

1. DEFINITIONS

Capitalised terms used in these Supplier Terms shall have the meaning given to them in the Call-off Terms unless otherwise defined in these Supplier Terms:

“Affiliate” means in relation to a Party, its ultimate holding company and all subsidiaries of its ultimate holding company, the definitions of “holding company” and “subsidiary” being those set out in sections 1159 and 1160 of the Companies Act 2006.

“Buyer Cause” has the meaning given in clause 5.1.

“Buyer Data” means all data, information, and other materials in any form (including derivatives) relating to the Buyer (and/or its customers) and which may be accessed, generated, collected, stored or transmitted by the Supplier (or any Supplier subcontractors or consultants) in the course of the performance of the Services.

“Buyer Responsibilities” means any obligation of the Buyer under this Call-off Contract, including those set out in the Order Form.

“Call-Off Terms” means the Call-off Contract terms and conditions and the Order Form set out under the G-Cloud 13 Framework Agreement.

“Change Information” has the meaning specified at clause **Error! Reference source not found.**

“Change Request” has the meaning specified at clause **Error! Reference source not found.**

“Charges” means the charges payable under this Call-off Contract as calculated in accordance with *Call-off Contract Charges*.

“Data Protection Losses” all liabilities arising in connection with the Data Protection Legislation under this Call-off Contract including the following liabilities: (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or nonmaterial damage); and (b) to the extent permitted by applicable Law: (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a supervisory authority; (ii) compensation which is ordered by supervisory authority to be paid to a Data Subject; and (iii) the reasonable costs of compliance with investigations by a supervisory authority;

“Deliverable” means an item or feature delivered or to be delivered by the Supplier in relation to the completion of a Milestone.

“Employee Liabilities” means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of agreed settlement (subject to approval by the Contractor, such approval not to be unreasonably withheld or delayed) and costs and expenses reasonably and necessarily incurred in connection with a claim or investigation (including any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), together with reasonable legal costs and expenses incurred in defending any such claims;

“In-Scope Services” means the Services categorised as being the Supplier’s responsibility as set out in the Order Form.

“Implementation Plan” means the plan to be delivered in accordance with clause 7 (*Implementation Plan*).

“Intellectual Property Rights” or **“IPR”** means: (i) patents, supplementary protection certificates, rights in trade secrets and other confidential or undisclosed information (such as inventions (whether patentable or not) or know-how), registered designs, rights in copyright (including authors’ and neighbouring or related rights), database rights, design rights, semiconductor topography rights, mask work rights, trademarks and service marks; (ii) all registrations or applications to register any of the items referred to in paragraph (i); and (iii) all

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rights in the nature of any of the items referred to in paragraphs (i) or (ii) including continuations, continuations in part and divisional applications, reputation, personality or image, trade names, business names, brand names, get-up, logos, domain names and URLs, rights in unfair competition and, without prejudice to anything set out elsewhere in this definition, rights to sue for passing off and all rights having equivalent or similar effect to, and the right to apply for any of, the rights referred to in this definition in any jurisdiction;

“Losses” means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.

“Milestone” means the activities which are to be completed as part of the Services as set out in the Implementation Plan and *Call-off Contract Charges*.

“Out of Scope Services” means the tasks and activities set out in *Service Definition*.

“Outline Implementation Plan” means the outline project plan set out in the Order Form.

“Pricing Assumption” means any stated assumptions as set out in *Call-off Contract Charges* that affect the Supplier’s cost of delivering the Services and/or Deliverables if they are inaccurate.

“Project Manager” means, in respect of each Party, the person appointed pursuant to clause 8.1.

“Rate Card” means the table of day rate fees set out in *Call-off Contract Charges*.

“Services” means the services to be provided pursuant to this Call-off Contract as described at *Service Definition*.

“Service Recipient” means a Contracting Authority which receives the benefit of any of the Services or Deliverables provided under this Call-Off Contract which are identified as such in the Order Form.

