

G-Cloud 14 – KPMG Supplier Terms: Implementation Services

1 Scope and definitions

- 1.1 KPMG LLP has been appointed to the Crown Commercial Service G-Cloud 14 Framework Agreement reference RM1557.14 (the “**Framework**”) which sets out the terms applicable to Call-Off Contracts entered into between a Supplier and a Buyer under that Framework (the “**Call-Off Terms**”).
- 1.2 Unless otherwise provided in these Supplier Terms:
- (i) capitalised words have the meaning given to them in the Framework and Call-Off Terms;
 - (ii) the term “you” and its derivatives refer to the Buyer and the terms “we” and “our” and its derivatives refer to the Supplier, each as identified in the Order Form;
 - (iii) references to clause numbers are to clauses in the Call-Off Terms and references to paragraphs are references to paragraphs in these Supplier Terms;
 - (iv) references to the Order Form are references to the relevant Order Form entered into between the Buyer and Supplier; and
 - (v) the term “the Services” means the Services (including any Additional Services) set out in the applicable Order Form and any other obligations performed by us under the Call-Off Contract.
- 1.3 These Supplier Terms explain how, together with the Call-Off Terms, we will work with you under a Call-Off Contract and set out the supplemental terms that will apply in relation to the Services provided in addition to the Call-Off Terms.
- 1.4 At your request we may agree with you to specifically vary these Supplier Terms for a specific Call-Off Contract, provided such amendment does not materially change the overall effect of these Supplier Terms, and we will set out any agreed amendment in the Order Form.

2 Providing the Services

- 2.1 Notwithstanding our duties and obligations, our role is to provide the Services rather than to make business decisions on your behalf, and you will always remain responsible and accountable for managing your affairs, deciding on what to do after receiving our Services, and implementing any advice or recommendations we provide.
- 2.2 In relation to any due diligence we may have conducted in accordance with clause 5, you warrant that any information you provided us, and any responses to our enquiries, was accurate and complete in all material respects. If you become aware of any inaccuracies or omissions you will promptly notify us in writing.
- 2.3 The description of any key Deliverables will be set out in or referenced in the Order Form (including any key documentary deliverables and/or implementation deliverables). We shall ensure that each Deliverable shall comply in all material respects with the features and functionality set out in or referenced in the Order Form. We shall use all reasonable endeavours to perform the Services in accordance with the agreed timescales (unless otherwise agreed with the Buyer in writing or we are relieved from such timescales under the terms of the Call-Off Contract).

3 The way we work

- 3.1 In providing the Services we may provide advice orally, in draft or interim form, but our later written advice or final written report supersedes anything provided earlier and you should not rely on any advice that is draft or interim. If we give you oral advice, and you want to rely on it, let us know and we will provide it in writing. Only the written advice provided in response to such a request should be relied upon.
- 3.2 We cannot predict future events or circumstances, and you should not interpret any advice, opinion, statement of expectation, forecast or recommendation given by us as being a prediction or guarantee of any outcome.
- 3.3 Unless specifically forming part of the Services, or otherwise specifically agreed with you in writing:
- (i) if we receive information from you or from other sources in connection with the Services, we may rely upon it without independent verification; and
 - (ii) we will not update the Services or any Deliverables after we have delivered the final Deliverables.
- 3.4 The Services and any Deliverables are provided for your internal use only (and not for the benefit of any third party) and, except as specifically provided under the Call-Off Terms, they may not be disclosed to any other party without our prior written consent (except as required by Law or by a competent Regulatory Body in which case you shall, if permitted by Law or the Regulatory Body, promptly inform us). However, you may disclose the Deliverables to other government bodies or agencies for support purposes and to your insurers, legal and other professional advisers if seeking advice in relation to the Services, provided that you inform them that: (i) the Deliverables are to be held in confidence; and (ii) to the fullest extent permitted by law, we accept no liability to them in connection with the Services or the Deliverables.
- 3.5 We may agree with you a detailed procedure for managing any changes that you or we may request in relation to the Services or the Call-Off Contract. In the absence of agreeing such procedure, the following process shall apply:
- (i) if either Party requests a change to the scope or performance of the Services or any other aspect of the Call-Off Contract we will discuss this with you and shall, within a reasonable time, provide a written explanation of (a) the likely time required to implement the change; (b) any variation to the Charges arising from the change, or any cost to implement the change; and (c) any impact of the change on the terms of the Call-Off Contract; and
 - (ii) if you approve the details of the change we shall promptly document the details of the change in a change form. If you approve the change form we shall both sign it, and once signed by both Parties it shall form part of (and amend as appropriate) the Call-Off Contract. No change shall be effective or binding until a change form is signed by both Parties.
- 3.6 We will agree with you a detailed procedure for managing and governing the Services and the performance of both of our obligations under the Call-Off Contract. Both Parties shall follow this governance procedure in relation to activities under the Call-Off Contract.
- 3.7 If, as part of or to facilitate the Services, you require use of a collaboration site, such as for uploading data or other collaboration tools or data repository site, additional terms may apply. We will provide these to you at the relevant time and these terms will apply in addition to these Supplier Terms in relation to your use of the relevant collaboration site or tools.

4 Subcontracting

- 4.1 In addition to any Subcontractors expressly identified in the Order Form, we may also use any of the third party subcontractors specifically set out in our Service Description or our Application. We may also rely on the services of other KPMG Persons (defined below) in providing the Services, to which you hereby consent.
- 4.2 In these Supplier Terms “**KPMG Persons**” means KPMG LLP and each and all of its members, employees, and other workers, together with any entity associated with us and each and all of its partners, members, directors, employees and other workers, and “**KPMG Person**” means any one of them.

5 Managing delays

- 5.1 If a Party becomes aware that its obligations are not going to be met within any agreed timescale (including any milestones or go-live dates), it shall advise the other Party of this as soon as reasonably possible in writing.
- 5.2 Each Party shall advise the other Party as soon as reasonably possible if it becomes aware that any anticipated failure by the other Party to perform its obligations under this Call-Off Contract will prevent it from performing obligations, fulfilling dependencies (including any Buyer responsibilities) or meeting any assumptions, milestones or go-live dates.
- 5.3 Except in the circumstances referred to in paragraph 8, if we become aware that we will not meet a milestone or go-live date by the relevant date, we shall promptly provide you with details of our proposed mitigating actions and shall use reasonable endeavours to reduce or mitigate the impact of the delay.
- 5.4 Nothing in the Call-Off Contract shall make time of the essence in respect of our performance of the Services or provisions of any Deliverable.

