



## **Terms of Service**

**Ref: Terms202205.30.1:G-Cloud15**

## IN CONFIDENCE

As per the G-Cloud Framework Agreement, if there is any conflict or ambiguity between the clauses of this agreement, to the extent necessary, the order of precedence for resolving the conflict is:

- The Framework Agreement
- The completed Order Form
- The clauses of a Call-Off Contract (excluding Supplier Terms)
- The Supplier's Terms (this document)
- Any other document referred to in the Call-Off Contract clauses

### 1. THESE TERMS OF SERVICE

- 1.1 These Terms of Service govern the overall relationship between the Customer and the Supplier with respect to the Services.
- 1.2 The Customer is not obliged to purchase any Services from the Supplier, but if it wishes to do so then the Customer and the Supplier shall enter into a Statement of Target Outcomes (SOTO), which shall be substantially in the form set out in the schedule to the Proposal. Neither party shall have any rights or obligations in respect of any SOTO, including the provision of the Services, unless and until each of the parties has signed the SOTO.
- 1.3 Following the signature by both parties of a SOTO, a contract shall be automatically created which comprises the SOTO and these Terms of Service.

### 2. THE SERVICES

- 2.1 In respect of each SOTO the Supplier shall use reasonable endeavours to deliver the Target Outcomes within the Constraints to achieve the Business Objectives.
- 2.2 For each Target Outcome the Supplier shall create Options that have the potential to achieve the Target Outcome. In respect of each Option the Supplier shall provide a forecast in terms of the estimated value, costs, risks and expiry date (if any) for that Option and shall inform the Customer of any requirements for execution of the Option and any circumstances in which the Option may expire.
- 2.3 The Supplier shall be entitled to use any design, strategy, method or process to create the Outcome Delivery, provided that: (a) the Outcome Delivery is within the parameters of the Constraints and has the objective of achieving the Target Outcomes; and (b) if the Outcome Delivery is abandoned pursuant to clause 2.5, this will not adversely affect any Outcome Delivery that has been accepted by the Customer pursuant to clause 2.6 prior to that date.
- 2.4 Following the creation of each Outcome Delivery the Supplier shall invite the Customer to inspect the Outcome Delivery and shall report to the Customer on the following (such report to be made accessible to the Customer at all times during the SOTO): (a) an assessment of the

Ref: Terms202205.30.1:G-Cloud15

Terms of Service

IN CONFIDENCE

Page 2 of 14



impact (negative or positive) of the Outcome Delivery on the Target Outcomes, based upon the measurement of the Outcome Delivery against the Target Outcomes; (b) the updated Outcome Tracker; (c) any risks and learning arising from the Outcome Delivery which may impact on the Target Outcomes; (d) the remaining resources allocated for the current SOTO against the progress of the Target Outcomes to date.

- 2.5 On the basis of the report pursuant to clause 2.4, the Supplier shall, in consultation with the Customer, decide: (a) whether to adopt or abandon the Outcome Delivery; (b) which Target Outcome(s) to focus on next.
- 2.6 If the Supplier, in consultation with the Customer, decides to accept the Outcome Delivery, the Customer shall be deemed to have accepted the Outcome Delivery, and the Supplier shall give the Customer access to all work products related to the on-going operation and maintenance of the Outcome Delivery.
- 2.7 The Customer may require the Supplier to abandon any Outcome Delivery if: (a) it is outside the scope of the Constraints; or (b) It has a negative impact on other Target Outcomes or on other systems of the Customer;
- 2.8 The SOTO and the Terms and Conditions shall be considered an addendum to the G-Cloud Call-off Contract, typically referenced within Part A: Order Form, Schedule 1: Services and Schedule 2: Call-Off Contract charges within the contract.