“Supplier Terms” means these terms and conditions.

“Supplier Toolset” has the meaning in clause **Error! Reference source not found..**

“Supplier's Background Intellectual Property” means the Intellectual Property Rights in works owned by the Supplier and used in the provision of the Services: (a) which were created by or on behalf of the Supplier before the Call-off Start Date; (b) created by or on behalf of the Supplier for purposes not connected with the provision of the Services; but excluding the Supplier’s Toolset.

“Termination Payment” means the sum calculated in accordance with *Call-off Contract Charges* where specified.

“Working Day” means a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in the City of London.

“Works” means all output whether electronic, documentary, tangible or intangible, developed, written or prepared by the Supplier (or its sub-contractors or consultants), whether individually, collectively or jointly with the Buyer, in performing the Services in which Intellectual Property Rights subsist.

2. SERVICES

- 2.1 In consideration of the payment of the Charges, the Supplier shall supply the Services in accordance with the terms of this Call-off Contract. The Supplier shall perform the In-Scope Services.
- 2.2 Services provided by the Supplier under this Call-off Contract do not include:
 - 2.2.1 any services made necessary as a result of the Buyer's misuse or modification of software or equipment other than in accordance with the Supplier's instructions; or
 - 2.2.2 any Out of Scope Services (subject to the provision of such services being agreed in accordance with clause **Error! Reference source not found.**
- 2.3 Any changes to the Services shall be dealt with in accordance with clause **Error! Reference source not found..**
- 2.4 The Services are provided at the Buyer’s request and the Buyer is responsible for ascertaining that the Services are suitable for its own needs.

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3. SUPPLIER GENERAL OBLIGATIONS

- 3.1 The Supplier shall provide the Services in accordance with the Implementation Plan but nothing in this Call-off Contract shall entitle the Buyer to terminate this Call-off Contract if the delivery dates set out in Implementation Plan are not achieved unless failure to achieve a specific delivery date is expressly identified as being a material breach of this Call-off Contract in the Implementation Plan.
- 3.2 The Supplier shall use reasonable endeavours to comply with the rules and regulations which are notified to it in accordance with clause 4.1.3.

4. BUYER RESPONSIBILITIES

- 4.1 The Buyer shall at its own cost comply with, provide or procure (as the case may be) for the Supplier:
 - 4.1.1 access to, and use of, the Buyer's premises and facilities;
 - 4.1.2 access to Buyer Software and Buyer Data;
 - 4.1.3 the rules and regulations in force for the conduct of personnel at the Buyer premises in writing before the Supplier first visits those premises;
 - 4.1.4 guidance for the Supplier regarding those aspects of the Buyer's business practice which may affect the Services or the provision of them;
 - 4.1.5 that its employees, and any relevant consultants to the Buyer, co-operate fully with the Supplier;
 - 4.1.6 all information, instructions, documentation, and assistance that the Supplier reasonably requests to enable it to perform its obligations under this Call-off Contract; and
 - 4.1.7 the obligations listed as the Buyer Responsibilities.
- 4.2 The Buyer shall ensure that the computer and operating system and any other hardware or software which the Supplier is asked by the Buyer to use or modify for the purposes of performing the Supplier's obligations is either the property of the Buyer or is legally licensed to the Buyer and that the Supplier is authorised to use the same for the purposes of this Call-off Contract.
- 4.3 The Buyer shall only use the Services for its own benefit and not for the benefit of any third party unless otherwise agreed in writing.