6 Buyer's responsibilities

- 6.1 You shall provide (and procure that your personnel and any of your other suppliers provide), in a timely manner, such cooperation, information, documents and access to adequately skilled and knowledgeable personnel (including project stakeholders), premises, systems and facilities, as set out in the Order Form or as we reasonably need to provide the Services or we request in order to obtain all necessary licences and permissions. We shall endeavour to set out such requirements in the Order Form, but you acknowledge that such details may not be exhaustive.
- 6.2 In order to enable us to provide the Services, you shall:
- (i) perform or comply with (as the context permits) any dependencies or responsibilities set out in or referenced in the Order Form;
 - (ii) give prompt attention to any matter raised by us relating to your obligations and the performance of the Services;
 - (iii) inform us of any changed circumstances or information that may have an impact on our Services (and where any developments increase our obligations or vary the scope of the Services, the Parties shall agree the same as a change in scope under the agreed change control procedure);
 - (iv) ensure that the personnel with whom we deal have the required skills and information to support the receipt of the Services;

- (v) be responsible for acquiring all such products and the appropriate license rights necessary for us and our Subcontractors to access your systems (including any third party software) in connection with the Services; and
 - (vi) enter into any notifications, registrations and disclosures required of you by Law.
- 6.3 If the Services are not to be performed at our premises, you agree to:
- (i) provide (and ensure that all arrangements are made for) access to your premises and suitable workstations and access to your systems and software to enable us to provide the Services (including arrangements for security procedures, virus checks and any licences or consents as may be required); and
 - (ii) ensure that the Supplier Staff are able to safely use your premises to provide the Services and that your premises are free from recognised hazards and, at no charge to us, to provide reasonable levels of support at your premises consistent with provision of the Services at those locations (including any specific support requirements set out in or referenced in the Order Form).
- 6.4 We may rely on any instructions, requests or information supplied, orally or in writing, by any person whom we reasonably believe to be authorised by you to communicate with us for the purposes of the Call-Off Contract. We may at your request send documents to an electronic storage facility hosted or controlled by you or at your direction, in which event you shall be responsible for security and confidentiality at such facility.
- 6.5 You must review and sign off the Deliverables in accordance with the procedure(s) set out in or referenced in the Order Form, or as otherwise agreed and documented between us in writing, as required to enable us to meet any timescales (including any design, specification, testing, migration and live promotion), as meeting your requirements, being suitable for the purposes of your business and meeting any Laws that apply to you or your business.
- 6.6 You shall carry out the acceptance tests (if any) in relation to the Services and Deliverables in accordance with the procedure(s) set out in or referenced in the Order Form, or as otherwise agreed and documented between us in writing. You must carry out such testing in accordance with any agreed timetable set out in or referenced in the Order Form or, in the absence of such timetable, within such timetable as we reasonably require to enable us to deliver the Services and Deliverables. You must promptly carry out the acceptance tests, not unreasonably delay any testing and not unreasonably withhold your acceptance of the Services and Deliverables.
- 6.7 You warrant that:
- (i) you shall inform us (and have informed us of any such matters that are in effect at the date of the Call-Off Contract) in writing of all information relevant to your regulatory practices (including but not limited to policies, interactions with any Regulatory Body and enforcement actions) and related context within which we provide the Services and the Deliverables, and any regulatory or other relevant steps which are specific to you and your operations which we, in providing the Services, needs to take into account in providing the relevant Services; and
 - (ii) you shall comply with the export laws and regulations of the United Kingdom and as applicable the United States and any other relevant local export laws and regulations (including “deemed export” and “deemed re-export” regulations) ("**Export Controls**") which apply to the Platform and the Deliverables. You agree that such Export Controls govern the use of the Platform (including technical data) and any Deliverables provided under the Call-Off Contract, and agree to comply with all such Export Controls. You agree that no such Deliverable will be used or exported, directly or indirectly in violation of or in a way prohibited by these laws.

7 Buyer systems and third parties

- 7.1 You shall enter into and maintain for the duration of the Services the Platform Licence(s) and any Third Party Licence(s) (as defined in paragraph 12.1 below) and grant us the rights set out under paragraph 12 to enable us to perform the Services.
- 7.2 You shall ensure for the duration of the Services that:
- (i) the Platform Owner (as defined in paragraph 12.1 below) is and remains responsible to you for technical support and maintaining and supporting the functionality of the Platform and any future developments of the Platform;
 - (ii) each Third Party Licensor (as defined in paragraph 12.1 below) is and remains responsible to you for technical support and maintaining and supporting the functionality of its IPRs and any future developments of its IPRs; and
 - (iii) you promptly escalate:
 - (a) any defects or operational instability in the Platform or any Third Party Licensor product that affect the performance of the Services or the operation of the Deliverables; and
 - (b) any failure by the Platform or any Third Party Licensor product (licensed directly to you) to meet the agreed specification (except, for the avoidance of doubt, where it is our responsibility to configure the Platform or Third Party Licensor product to meet the specification as part of the Services) and
 - (c) as soon as possible after becoming aware of the relevant issue (including both those issues discovered by you and those reported to you by us) and to procure that the Platform Owner in the case of the Platform Licence(s) and the Third Party Licensor in the case of the Third Party Licence(s) investigates and remedies the issue in question as soon as reasonably possible (and in any event in good time to enable us to comply with our obligations under the Call-Off Contract) or to take such actions yourself in respect of your own systems.
- 7.3 We acknowledge that you may engage other suppliers and contractors to perform your obligations under the Call-Off Contract on your behalf, but you must inform us before doing so. You shall not be relieved from any of your obligations under the Call-Off Contract by delegating the performance of any part of your obligations to any supplier or contractor. You shall be responsible for the acts and omissions of all such suppliers and contractors as if they were your acts and omissions.
- 7.4 Subject to paragraph 3.4, you may disclose our Confidential Information (with the exception of any Restricted Information (as defined in paragraph 10.5)) to your other suppliers and contractors solely to the extent necessary, and for so long as is necessary, to enable them to perform your obligations under the Call-Off Contract or to enable you to obtain the benefits conferred under Call-Off Contract and provided that such third party has signed a confidentiality agreement on terms at least as protective of our Confidential Information as in the Call-Off Contract and enforceable by us, and they may only use our Confidential Information for the purposes of the services it provides to you and they may not disclose our Confidential Information to any other third party.