### 3. FEES AND PAYMENT ARRANGEMENTS

- 3.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the fees in the amount and on the dates or with the frequency as set out in each SOTO. Payment is due within thirty (30) days from the date of each invoice.
- 3.2 All sums payable under the Contract are exclusive of any taxes, charges or duties to which the supply of goods or services may be subject or give rise.
- 3.3 If the Customer fails to make any payment due to the Supplier under this Agreement by the due date for payment
  - (a) The Customer shall pay interest on the overdue account at a rate of 4% above Barclays Bank Plc base rate from time to time which shall accrue on a daily basis from the due date until the date of actual payment and/or
  - (b) The Supplier shall be entitled to suspend work for the Customer until payment of the outstanding sum plus any interest due is paid

#### 4. CUSTOMER RESPONSIBILITIES

- 4.1 The Customer shall co-operate with the Supplier in its performance of the Services and shall provide such support, facilities and information, including any requirements for execution of the Options, as set out in the SOTO.
- 4.2 The Customer shall ensure that the Supplier has access to a representative of the Customer as identified in the SOTO who: (a) can fully articulate the business objectives, expectations and constraints of all stakeholders who have an active interest in the success of the Target Outcomes, are actively involved in the Outcome Delivery, or may exert influence over the Outcome Delivery, including the end users, purchasers, managers and executives responsible for the funding of the Target Outcomes; (b) is fully authorised to make decisions on behalf of all of such persons; (c) provides feedback in a timely manner as set out in the SOTO to all requests from members of the Supplier and in relation to the Outcome Delivery and the progress towards the Target Outcomes; and (d) identifies any changes in external factors that will impact on the Target Outcomes.

#### 5. OWNERSHIP AND LICENSING

- 5.1 All right, title and interest in the Customised Software shall, on the date of the Contract or (if later) on creation of such Intellectual Property Rights, vest in the Customer. The Supplier hereby assigns with full title guarantee by way of present and future assignment to the Customer all right, title and interest in the Customised Software.
- 5.2 The Customer hereby grants to the Supplier a non-exclusive, non-transferable, royalty-free, perpetual licence to use the Customised Software to fulfil any on-going obligations of the Supplier under the Contract.
- 5.3 Subject to the licence in clause 5.4, all Intellectual Property Rights in the Supplier Software, any associated Documentation and the Deliverables shall remain in the Supplier or its licensors. However, ownership of the media on which the Documentation and Deliverables are supplied by the Supplier shall vest in the Customer upon acceptance thereof.
- 5.4 The Supplier hereby grants (or shall procure that the owner of the Intellectual Property Rights therein shall grant) to the Customer a non-exclusive, non-transferable, royalty free, perpetual licence to use the Supplier Software, any associated Documentation and the Deliverables as necessary to enable the use of the Customised Software excluding any licensable components described in the SOTO which shall fall under a separate software license.
- 5.5 In respect of: (a) any Third Party Software, the Customer shall, at its own expense, enter into a licence directly with the owner or authorised licensor of such Third Party Software; and (b) any Open Source Software, the Customer shall comply with the terms and conditions of the specific licence under which such Open Source Software is made available; in each case regardless of whether the Supplier has sourced or made such software available to the Customer or the Customer has procured such software itself.

- 5.6 Nothing in the Contract shall be construed so as to prevent the Supplier from using any techniques, methods, ideas and other know-how gained during the performance of the Contract in the further of its own business to the extent that such use does not result in a disclosure of confidential information in breach of clause 9 or any infringement of any Intellectual Property Rights of the Customer (or its licensors), and provided that the Supplier shall not use any know-how which is specific to the business of the Customer or has been developed specifically for use in or for the business of the Customer.

## 6. REPRESENTATIONS AND WARRANTIES

- 6.1 Each party represents and warrants to the other party in respect of each SOTO that it shall perform its obligations in good faith and in a timely and professional manner by using at all times appropriately experienced, knowledgeable, qualified, and trained staff exercising reasonable care and skill.
- 6.2 The Supplier represents and warrants to the Customer in respect of each SOTO that: (a) the performance of the Services and the Outcome Delivery will not in any way constitute an infringement or other violation of any Intellectual Property Right of any third party; and (b) the Supplier owns or has obtained valid licences of all Intellectual Property Rights which are necessary to the performance of any of its obligations hereunder.
- 6.3 Any unauthorised modifications or use of the Software or any installation of the Software otherwise than in accordance with the Supplier's instructions (provided that such instructions are sufficiently detailed to enable any person reasonably skilled in the relevant programming language to follow them) by, or on behalf of, the Customer shall render the Supplier's warranties in clause 6.2 null and void.
- 6.4 Any Third Party Software and any Open Source Software which is sourced, or made available, by the Supplier may be used according to the terms and conditions of the specific licence under which the relevant software is made available, but is provided "as is" and expressly subject to the disclaimer in clause 6.5.
- 6.5 Except as expressly stated in these Terms of Service, all other warranties, and conditions, whether expressed or implied by statute, common law or otherwise, are hereby excluded.