5. BUYER CAUSE

- 5.1 If the Supplier would have provided the Services in accordance with this Call-off Contract but has failed to do so as a result of the Buyer's failure to comply with any Buyer Responsibility ("**Buyer Cause**"), the Supplier shall:
 - 5.1.1 not be treated as being in breach of this Call-off Contract to the extent that non-performance or breach is due to any Buyer Cause;
 - 5.1.2 attempt to mitigate any Buyer Cause by using its reasonable endeavours to perform the Services on time and in accordance with this Call-Off Contract;
 - 5.1.3 be entitled to be paid any Charges associated with a Milestone to which it would otherwise have been entitled to without deduction; and
 - 5.1.4 in the event that it has, as a consequence of the Buyer Cause, suffered Losses that are not alleviated or satisfied by the relief afforded to it pursuant to clauses 6.1.1 and 6.1.3 be entitled to recover from the Buyer any Losses reasonably and properly suffered or incurred by the Supplier as a result of the Buyer Cause.

6. IMPLEMENTATION PLAN

- 6.1 The Outline Implementation Plan is set out in the Order Form.
- 6.2 Unless otherwise agreed, the Supplier shall within 20 Working Days of the date of the Call-off Contract Start Date deliver to the Buyer an Implementation Plan which shall include the proposed timescales for the delivery of the Milestones and the testing measures and success criteria to be applied in relation to each Milestone.
- 6.3 The Parties shall agree the Implementation Plan promptly and within a further 10 Working Days. In the event the Parties cannot agree any aspect of the Implementation Plan within the required timescale then the matters in dispute shall be resolved in accordance with 8.

7. CHARGES AND PAYMENT

- 7.1 The Supplier shall invoice the Buyer the Charges for the Services on the acceptance of each Milestone in accordance with clause 7.2.
- 7.2 If it is agreed that the Supplier shall charge fees in accordance with the Rate Card, the Supplier shall invoice the

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Buyer the Charges monthly in arrears for all work completed during the preceding month which shall be calculated in accordance with the Rate Card. The Parties shall agree the format of any reporting to support invoicing of the Charges or failing that, the Supplier shall provide a reasonable supporting detail to breakdown the calculation of the Charges.

- 7.3 The Buyer shall reimburse the Supplier all travelling, accommodation and other expenses reasonably incurred by the Supplier in the performance of the Supplier's obligations under the Call-off Contract in accordance with the agreed expenses policy.
- 7.4 All Charges shall be calculated and payments made in pounds sterling. The Buyer shall pay all invoices within 30 calendar days of the date of the invoice.
- 7.5 All amounts payable pursuant to this Call-off Contract are exclusive of any VAT properly chargeable in accordance with laws. The Buyer shall pay VAT at the rate for the time being properly chargeable in respect of the Services subject to the Supplier providing the Buyer with such valid tax invoices or other documentation as may be required by any relevant laws.
- 7.6 Where the payment of any invoice (or any part of an invoice) is not made in accordance with this clause 6, the Supplier, without prejudice to its other rights under this Call-off Contract or in law, may:
 - 7.6.1 cease providing any or all of the Services; and/or
 - 7.6.2 charge interest on the late payment of any undisputed Charges properly invoiced which shall accrue daily from the due date to the date of actual payment on any overdue amounts under this Call-off Contract (whether before or after judgment) at the rate of 5% per cent per annum above the base rate of the Bank of England for the time being in force.
- 7.7 Where:
 - 7.7.1 the Supplier's delivery of the Services is impacted as a result of Buyer Cause; and/or
 - 7.7.2 a Pricing Assumption is not accurate or correct (as demonstrated with supporting evidence by the Supplier),
 then:
 - 7.7.3 the Charges payable by the Buyer in respect of any additional services provided by the Supplier shall be calculated in accordance with the Rate Card, such Charges to be invoiced by the Supplier monthly in arrears of the supply of the relevant services; and/or
 - 7.7.4 the Supplier shall confirm to the Buyer in writing any changes to the Implementation Plan required as a result of the Buyer Cause or inaccurate or incorrect Pricing Assumption and the Implementation Plan shall be deemed to be updated accordingly following such confirmation by the Supplier.
- 7.8 All amounts due from the Buyer to the Supplier under or in connection with this Call-off Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of taxes required by law).