8 Relief Events

- 8.1 If there is a Relief Event (as defined in paragraph 8.3 below) this may have an impact on our delivery of the Service (such as on timescales, our ability to comply with the terms of the Call-Off Contract, or to increase our costs) and we shall be relieved from our obligations or any delivery timetable/date to the extent impacted by the Relief Event. We may also recover from you any additional costs we incur as a

direct result of the Relief Event, provided we use reasonable endeavours to mitigate the impact of the Relief Event to the extent we are reasonably able to.

- 8.2 If we become aware of a Relief Event, and that Relief Event has or is likely to have a material detrimental effect on our ability to comply with our obligations:
- (i) we shall provide you with notice of that Relief Event, its consequences, and whether we believe there is likely to be a cost implication or delay due to such failure as soon as reasonably practicable;
 - (ii) we shall use reasonable endeavours to mitigate the impact of a Relief Event, which may include implementing a workaround in the way or method of providing the Services or a Deliverable; and
 - (iii) we shall both review the relevant details of the likely impact of the Relief Event through the governance procedures.
- 8.3 A "**Relief Event**" means (a) any failure by you to ensure that your dependencies and responsibilities are performed; (b) any failure by you to comply with your obligations under the Call-Off Contract; (c) any assumptions set out in or referenced in the Order Form proving to be incorrect; and (d) any failure of the Platform or your Third Party Licensor's IPRs to conform to its relevant specification.

9 Buyer policies

- 9.1 We appreciate that you may have your own internal policies and procedures applicable to the Services ("**Buyer Policies**") with which you would like us to follow in providing the Services (which may include staff vetting, security and environmental requirements). However, in order to enable us to ensure we can comply with any Buyer Policies in providing the Services (and for the Charges), we require written copies of them in advance of entering into the Call-Off Contract (other than the specific policies listed in the Call-Off Terms).
- 9.2 If you ask us to comply with any additional or amended Buyer Policies after the date of the Call-Off Contract we will use our reasonable endeavours to comply with them in all material respects, however we will discuss with you if we are unable to comply with any additional or amended Buyer Policies in providing the Services or if we are unable to do so for the Charges.

10 Confidentiality

- 10.1 We are a regulated business and comply with the confidentiality standards of the Institute of Chartered Accountants in England and Wales and will comply with the specific confidentiality obligations set out in the Call-Off Terms. Notwithstanding this, we may share information relating to you, our relationship with you, and the Services (including Confidential Information) with other KPMG Persons, and that information may be accessed by other parties who facilitate or support our business, but we will ensure that such parties are bound by confidentiality obligations protecting your Confidential Information and we are still responsible for ensuring such confidentiality if Confidential Information is shared with or accessed by such parties.
- 10.2 We may also disclose your Confidential Information to any of your other suppliers and contractors where you have instructed us to work with those third parties or to transfer your Confidential Information to them. You are responsible for ensuring you have appropriate confidentiality obligations in place with your other suppliers and contractors in respect of such disclosures.
- 10.3 You must take all necessary precautions to ensure that any of our Confidential Information is only disclosed to such of your personnel to the extent that it is strictly necessary for them to know the Confidential Information and you must ensure that they comply with the confidentiality obligations under the Call-Off Contract.

- 10.4 If a Party shares the other Party's Confidential Information it shall be responsible for the acts and omissions of all individuals or entities to which it disclosed the Confidential Information as if they were the acts and omissions of that Party to the extent that Party would be liable to the other Party under or in connection with the Call-Off Contract for those acts and omissions.
- 10.5 Due to the nature of our business we require you to comply with additional restrictions in relation to "**Restricted Information**", being our Confidential Information which refers to (a) our internal financial data, including any internal profit margins; (b) our other clients; (c) our internal business processes and operations not related to the Services; (d) personnel information concerning Supplier Staff; or (e) information in respect of which we are bound by separate duties owed to third parties not to reveal certain information (whether founded in law, regulation or contract). These restrictions include not to disclose our Restricted Information to any third party unless such disclosure is required by Law (and only then to the minimum extent required), or any other reasonable restriction we notify you of in writing. We may also withhold any Restricted Information from any audit.
- 10.6 You will immediately tell us about any security breach of our Confidential Information and will keep a record of those breaches. You will take the necessary steps to recover this information. You will co-operate with us in any investigation into the breach that we consider is necessary.
- 10.7 If you request (or the Call-Off Terms require) that we destroy or procure the return of your Confidential Information or any data we will take commercially reasonable steps to delete the same from our computer and communications systems and devices. However, we may retain a copy of such Confidential Information or data as required by Law or our record retention policy (which we have implemented to enable us to comply with Law and the requirements of our Regulatory Body).
- 10.8 You will use software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software and to prevent it spreading or otherwise having an adverse effect on our systems or those of our Subcontractors. You are also responsible for ensuring that the Platform Owner and each Third Party Licensor use software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software and to prevent it spreading or otherwise having an adverse effect on our systems or those of our Subcontractors.
- 10.9 To clarify, we accept our obligation under clause 16.3 only in relation to Malicious Software introduced by us or our Subcontractors (or our Subcontractors' systems). To reciprocate clause 16.3, if Malicious Software is introduced by you or your third parties (or your to their systems) into our systems you will help us to mitigate any losses and will, as requested, help us to restore our systems as soon as possible.
- 10.10 To reciprocate the obligation in clause 16.3, you will immediately notify us of any breach of security of our Confidential Information and you will, where the breach occurred because of your default, recover our Confidential Information however it may be recorded.
- 10.11 Both Parties agree that the other may make any notifications, registrations and disclosures required by Law or considered advisable to comply with Law and this may include disclosures or registrations relating to money laundering, tax requirements, and criminal or regulatory investigations.
- 10.12 We may use information we obtain in performing the Services on an anonymised and/or aggregated basis so that no Personal Data or Confidential Information is disclosed, for benchmarking, analytics, quality assurance or other purposes related to our business.