## 7. LIMITATION OF LIABILITY

- 7.1 Neither party excludes or limits liability to the other party for:
- (a) fraud or fraudulent misrepresentation;
  - (b) death or personal injury caused by negligence;
  - (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

- (d) any matter for which it would be unlawful for the parties to exclude liability.
- 7.2 Subject to clause 7.1, the Supplier shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
  - (b) any loss or corruption (whether direct or indirect) of data or information;
  - (c) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
  - (d) any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 7.3 Clause 7.2 shall not prevent claims, which fall within the scope of clause 7.4, for:
- (a) direct financial loss that are not excluded under any of the categories set out in clause 7.2(a) to clause 7.2(d); or
  - (b) tangible property or physical damage.
- 7.4 Subject to clause 7.1, each party's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall in respect of any cause of action related to this Agreement, be limited to the greater of:
- (i) £2 Million; and
  - (ii) the total charges paid by the Customer to the Supplier during the [12]-month period immediately before the date on which the cause of action first arose or, if the cause of action arose during any period before 12 months had elapsed from the Commencement Date, during that shorter period; and
- 7.5 Any dates quoted for delivery of the Work or the Support Services are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the
- Work or the Support Services that is caused by an event, circumstance or cause within the scope of clause 11 or the Customer's failure to provide the Supplier with adequate delivery instructions.

## 8. DATA PROTECTION

- 8.1 Both parties hereby warrant, represent and agree that in relation to the performance of the Services each will comply with the Data Protection Laws.

- 8.2 Both parties acknowledge and agree that Customer is the Data Controller and Supplier is the Data Processor. Supplier agrees and accepts that it will process the Personal Data pursuant to and in accordance with these Terms of Service and the Data Protection Laws.
- 8.3 Supplier shall:
- 8.3.1 only process the Personal Data for the purposes of performing its obligations under these Terms of Service and in accordance with the documented instructions of Customer;
  - 8.3.2 not transfer the Personal Data outside of the EEA without Customer's prior written consent unless required to do so by any legislation or regulation, in which case Supplier shall inform Customer of such requirement if it is able to do so;
  - 8.3.3 ensure that all personnel who process the Personal Data are subject to an obligation of confidentiality in relation to the Personal Data;
  - 8.3.4 implement appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of Personal Data and to ensure a level of security appropriate to the risk, including but not limited to:
    - 8.3.4.1 pseudonymising and encrypting Personal Data, as appropriate;
    - 8.3.4.2 ensuring the ongoing confidentiality, integrity, availability and resilience of its processing systems and services;
    - 8.3.4.3 enabling the restoration, availability and access to Personal Data in a timely manner in the event of a physical or technical incident and, without prejudice to the foregoing, in accordance with any service level agreement between the Supplier and Customer;
    - 8.3.4.4 regularly testing, assessing and evaluating the effectiveness of the technical and organisational measures for ensuring the security of the processing; and
    - 8.3.4.5 taking steps to ensure that any personnel who has access to Personal Data does so in accordance with the rights and obligations of Supplier as expressly detailed in this clause or otherwise on the express written instructions of the Customer unless otherwise required by legislation or other applicable regulation;
  - 8.3.5 inform the Customer of any new sub-processor and/or change of an approved subprocessor. The Customer shall inform Supplier within five (5) working days of any objection to such appointment or change. If the Customer does not raise any such objection, Supplier shall ensure that such sub-processors shall comply with the provisions of this clause;
  - 8.3.6 assist Customer in the timely response to requests from Data Subjects exercising their rights, including but not limited to:

- 8.3.6.1 where Supplier is required to assist Customer with a Data Subject Access Request it has received, responding to such request for assistance within twenty (20) days of receiving notice of such request from Customer;
- 8.3.6.2 where Supplier receives a Data Subject Access Request directly from the Data Subject, Supplier shall notify Customer within one (1) working day after receipt and shall respond to the Data Subject within the time limits specified within the Data Protection Laws;
- 8.3.6.3 where Customer is required to assist Supplier with such Data Subject Access Request, it shall respond to Supplier within twenty (20) days of receiving notice of such request from Supplier;
- 8.3.6.4 assisting Customer, as applicable, with a request for access, rectification and/or erasure by a Data Subject; and
- 8.3.6.5 enabling Customer to comply with a request for data portability of a Data Subject;
- 8.3.7 assist Customer in complying with its obligations relating to security of Personal Data as set out in these Terms of Service or as otherwise may be reasonably requested by Customer, including but not limited to:
  - 8.3.7.1 notifying Customer of any Personal Data breach as soon as reasonably practicable and no later than 24 (twenty four) hours after becoming aware of the breach occurring (such notice by email and/or telephone and followed up by email), and including all relevant detail. Supplier agrees and accepts that Customer may use any detail included in the notification of a Personal Data breach, or otherwise given in its communication to Data Subjects, to the extent that such information does not breach the rights of any other individual;
  - 8.3.7.2 at the request and expense of the Customer, assisting with the communication to the Supervisory Authorities, any customer of Customer and/or Data Subjects following a Personal Data breach and/or implementing any measures required as a result of such breach;
  - 8.3.7.3 at the request and expense of the Customer, consulting with the Supervisory Authorities and/or assisting Customer to consult with the Supervisory Authorities, including providing Customer with any information relating to Supplier's processing of Personal Data and/or Supplier's compliance with the Data Protection Laws as may be reasonably requested by Customer.
- 8.3.8 upon the expiry or termination of these Terms of Service, delete or return all Personal Data to Customer (as requested by Customer), unless otherwise required or permitted by Data Protection Law and provide written confirmation in this respect;
- 8.3.9 make available to Customer all information reasonably necessary to enable Customer to demonstrate compliance with its obligations under the Data Protection Laws, including such

records of all categories of processing carried out on behalf of Customer, as such is requested by Customer;

- 8.3.10 co-operate with any request of the Supervisory Authority;
- 8.3.11 allow Customer to undertake audits of Supplier on 30 days' notice and at the expense of the Customer, subject to any reasonable requests Supplier may have regarding the timing and conduct of such audit, to ensure Supplier's compliance this clause;
- 8.3.12 contribute to any audits or inspections of the Customer by any Supervisory Authority, a supplier of Customer or any other third party of Customer, as such contribution and/or inspection is reasonably necessary to demonstrate compliance with Customer's and/or Supplier's obligations under this clause;
- 8.3.13 at the expense of the Customer, implement any reasonable recommendations and/or remedial actions necessary to ensure compliance with the provisions of this clause and/or the Data Protection Laws, as such recommendations and/or remedial actions are deemed necessary by Customer (acting reasonably) or any Supervisory Authority, as applicable following an audit or inspection, or otherwise as Customer deems reasonably necessary.

## 9. CONFIDENTIALITY

- 9.1 Neither party shall disclose or allow to be disclosed any confidential information relating to the business or affairs of the other party other than to the extent necessary for the performance of its obligations under the Contract and only to its employees, officers, directors, agents, legal advisors, auditors and sub-contractors who have signed an appropriate undertaking of confidentiality.
- 9.2 The obligations under clause 9.1 shall not apply to any confidential information which: (a) must be disclosed by law; or (b) was known to the recipient before its receipt from the disclosing party; or (c) is lawfully in the public domain or in the possession of a third party other than by reason of breach of the Contract; or (d) is independently developed without access to the other party's confidential information; or (e) is authorised for release by the written consent of the disclosing party.

## 10. TERMINATION

- 10.1 Either party may terminate the Contract at any time with immediate effect by written notice to the other party if: (a) the other party commits a material breach of any term of the Contract (other than failure to pay any amounts due under the Contract) and, if such breach is capable of remedy, fails to remedy that breach within a period of thirty (30) days of being notified in writing to do so; or (b) an Insolvency Event of the other party occurs; or (c) the other party ceases or threatens to cease to carry on the whole or any material part of its business.