8. GOVERNANCE

- 8.1 The Parties shall each appoint a Project Manager who shall, from the Call-off Start Date, have full authority to take all necessary decisions regarding the provision of the Services including agreeing variations to the Call-off Contract terms in accordance with clause **Error! Reference source not found.**
- 8.2 The Parties shall comply with the provisions of Schedule 8 in relation to the management and governance of this Call-off Contract.

9. TERM AND TERMINATION

Unless entered in accordance with the Call-Off Terms, this Call-off Contract shall come into force on the date of this Call-off Contract and the provision of the Services shall commence on the Call-off Start Date and shall continue in force until the Services are complete.

10. TERMINATION CONSEQUENCES

- 10.1 Upon the termination or expiry of this Call-off Contract:
 - 10.1.1 each Party shall promptly return any property of the other which it has in its possession or control;
 - 10.1.2 the Buyer shall promptly pay the Supplier all unpaid Charges accrued until the date of termination or expiry;
 - 10.1.3 any right of action or remedy which has accrued or shall afterwards accrue to either Party shall not be prejudiced; and
 - 10.1.4 all provisions which are, expressly or impliedly, to survive the termination or expiry of this Call-off

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Contract shall remain in full force and effect.

- 10.2 If the Buyer ends the Call-off Contract by giving 30 days' notice under clause 10, then the Supplier shall be entitled to charge the Buyer a Termination Payment calculated in accordance with *Call-off Contract Charges* where specified.
- 10.3 Exit plans:
- 10.3.1 the Buyer and the Supplier acknowledge that the Exit 'off-boarding' arrangements may not align fully with Cloud Support consultancy services and agree that if alternative Exit Plans and arrangements are inserted into these Supplier Terms, then these Buyer specific arrangements shall apply in place of the provisions;
- and
- 10.3.2 in any event, the Supplier shall not be required to carry out any activity that requires it to incur costs that are not provided for within the Charges.

11. INTELLECTUAL PROPERTY INDEMNITY

The Buyer shall, on demand, defend and indemnify the Supplier, its officers, directors, employees, agents, successors and assigns against all, claims, demands, actions, proceedings, losses, damages, costs and expenses (including all reasonable legal fees) in relation to any infringement or alleged infringement of any third party Intellectual Property Rights incurred by the Supplier as a result of carrying out the Services in accordance with designs, specifications or materials provided by the Buyer or using any other of Buyer Materials, including Buyer Software and Buyer Data.

12. LIABILITY

- 12.1 Subject to clauses 12.2 and 12.3, in the event of a breach of the terms of this agreement by the Supplier, the Supplier shall remedy the relevant breach and/or repair the relevant Services and/or Deliverables. The Supplier's liability in remedying such breach and/or repairing the relevant Services and/or Deliverables shall be limited an amount set out in the Order Form.
- 12.2 Subject to clause 16.3, the Supplier will not be liable to the Buyer for any:
- 12.2.1 loss of revenue; loss of anticipated savings; loss of opportunity; loss of goodwill or injury to reputation; punitive damages; or losses suffered by third parties regardless of whether such loss is direct, indirect, special or consequential;
- 12.2.2 any third party costs or expenses;
- 12.2.3 indirect, consequential or special loss (including that already excluded pursuant to clause 12.2.1) whether or not the Supplier knew of the circumstances giving rise to such loss, arising out of, or in connection with, this Call-off Contract.
- 12.3 Nothing in this Call-off Contract shall exclude or limit either Party's liability for:
- 12.3.1 death or personal injury caused by its (or its agent's or sub contractor's) negligence;
- 12.3.2 any breach of obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- 12.3.3 fraud or fraudulent misrepresentation; or
- 12.3.4 any amount due and payable pursuant to the indemnities in clauses 11 and 13, and this clause 12.3 takes precedence over all other clauses in this Call-off Contract.
- 12.4 The Supplier's total liability in connection with all Data Protection Losses shall be limited to the amount set out in the Order Form.