11 Conflicts of Interest

- 11.1 We may be delivering services to, or be approached to deliver services to, another party or parties with interests which conflict with yours (a "**Conflicting Party**"). We therefore have policies and procedures in

place (as required by our Regulatory Body) to identify and manage potential conflicts between the interests of our clients. Where there is a risk of a conflict we may establish “**Barriers**” as safeguards designed to facilitate the protection of each client’s interests, which may include (for example) separate teams, their geographical and operational separation and/or access controls over data, computer servers and electronic mail systems.

- 11.2 You accept that Supplier Staff are free to deliver services to Conflicting Parties, but where the interests of any Conflicting Party directly conflict with yours in relation to the subject matter of the Services (or under Framework clause 24.3) then the Supplier Staff shall not deliver services to the Conflicting Party and only other KPMG Persons may deliver services to the Conflicting Party where appropriate Barriers are in place. Where this process is followed and such Barriers are in place you agree that this will be sufficient in accordance with incorporated Framework clause 24 to manage such conflict of interest.
- 11.3 We will seek to identify Conflicting Parties in the circumstances set out in paragraph 11.1, however if you know or become aware that a potential conflict may arise then you must inform us promptly.
- 11.4 Where a third party has engaged us to deliver services before we entered into the Call-Off Contract and subsequently circumstances change, we may consider that, even with Barriers operating, your interests are likely to be prejudiced and we may not be satisfied that the situation can be managed. In that event, we may have to terminate the Call-Off Contract and we shall be entitled to do so on notice taking effect immediately on delivery, but we shall consult with you before we take this step.
- 11.5 The Supplier Staff who are engaged in the provision of the Services to you shall not be:
- (i) expected or assumed to have knowledge of any information known to other KPMG Persons not engaged on the Services; and
 - (ii) required to make use of or to disclose to you any information, whether known to them personally or known to other KPMG Persons, which is confidential to one of our other clients.

12 Intellectual Property Rights

Additional definitions

- 12.1 The following definitions shall apply in these Supplier Terms:
- (i) “**Platform**” means the technology platform and connectivity (as identified in the Order Form) to be provided to you by the Platform Owner pursuant to the Platform Licence(s), and any other IPRs, software, materials or works licensed to you by the Platform Owner under the Platform Licence(s).
 - (ii) “**Platform Licence**” means the valid rights and/or permissions granted (or which may, in the future, be granted) by the Platform Owner (or a relevant licensee of the Platform Owner) to you to use the Platform, and all related IPRs.
 - (iii) “**Platform Owner**” means the Platform owner as identified in the Order Form (or such other person as takes over relevant parts of the business of the foregoing).
 - (iv) “**Third Party Licence**” means the rights and/or permissions granted (or which may, in the future, be granted) by a Third Party Licensor to you for use in connection with the Platform (but excluding IPRs of the Platform Owner).
 - (v) “**Third Party Licensor**” means a third party (other than the Platform Owner) who licenses any software, materials or other IPRs or works to you in connection with the Platform.

KPMG IPR

12.2 Subject to the payment of our Charges, we grant you:

- (i) the rights to use our Intellectual Property Rights as set out in clause 11;
- (ii) with effect from the date of delivery (or otherwise making available) of the Deliverables, a non-exclusive, non-transferrable, perpetual, royalty-free (other than the Charges) licence to use those Deliverables (including any of our IPRs embedded in those Deliverables) for your ordinary business activities; and
- (iii) the rights to use during the Term (on a non-exclusive non-transferable basis), any of our other Intellectual Property Rights which we provide or make available to you in providing the Services, solely to the extent you need to use the same to receive the benefit of the Services during the Term.

The licences granted in clause 11 and paragraph 12.2(ii) and 12.2(iii) shall be revoked if our Charges are not paid in accordance with the Call-Off Terms.

12.3 For the purpose of the Call-Off Contract, our Background IPRs include any IPRs licensed to us before the date of the Call-Off Contract and any IPRs that are a development of or an enhancement and/or modification to any IPRs owned by or licensed to us before the date of the Call-Off Contract (howsoever arising, including as a consequence of the Services), and the definition of Background IPRs shall be interpreted accordingly. You will get a licence to use all such Background IPRs in accordance with clause 11.4.

12.4 You may only sub-license or transfer the rights granted under clause 11.2 and paragraph 12.2(ii):

- (i) to a supplier or contractor, solely to the extent necessary and for so long as is necessary for the supply of their services to you, and provided that such supplier or contractor may only use the IPRs for the purposes of those services and may not disclose our IPRs to any other third party; and
- (ii) to any member of your department, agency, commission or other government or public sector body or contracting authority, for as long as they remain a member of your department, agency, commission or other government or public sector body or contracting authority,

in each case, only in relation to your ordinary business activities.

12.5 If a member of your department, agency, commission or other government or public sector body or contracting authority ceases to be licensed to use the Platform, then the licence under clause 11.2 shall be suspended at that time so far as it relates to use by that member of your department, agency, commission or other government or public sector body or contracting authority. That licence shall be automatically re-activated (with the suspension being lifted without payment of any additional amount and without notice needing to be given) in respect of that member of your department, agency, commission or other government or public sector body or contracting authority with effect from such time as it is (or is again (as applicable)) licensed to use the Platform.

12.6 Under clause 15 (and subject to paragraph 12.8) the right to publish IPR as open source shall only apply:

- (i) to Project Specific IPR (excluding any software, which is subject to clause 15 and paragraph 12.9) for your ordinary business purposes;