- 10.2 Upon the expiry or termination of the Contract for any reason: (a) the Supplier shall give the Customer up to date digital copies of all the Supplier Software, Customised Software and Deliverables that have been delivered to the Customer and digital copies of all test data and test plans, to the extent that the Customer does not already have such copies in its possession; (b) the Customer shall pay the fees to the Supplier for all Services provided until the date of expiry or termination (as applicable) of the Contract; and (c) any and all amounts outstanding and any unpaid amounts due and owed under the Contract shall become immediately due and payable.
- 10.3 If the Customer terminates the Contract or ceases to comply with its obligations under clause 3.3 in respect of any Target Outcomes, in each case for any reason outside the control of the Supplier, the Supplier shall be entitled to the early termination payment set out in the SOTO.

## 11.FORCE MAJEURE

- 11.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for [180] days, the party not affected may terminate this agreement by giving [30] days' written notice to the affected party.
- 11.2 If termination occurs under clause 10, all sums paid to the supplier by the customer under this agreement shall be refunded to the customer, except that the supplier shall be entitled to payment on a quantum meruit basis for all work done before termination, provided that the supplier takes all reasonable steps to mitigate the amount due

## 12.Non-solicitation and employment of employees or contractors

- 12.1 In order to protect the legitimate business interests of the Supplier, the Customer covenants with Supplier for itself and as agent for each of its group companies that it shall not (and shall procure that no member of the Customer's group shall) directly or indirectly (except with the prior written consent of the Supplier):
- 12.1.1 attempt to solicit or entice away;
- 12.1.2 offer to employ or engage or otherwise endeavour to entice away;
- 12.1.3 employ or engage or otherwise facilitate the employment or engagement of, the services of any Restricted Person from the employment or service of the Supplier other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of Supplier.

- 12.2 The Customer shall be bound by the covenant set out in clause 12.1 during the term of the Contract, and for a period of 6 months after termination or expiry of the Contract.
- 12.3 For the purposes of this clause 12, a **Restricted Person** shall mean any firm, company or person employed or engaged by the Supplier or any of its group companies during the term of the Contract who had been engaged in the provision of the Services or the management of the Contract either as principal, agent, employee, independent contractor or in any other form of employment or engagement with whom in the course of the Services the Customer (or the Customers group) dealt with in the 12 months before employing or engaging the Restricted Person whether or not such person would be in breach of contract as a result of such employment or engagement.
- 12.4 If the Customer commits any breach of this clause 12, the Customer shall, on demand, pay to Supplier or its relevant group company a sum equal to 6 months basic salary or 6 months of the annual fee that was payable by Supplier or its relevant group company to the Restricted Person plus the recruitment costs incurred by Supplier or its relevant group company in replacing such person. The parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interest of the Supplier or its relevant group company in performance.

### 13. GENERAL

- 13.1 All notices required to be given under the Contract shall be in writing and sent by email to the address of the other party as set out in the SOTO, or as otherwise notified in accordance with this clause.
- 13.2 No amendment or variation to these Terms of Service shall be effective unless it is made by a written instrument which expressly purports to amend these Terms of Service and is executed by or on behalf of each party.
- 13.3 A failure or delay by a party at any time or for any period to enforce any of its rights under the Contract shall not constitute a waiver of such rights or the right at any time subsequently to enforce any provisions of the Contract.
- 13.4 If any provision of these Terms of Service is found to be invalid, unenforceable or illegal, then such provision shall be severed and the remainder of the Contract shall continue with full force and effect.
- 13.5 The Contract is personal to the parties, and neither party shall assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 13.6 Nothing contained in the Contract is intended to, shall be deemed to, or shall create any agency relationship, partnership or joint venture between the parties. Neither party shall have authority to act in the name nor on behalf of nor otherwise to bind the other party in any way, save as specifically provided in these Terms of Service.

- 13.7 Neither party shall be liable for delay or failure to perform any of its obligations under the Contract to the extent that such delay or failure is caused by circumstances beyond its reasonable control, including a national emergency or war.
- 13.8 No third party shall have any rights under, or be able to enforce, all or any part of the Contract.
- 13.9 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract. Nothing in this clause 12.9 shall limit or exclude any liability for fraud.
- 13.10 The Contract shall be governed by English law in every respect including its formation. The parties irrevocably submit to the exclusive jurisdiction of the courts of England regarding any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

#### 14. DEFINITIONS

##### 14.1 In these Terms of Service:

Business Objectives means the business objectives for each SOTO as set out in the SOTO.