13. DATA PROTECTION

- 13.1 The Buyer shall comply with:
- 13.1.1 all Data Protection Legislation in connection with the processing of Personal Data, the Services and the exercise and performance of its respective rights and obligations under this Call-off Contract, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Legislation; and
- 13.1.2 the terms of this clause 13.
- 13.2 The Buyer shall ensure that:
- 13.2.1 the Supplier is lawfully permitted under Data Protection Legislation to carry out the Services and Process the Personal Data on its behalf, including by ensuring that there is a lawful basis for the Processing by the Supplier which shall include validating the legal basis for any Processing by the Supplier and providing all of the required fair processing notices and forms of consent for use by the Supplier in its provision of the Services (where necessary);

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- 13.2.2 all instructions given by the Buyer to the Supplier in respect of Personal Data shall at all times be in accordance with Data Protection Legislation.
- 13.3 The Buyer warrants that all Personal Data Processed by the Supplier as envisaged under this section has been and shall be collected and processed by the Buyer in accordance with Data Protection Laws including without limitation: (a) ensuring that all notifications to and approvals from regulators which are required by Data Protection Laws are made and maintained by the Buyer; and (b) ensuring that all Personal Data is collected and Processed fairly and lawfully, is accurate and up to date and that a fair collection notice is provided to data subjects which describes the Processing to be undertaken by the Supplier pursuant to this Call-off Contract.
- 13.4 If the Supplier is a Data Processor it shall:
- 13.4.1 Process the Personal Data only in accordance with instructions from the Buyer (which may be specific instructions or instructions of a general nature as set out in this Call-off Contract or as otherwise notified by the Buyer to the Supplier during the Term); and
- 13.4.2 Process the Personal Data only to the extent, and in such manner, as is specified in the Buyer's written processing instructions necessary for the provision of the Services or as is required by Law or any Regulatory Body.
- 13.5 At the request of the Supplier, the Buyer shall cooperate with the Supplier to clarify existing or record new detailed written Processing instructions.
- 13.6 The Supplier shall be entitled to suspend any part Services (without liability to the Buyer) to the extent that the Supplier in good faith raises legitimate concerns regarding the lawfulness of the sharing or Processing of Personal Data carried out as part of the Services until such time as those concerns are satisfactorily resolved or mitigated by the Parties.
- 13.7 The Buyer shall review the technical and organisational measures adopted by the Supplier in connection with the provision of the Service and satisfy itself as to their adequacy and compliance with Data Protection Laws.
- 13.8 The Supplier shall be entitled to disclose the relevant parts of the Call-Terms relating to the handling of Personal Data and/or any associated documentation or Processing instructions exchanged between the Parties to a Regulatory Body or otherwise in the course of investigating and defending any legal proceedings or claims.

14. THIRD PARTY RIGHTS

A person who is not the Buyer or the Supplier shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Call-off Contract. This clause 14 shall not affect any right or remedy of any person which exists, or is available otherwise than pursuant to that Act.

15. ENTIRE AGREEMENT

- 15.1 This Call-off Contract sets out the entire agreement and understanding between the Parties in respect of its subject matter and supersedes any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) given or made before the Call-off Start Date by, or on behalf of, the Parties and relating to its subject matter.
- 15.2 Each Party confirms that it has not relied upon, and (subject to clause 15.4) shall have no remedy in respect of, any agreement, warranty, statement, representation, understanding or undertaking made by any Party (whether or not a Party to this Call-off Contract) unless that agreement, warranty, statement, representation, understanding or undertaking is expressly set out in this Call-off Contract.
- 15.3 Subject to clause 15.4, neither Party shall be entitled to claim the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, understanding or undertaking whether or not it is set out in this Call-off Contract.
- 15.4 Nothing in this Call-off Contract shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.