- (ii) if you give us prior written notice of your intention to publish the Project Specific IPR as open source and we agree (in writing) to the open source licence terms you intend to use; and
 - (iii) you notify us in writing of any third party with whom you intend to share the Project Specific IPR so that we are aware, as part of our obligations as a regulated entity, of who has access to the Project Specific IPR and we consent to their use of the Project Specific IPR (which we may withhold if such sharing would prejudice our ability to comply with applicable auditor independence requirements or applicable Law).
- 12.7 In accordance with clause 11.4, if we wish to include any third party's IPRs (excluding any IPRs of a KPMG Person) as part of Deliverables or otherwise in relation to the Services, then we shall identify such third party's IPRs and the third party's licence terms which would apply to your use of such third party IPRs (either as direct licensee or a sub-licensee) prior to the inclusion of that third party's IPRs as part of Deliverables or otherwise in relation to the Services, and you agree to comply with (and will procure that any third party who you permit (as allowed under the Call-Off Contract) to access such third party IPRs complies with) the third party licensing terms in respect of the relevant third party's IPRs. In relation to certain third party IPRs we may procure a direct licence for your benefit (which may take the form of a direct licence pursuant to third party rights under our agreement with the third party) and we will discuss this with you if relevant to the specific circumstances of the Services.
- 12.8 We hereby inform you in accordance with clause 15.1 that you cannot, unless specifically set out in the Order Form, publish any third party IPRs or our Background IPRs as open source (however you will still have the other rights to use them in accordance with clause 11), and you hereby confirm such is acceptable to you in accordance with clause 15.1.
- 12.9 In accordance with clause 15.1, we hereby confirm that your right under clause 15 to publish as open source any software created for you shall not apply. You hereby agree that this is acceptable to you.
- 12.10 Although you may use and exploit the Project Specific IPRs (and any of our Background IPRs and third party IPRs) in accordance with the terms of the Call-Off Contract, we will have prepared the Project Specific IPR with the intent that they are used and relied upon by you only and only for the purposes of the Services or as otherwise stated in the Order Form or our Service Description. Accordingly, we do not accept a duty of care to others who may see or use any Project Specific IPRs outside of the scope of the Call-Off Contract and our Services to you (and you shall not inform or infer to any third party that we do).

Buyer IPR

- 12.11 You hereby grant us, or shall procure the grant of, a non-exclusive, worldwide, royalty free, non-transferable, non-sublicensable (other than in accordance with this paragraph 12.10), licence to use your IPRs (or those licensed to you and made available by you to us to provide the Services) solely to the extent necessary and for as long as is necessary in order for us to provide the Services. This licence shall be subject to such limitations as you may notify to us in writing from time to time. We may sub-license our rights to use your IPR to our Subcontractors solely to the extent necessary and for as long as is necessary in order for such Subcontractors to provide their services to us in connection with the Services.

Platform IPR and Licences

- 12.12 The Platform and IPRs in and to the Platform are owned by the Platform Owner and are licensed to you directly by the Platform Owner pursuant to the Platform Licence(s).
- 12.13 You hereby grant us for the Term, or shall procure the grant of, a royalty free, non-transferable, non-exclusive licence to use the Platform solely to the extent necessary and for as long as is necessary in

order for us to provide the Services. This licence shall be subject to such limitations as are contained within the Platform Licence(s) as notified to us in writing. We may only sub-license our rights to use the Platform to Subcontractors, and then solely to the extent necessary and for as long as is necessary in order for us to provide the Services to you.

12.14 Without prejudice to paragraph 12.12, you shall be responsible for ensuring that the Platform Licence(s):

- (i) remain valid, effectual and fully paid up (where applicable) for the Term;
- (ii) allow you (and any relevant any member of your department, agency, commission or other government or public sector body or contracting authority) to use (on the Platform) such applications and other relevant software as you wish to use to support your respective business purposes; and
- (iii) permit us to use the Platform and provide the rights required by us for the purposes of providing the Services and performing our obligations under the Call-Off Contract.

12.15 As a result of an alliance partnership between us and the Platform Owner, commissions may become due and payable from the Platform Owner to us in respect of certain transactions that you enter into with a third party who licenses any IPRs, software, materials or works to you (or any relevant any member of your department, agency, commissions or similar government body) in connection with the Platform Licences, or in respect of certain services we undertake for you which are related to the software licensed by the Platform Owner and/or such third party licensors to you ("**Platform Commission**"). You hereby consent to such Platform Commission being paid to and retained by us without us being liable to account to you for any such amounts.

Third Party IPR and Licences (excluding Platform IPR and Licences)

12.16 The IPRs in and to any Third Party Licence(s) are owned by the Third Party Licensor(s) and are licensed to you or any relevant any member of your department, agency, commission or other government or public sector body or contracting authority) directly by the Third Party Licensors.

12.17 If we require access to a Third Party Licensor's IPRs in order for us to provide the Services, you hereby grants to us for the Term, or shall procure the grant of, a royalty free, non-transferable, non-exclusive licence to use the Third Party Licensor's IPRs solely to the extent necessary and for as long as is necessary in order for us to provide the Services. This licence shall be subject to such limitations as are contained within the Third Party Licence(s) as notified to us in writing. We may only sub-license our right to use the Third Party Licensor's IPRs to Subcontractors and then solely to the extent necessary and for as long as is necessary in order for us to provide the Services to you.

12.18 Without prejudice to paragraph 12.16, you shall be responsible for ensuring that the Third Party Licence(s) remain valid, effectual and fully paid up (where applicable) during the Term.

General

12.19 Subject to our confidentiality obligations over your Confidential Information, nothing in the Call-Off Contract shall prevent us from using any know how, ideas or concepts acquired before or during the performance of the Services for any other purpose, including for the avoidance of doubt to provide services similar to the Services to our other clients.

12.20 You shall not sub-license, assign or otherwise transfer the use of the whole or any part of our IPRs except as set out in the Call-Off Contract and you are not permitted to use our name, logo or trade-

marks (or those of our Subcontractors) without our prior written consent (including any consent which may be stated in the Order Form).

- 12.21 Each Party shall notify the other if it becomes aware of an infringement of the IPRs licensed to it pursuant to the Call-Off Contract.
- 12.22 Neither Party shall delete proprietary information or trade mark or copyright notices (if any) appearing on the other's proprietary documentation or material.
- 12.23 Each Party shall be responsible for the acts and omissions of all sub-licensees in respect of the other Party's IPRs made available to that Party in connection with the Call-Off Contract, in each case as if they were the acts and omissions of that Party to the extent that Party would be liable to the other Party under or in connection with the Call-Off Contract for those acts and omissions.
- 12.24 Where either Party sub-licenses the other's IPRs or discloses the other's Confidential Information as permitted under the Call-Off Contract, it shall inform the recipient that disclosure by them (save for their own internal purposes or where compelled by Law) is not permitted without the disclosing Party's prior written consent,
- 12.25 Where you sub-licenses our IPR or disclose our Confidential Information to any other supplier or contractor in accordance with the terms of the Call-Off Contract you shall inform them that, to the fullest extent permitted by Law, we do not accept any responsibility or liability to them in connection with the Confidential Information, those IPRs or the Services or Deliverables and shall procure that any of your suppliers or contractors do not make any claim against us in this regard.