Constraints means the constraints which impose restrictions on a SOTO as set out in the SOTO;

Contract means the contract comprising a SOTO and these Terms of Service;

Customised Software means any new computer programs and any enhancements to existing computer programs which are to be developed by the Supplier under the Contract;

Data Protection Laws means all applicable laws and regulations relating to the processing of Personal Data and privacy including the Data Protection Act 1998, the General Data Protection Regulation 2016/679 and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated and the terms "Data Controller", "Data Processor", "Data Subject", "Data Subject Access Request", "Supervisory Authorities", "process" and "Personal Data" shall have the meanings given to those terms in such data protection laws and regulations;

Deliverable means a tangible object that is to be delivered to the Customer as part of the Outcome Delivery and which may take the form of a report, a document or any other material;

Documentation means all documents and other written material describing, explaining or assisting in the use of the Software, including user manuals relating to the Software;

Insolvency Event occurs with respect to a party if (a) the party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (b) a proposal is made with (or for the benefit of) the creditors of the party to reschedule any of its debts or to enter into any compromise or scheme of arrangement with its creditors (except for the purpose of a bona fide scheme for a solvent amalgamation or reconstruction); (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the party (except for the purpose of a bona fide scheme for a solvent amalgamation or reconstruction); (d) a court application or order is made or a notice of intention is given, for the appointment of an administrator, an administrative receiver or a receiver over the party; or an administrator, an administrative receiver or a receiver is appointed over the party; (e) a creditor or encumbrancer of the party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, any part of the party's assets and such attachment or process is not discharged within fourteen (14) days; or (f) any event occurs which is the equivalent of or similar to (a) to (e) in any jurisdiction to which the party is subject;

Intellectual Property Rights means all patents, trademarks, service marks, copyright and related rights, domain names, rights in get-up, design rights, database rights, topography rights, and all other similar proprietary rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Open Source Software means any software licensed under any form of open source licence meeting the Open Source Initiative's Open Source Definition (<http://www.opensource.org/docs/definition.php>) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at <http://www.gnu.org/licenses/gpl.html>), or anything similar, included or used in, or in the development of, the Software, or with which the Software is compiled or to which it is linked;

Option means an approach which may be used by the Supplier to achieve a Target Outcome;

Outcome Delivery means what the Supplier actually delivers, and such delivery may include Software, Deliverables and/or Documentation;

Outcome Measure means the quantification and/or qualification of how the Outcome Delivery will be measured;

Outcome Tracker means a visual, numeric or text indicator to track how the Outcome Delivery is progressing towards the Target Outcomes as measured against the Outcome Measure;

Outcome Value means the forecasted positive impact on the Customer of meeting the Target Outcomes;

Services means the services to be performed by the Supplier under the Contract;

Software means the computer programs to be supplied by the Supplier in the course of the performance of the Services, and shall comprise the Supplier Software, the Customised Software, the Third Party Software, the Open Source Software and the Tools;

SOTO means a statement of target outcomes as agreed by the parties in accordance with clause 1.1;

Supplier Software means the computer programs which are to be supplied by the Supplier under the Contract, and in which the Intellectual Property Rights are owned by the Supplier;

Target Outcome means the outcome-based business results, aligned with the Business Objectives that the Customer wishes to achieve and which, if achieved, will deliver the Outcome Value;

Terms of Service means these terms of service;

Third Party Software means the computer programs, which are to be supplied by the Supplier under the Contract, and in which the Intellectual Property Rights are owned by third parties;

14.2 In interpreting the obligations under the Contract, they should be construed such that the Customer is responsible for the domain expertise and the Supplier is responsible for the technical expertise.

14.3 The following expressions shall be construed as follows: (a) the terms "data controller", "personal data", "process" and "processing" have the meaning given to those terms in the DPA, or where any Act is silent as to such terms, as generally and readily understood and accepted within the software community; (b) any phrase introduced by the term "including" shall be construed as illustrative and shall not limit the sense of the words proceeding such term.

14.4 In interpreting the Contract (unless the context requires otherwise) any reference to any statute or statutory provision including any subordinate legislation includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.