Independence

- 12.26 To ensure that we are able to comply with applicable auditor independence requirements and applicable Law (including to ensure that we are not auditing our own work or the output of our own work during a specified period), during the Independence Period we require that you notify us as soon as possible if:
- (i) you cease to be a public agency, commission or other government or public sector body or contracting authority;
 - (ii) you merge with another agency, commission or other government or public sector body or contracting authority; or
 - (iii) a new government agency, commission or other government or public sector body or contracting authority is merged with you so that they will also benefit from or otherwise use the Services or any Deliverables.
- 12.27 In relation to paragraph 12.25, the following defined terms shall apply:
- (i) **"Independence Period"** means the earlier to end of:
 - (a) the period from the date of the Call-Off Contract to the first Confirmation of Clean Audit thereafter; or
 - (b) such shorter period as we may notify to you if we determine (acting reasonably) that such shorter period allows the independence requirements imposed upon us in under applicable Laws to be met.

- (ii) **"Confirmation of Clean Audit"** means confirmation by your external auditor of a full financial year's Clean Audit for a financial year commencing after completion of the Services.
- (iii) **"Clean Audit"** means, in relation to your external audit report, that there are no qualifications or matters of emphasis in that report:
 - (a) that are related to the implementation Deliverables that have been placed in live use; and
 - (b) which cite subsisting functional or operational issues in those Deliverables referred to in (a) which have resulted in your ability to generate accurate financial statements being compromised.

13 IPR Indemnity

- 13.1 We shall indemnify you against any claim of infringement or alleged infringement of a third Party's IPRs in accordance with clause 11.5 (subject to clauses 11.7 and 24) provided you comply with paragraph 10.2 below.
- 13.2 If a claim arises or is threatened against you, or you have reason to suspect that a claim may arise or be threatened, for which we indemnify you under clause 11.5: (i) you shall notify us promptly in writing; (ii) we may assume conduct of the claim; (iii) you shall not compromise or settle the claim without our prior written consent; and (iv) you shall provide us with such information and assistance, at our cost, as we reasonably require.
- 13.3 To reciprocate the indemnity we give to you under clause 11.5, you will, on written demand, fully indemnify us for all Losses which we or our Subcontractors may incur at any time from any claim of infringement or alleged infringement of a third party's IPRs because of:
- (i) the rights you have granted to us under the Call-Off Contract (including in relation to our use or access of your IPR, the Platform or IPRs of your Third Party Licensors in accordance with the Call-Off Contract);
 - (ii) your use of the Services or any Deliverables or our IPRs in breach of the Call-Off Contract; or
 - (iii) our use, in accordance with the terms of the Call-Off Contract, of any materials, information or data you have provided us.
- 13.4 If a claim arises or is threatened against us, or we have reason to suspect that a claim may arise or be threatened, for which you indemnify us under paragraph 13.3: (i) we shall notify you promptly in writing; (ii) you may assume conduct of the claim; (iii) we shall not compromise or settle the claim without your prior written consent; and (iv) we shall provide you with such information and assistance, at your cost, as you reasonably require.
- 13.5 In addition to the circumstances set out in clause 11.7, the indemnity in clause 11.5 and paragraph 13.3 above shall also not apply to the extent that:
- (i) the claim arises due to compliance by the party giving the indemnity with a documented specification or instructions provided by the other party;
 - (ii) the party being indemnified has caused or contributed to the events which gave rise to the claim under the indemnity by acting in breach of the licences or other terms of the Call-Off Contract;

- (iii) the claim results from or is in connection with any alteration or modification of the infringing items by the party being indemnified; or
- (iv) the claim results from the combination, operation or use of any infringing items with any data, equipment, product, system or intellectual property not supplied by or made known to the indemnifying party.

13.6 In relation to any IPR which is not licensed by us or our licensors on an on-going basis, the indemnity in clause 11.5 shall only apply to use during the Term.

14 Protection of Personal Data

- 14.1 We will comply with the obligations in clause 12, however you will be responsible for ensuring that you (and the relevant data controller) comply with your (or the relevant data controller's) obligations under the Data Protection Legislation, including in relation to you instructing us to Process any Personal Data as part of the Services.
- 14.2 Unless specifically stated to be part of the Services, we are not responsible for where any data is hosted or transferred under your hosted environment or cloud service (which you should specify with your hosting or cloud service provider), or where you direct us to transfer or disclose data to a third party (such as one of your other third party suppliers or a separate government body).
- 14.3 You and us shall answer the other's reasonable enquiries to enable them, in respect of their obligations under clause 12 and this paragraph 11, to monitor the other's compliance and to fulfil their respective obligations under the Call-Off Terms.
- 14.4 You acknowledge we outsource some of our information systems support to other KPMG Persons and to reputable international providers (our "**Infrastructure Providers**"). We do this in accordance with our rigorous controls and requirements, and we have agreements with them as required by Data Protection Legislation (including data export agreements, because some of our systems may be managed at times from outside the European Economic Area).
- 14.5 In accordance with clause 12.3, you hereby consent to the Processing of Buyer Personal Data by our Subcontractors for the provision of the Services, and by our Infrastructure Providers, provided we ensure that they comply with the Data Protection Legislation and we remain liable to you for compliance with the Call-Off Terms and we oblige them to take equivalent measures when Processing Personal Data to those you require from us under the Call-Off Terms. We can provide further details on our arrangements with such Subcontractors and Infrastructure Providers in relation to any Processing activities that they provide as part of the Services to you.
- 14.6 To reciprocate the indemnity we give to you under clause 10.1, you will during and after the Term keep us fully indemnified against all Losses arising from any breach of your obligations under the Data Protection Legislation or under incorporated Framework clause 34, or under this paragraph 11.

15 Employment Regulations (TUPE)

- 15.1 If you have reason to believe that the Employment Regulations will apply on the commencement of the Services or the entry into the Call-Off Contract you shall inform us in writing in advance of us entering into the Call-Off Contract so that both Parties can consider the implication of the Employment Regulations before entering into the Call-Off Contract and, if they choose to enter into the Call-Off Contract, so they can comply with their obligations under the Employment Regulations.
- 15.2 If you do not notify us in accordance with paragraph 12.1, you warrant and represent that the commencement of the Services and the entry into the Call-Off Contract shall not cause a Relevant

Transfer in respect of any of your employees or other workers (or those of any third party associated with or engaged by you, including any Former Supplier).

- 15.3 You agree to indemnify us for any Losses or additional costs or expenses (including unforeseen employment costs (including redundancy costs)) arising from:
- (i) if you fail to notify us under paragraph 12.1 and you are in breach of the warranty under paragraph 12.2, the Employment Regulations applying to transfer the employment of any of your employees or other workers (or those of any third party associated with or engaged by you, including any Former Supplier) to us or our Subcontractors;
 - (ii) your failure (or the failure of any third party associated with or engaged by you, including any Former Supplier) to comply with your or its obligations under the Employment Obligations and (if applicable) the New Fair Deal; and
 - (iii) any claim by any employee or person (or their employment representative) which arises or is alleged to arise from any act or omission by you (or any third party associated with or engaged by you, including any Former Supplier) on or before the date of the Relevant Transfer.
- 15.4 Clauses 29.7 and 29.8 shall apply also in respect of the provisions of this paragraph 12.

16 Our compliance with law and regulation

- 16.1 The Law and our Regulatory Bodies require us to comply with professional standards, including but not limited to standards requiring independence from our audit clients, ethical behaviour, objectivity, impartiality, strict rules of client confidentiality and 'know your client' checks. Accordingly, we may terminate the Call-Off Contract immediately if: (i) there is a change of Law, rule, regulation or professional standard, or circumstances arise that would cause the relationship between you and us to violate such Law, rule, regulation or professional standard or would prejudice any KPMG Person's ability to comply with applicable auditor independence requirements; or (ii) we believe a conflict of interest cannot be managed but in such a case we shall consult you before we do so. Should such a circumstance arise, we will discuss with you how the Services might be varied so that they can be continued or, if appropriate, arrangements by which our Call-Off Contract can be terminated and handed over to a successor service provider chosen by you.
- 16.2 In relation to the performance of our obligations under the Call-Off Contract, the defined terms "Regulatory Body" and "Regulatory Bodies" shall include any organisation or body that has regulatory or professional oversight over our business.
- 16.3 If we are required by any court or Regulatory Body in any proceedings or forum in which we are not a party or participant but you are, or if we are required by a parliamentary select committee or body, to provide information or to produce documents relating in any way to the Services, you shall pay our costs incurred in preparing for and responding to any such requirement at our standard rates applicable at the time of responding, together with outlays including legal expenses, and VAT thereon (where appropriate).

17 Liability

- 17.1 Where the Call-Off Contract and/or Services are for the benefit of you and one or more Beneficiary, the limitations on our liability under clause 24.1 (including incorporated Framework clauses 4.1 – 4.6) shall be in the aggregate and will be apportioned amongst you and the Beneficiaries. Neither you nor a Beneficiary shall dispute or challenge the validity or operation of this paragraph on the grounds that no apportionment has been agreed or that the agreed share of the limitation amount apportioned to any Beneficiary is unreasonably low.

- 17.2 In order to clarify the intention under incorporated Framework clause 4.4, you agree that (subject to the agreed caps on liability) we shall, to the extent the same can be recovered under Law, only be responsible for regulatory losses or fines arising directly from our breach of any Laws as they apply to us.
- 17.3 You shall not (and you shall procure that no Beneficiary shall) bring any claim against any KPMG Person except the contracting entity to the Call-Off Contract in respect of loss or damage suffered by you arising out of or in connection with the Call-Off Contract or the Services. This paragraph is enforceable by any KPMG Person. This restriction shall not operate to limit or exclude the liability of the KPMG contracting party for the acts or omissions of anyone involved in delivering the Services.
- 17.4 If other persons are liable to you for any Losses for which we are also liable, then our liability to you is limited to the sum we ought reasonably to pay having regard to our responsibility for those Losses, on the basis that we will not be liable for Losses that may be attributable to the other persons (whether or not they have limited or excluded their liability). Those other persons will be deemed to have paid to you sums appropriate to their responsibility for such Losses.
- 17.5 All warranties and undertakings under the Call-Off Contract are limited to those set out in the Call-Off Contract and any implied terms, conditions, undertakings or warranties whether arising through custom, statute or otherwise are excluded to the fullest extent permitted by the Law.

18 Insurance

- 18.1 We have agreed to maintain the insurance policies to the amounts set out in the Call-Off Contract and in accordance with the Call-Off Terms. If you require any additional policies under clause 9.3, you must inform us of these requirements in writing before we enter into the Call-Off Contract, and we will set out such requirements in the Order Form.
- 18.2 Under clause 9.2.2, we will only include an "indemnity to principles" clause for your benefit if this is specifically agreed in the Order Form (as we will need to agree any such provision with our insurers on a case by case basis).
- 18.3 If you do have additional insurance requirements you should discuss these with us, however we are unable to guarantee that we will be able to take out any additional insurance that we did not agree in the Order Form, and you accept that failure to do so shall not be a Default under the Call-Off Terms.

19 Consequences of termination

- 19.1 On termination of the Call-Off Contract or any part of the Services, you shall pay us the following by way of Charges:
- (i) all Charges that have accrued prior to the date of termination, including for:
 - (a) the Charges for milestones actually accepted by you prior to the effective date of termination; and
 - (b) a sum for any other work performed on the Services at the effective date of termination which has not previously been invoiced by us. This sum shall be calculated using our rate card and shall be subject to production of reasonable evidence of the work done (provided that this shall not exceed any relevant Charges which have been agreed for the work in question);
 - (ii) except where the termination is by you under clause 18.4 or 18.5:

- (a) a sum in respect of demobilisation of those Supplier Staff engaged in providing the Services (based on our rate card and limited to a period of no more than 30 days after the date of the termination notice);
- (b) our charges for providing the transition assistance agreed pursuant to paragraph 21.3; and
- (c) costs which relate to amounts that we are required to pay (or have paid) to other third party suppliers under contracts entered into by us and which have been entered into in connection with the provision of the Services by us, and which would not have been incurred (or, as applicable, would not have been wasted) had the Call-Off Contract and/or the Services continued until its natural expiry and which are not reasonably avoidable and not reasonably capable of recovery by us.

19.2 Where the Call-Off Contract is terminated by us under clause 18.5, then we may require you to make payment on account of any costs under paragraph 19.1 prior to providing any exit assistance.

19.3 We shall use our reasonable endeavours to minimise and mitigate the amounts that make up the costs under paragraph 19.1(ii) and will provide you with such reasonable information and supporting documentation as you may reasonably request (excluding the for the avoidance of doubt any Restricted Information) in order to verify that the amounts that make up such costs have been incurred or suffered by us in relation to a relevant termination event.

20 Assignments and transfers

20.1 Under Framework clause 21.4 you may assign, novate or otherwise dispose of your rights and obligations under the Call-Off Contract in certain circumstances. However, in order to enable us to comply with our regulatory requirements to ensure we know who we are providing services to (or are otherwise contracting with), you must inform us in advance of any proposed transfer and we may object to such transfer, acting reasonably, if such transfer would cause you or us to be in breach of Law, the requirements of our Regulatory Body, or cause a conflict of interest or our independence to be impaired.

20.2 KPMG Persons (who are not the KPMG contracting entity) may rely upon any rights or protections given them under the Call-Off Contract, and clause 27.1 shall be interpreted accordingly.

21 Exit Plan

21.1 In accordance with clause 21 we will have supplied an exit plan for the migration away from the Services provided by us. The details of this exit plan may be further refined and agreed with you before the date of the Call-Off Contract or in accordance with any process set out in the Order Form.

21.2 Unless otherwise specifically agreed in the exit plan, we will provide the services and assistance set out in the exit plan, and in accordance with clause 22.1 will make any data (including Buyer Data and Buyer Personal Data) available to you, however you or your Replacement Supplier (or other third party engaged by you for any migration services) will be responsible for your overall migration and exit strategy and migration to the Replacement Supplier.

21.3 Unless otherwise agreed with you in writing (including in the exit plan) we will charge you for any exit assistance we provide. We can agree these costs (or the charging basis) with you in the exit plan, and in the absence of these being agreed in advance can provide you with an estimate as and when such assistance is required.

22 Miscellaneous

- 22.1 All warranties and undertakings under the Call-Off Contract are limited to those set out in the Call-Off Contract and any implied terms, conditions, undertakings or warranties whether arising through custom, statute or otherwise are excluded to the fullest extent permitted by the Law.
- 22.2 You shall not, directly or indirectly, solicit the employment of any Supplier Staff involved in performing the Services, during performance or for a period of 6 months following their completion or following termination of the Call-Off Contract, without our prior written consent. This prohibition shall not prevent you at any time from running recruitment advertising campaigns nor from offering employment to any Supplier Staff who may respond to any such campaign.
- 22.3 In these Supplier Terms "**Beneficiaries**" means any person identified in the Order Form or Call-Off Terms as a beneficiary of the Services or of any Deliverable other than you, and on whose behalf or for whose benefit you enter into the Call-Off Contract or in respect of whom we subsequently agree, at your request, to accept responsibility or liability towards in respect of the Deliverables or the Services (and "**Beneficiary**" shall be interpreted accordingly). You agree to the provisions of the Call-Off Contract on your own behalf and as agent for any other Beneficiaries.
- 22.4 You shall supply information in response to our enquiries (if any) to enable us to comply with our statutory responsibilities to make disclosures to relevant authorities in respect of money laundering and any other criminal activity that we may encounter during performance of the Services and you accept that any such disclosures may include Confidential Information.

23 Support Services

Where the Services set out in the Call-Off Contract include support services, the following terms shall apply:

For the purposes of this paragraph 23, the following definitions shall have the following meanings:

"**Incident**" is an issue raised by Buyer in relation to the Solution, and following review by Supplier, accepted by Supplier as caused by Supplier, Platform Owner or any other software vendor's product included in the Solution;

"**Key Users**" means the Level 1 support team at Buyer or any other Buyer assigned team members to be part of Key Users;

"**Production Environment**" is Buyer's live operating environment for the Solution;

"**Solution**" means the Platform Owner's solution operated by Buyer at the time of commencement of this Call-Off Contract and as described in the Order Form; and

"**Supplier Support Desk**" is the Supplier owned function for accepting Incidents.

- 23.1 The support services will be delivered in accordance with the support service levels set out in in the Call-Off Contract, in line with the functionality released to date and detailed in the Call-Off Contract, and through the course of the period of the Call-Off Contract.
- 23.2 Key Users will be provided with a login password to access the Supplier service desk web portal where they can submit incidents and track their progress.

23.3 Support requests may also be submitted by Key Users via email or telephone to the Supplier Support Desk. Support requests raised by Key Users should have the appropriate level of information included. This includes but not limited to:

- a. Date and time issue occurred;
- b. How many users does this effect;
- c. Screen shots and full details of the issue and how it may be recreated if possible.

23.4 Buyer's eligibility for the support services may be invalidated if:

- a. any changes are made to the Solution by the Buyer or any third-party that would alter the Solution other than by Supplier for the purposes of fulfilling this Call-Off Contract;
- b. valid licences required for the Solution are not maintained;
- c. the Solution is not operated in accordance with the Solution documentation (specifically, the work instructions provided by Supplier and any operating manuals provided by Platform Owner or other relevant third party as described in the Order Form);
- d. errors are caused by the use of the Solution on or with equipment or programs not approved in writing by Supplier;

23.5 Buyer is responsible for:

- a. end-to-end quality and performance of the Solution for any changes undertaken;
- b. testing and signing off any code packages prior to release to the Production Environment;
- c. providing Supplier with a Support Environment;
- d. ensuring that the data in the Support Environment is refreshed with data as needed to provide the support services;
- e. testing fixes released by Supplier to Buyer's test environment and for releasing them to the Production Environment if satisfied with the resolution;
- f. hand-over to Supplier of any changes to the Solution undertaken by Buyer or by a third party
- g. appointing suitably trained users for support issues ("Key Users");
- h. ensuring all communication will be in English;
- i. providing Supplier with all necessary access to Buyer's systems to enable Supplier to perform the Support Services. Additional charges may be incurred if Buyer requires alternative methods;
- j. providing the Level 1 Support as set out hereto;

"Level 1 Support" will undertake all efforts to resolve the Incident. If no resolution can be achieved, Level 1 Support will transfer the Incident to Level 2 Support along with relevant information on the incident (details of Incident, triages, diagnoses, resolution steps taken, impact on Buyer etc.). Level 1 Support continues to keep Buyer informed on the status of the Incidents transferred to Level 2 Support.