

DATED

SERVICES AGREEMENT

between

Public Group International Limited

and

[Contracting Authority]

Terms and Conditions applicable to G-Cloud 15 Call-Off Contracts

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This agreement is dated [DATE]

Parties

(1) PUBLIC GROUP INTERNATIONAL LIMITED incorporated and registered in England and Wales with company number 10608507 whose registered office is at Public Hall, 1, Horse Guards Avenue, London, England, SW1A 2HU; (**Supplier**)

(2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS]; (**Buyer**)

BACKGROUND

(A) The Supplier is a consultancy services established as company under the laws of England and Wales

(B) The Supplier is a participant within the G-Cloud 14 framework and is able to provide its services on a call off basis under that framework.

(C) The Buyer has a requirement for certain services and has selected the Supplier to provide the Services on the terms set out in this agreement.

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions

1 Applicable Laws: all applicable laws, statutes, regulations [and codes] from time to time in force.

2 Business Hours: the period from [9.00 am to 5.30 pm] on any Working Day.

3 Buyer's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Buyer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services.

4 Buyer Materials: all documents, information, items and materials in any form, whether owned by the Buyer or a third party, which are provided by the Buyer to the Supplier in connection with the Services, including the items provided pursuant to 4.1(d).

5 Call-Off: the Buyer's request for the Services which are to be provided under the terms and conditions of an Order Form which incorporates the terms and conditions of the Call-Off Contract

6 Call-Off Contract: the terms and conditions under which a Call-Off is to be undertaken and which incorporate the Order Form, the Terms and Conditions governing the Call-Off and the terms and conditions of this Agreement.

7 Collaboration Agreement: where applicable an agreement in the form set out at Schedule 3 to the Call-Off Contract terms and conditions.

8 Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

9 Deliverables: any output of the Services to be provided by the Supplier to the Buyer as specified in the relevant Proposal Document or an Order Form agreed to between the parties and any other documents, and materials provided by the Supplier to the Buyer in relation to the Services.

10 Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.

11 Milestones: a date by which a part of the Services is to be completed, as set out in the Order Form or when provided for in the Proposal confirmed in the Order Form.

12 Proposal: the Suppliers response to the request from the Buyer for a proposal to provide the Services.

13 Services: the services as provided for under the Call Off Contract including services which are reasonably incidental or ancillary to such services.

14 Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Buyer and used directly or indirectly in the supply of the Services including (if relevant) any such items specified in the Order Form but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Buyer.

15 Supplier's Materials: all documents, information, items and materials in any form, whether owned by the Supplier or a third party, which are provided to the Buyer by the Supplier in connection with the Services.

16 VAT: value-added tax chargeable in the UK.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to "Call-Off terms and conditions" is a reference to the terms and conditions set out at Part B of the Call-Off Contract model document for G-Cloud 14.

1.5 These terms and conditions shall form part of a Call-Off Contract but in there interpretation shall be subordinate to:

(a) the G-Cloud 14 Call Off terms and conditions including the relevant Order Form; and

(b) any Collaboration Agreement (where relevant).

1.6 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.7 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.8 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.10 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.

1.11 Unless expressly provided otherwise in this agreement a reference to legislation or a legislative provision shall include all subordinate legislation made as at the date of this agreement under that legislation or legislative provision.

1.12 A reference to **writing** or **written** includes email but not fax.

1.13 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.14 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document, in each case as varied from time to time.

1.15 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.16 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Commencement and duration

2.1 This agreement shall have effect from the date on which both parties have signed or the final party has signed the Order Form.

3. Supplier's responsibilities

3.1 The Supplier shall use reasonable endeavours to manage and supply the Services, and deliver the Deliverables to the Buyer, in accordance with the Call-Off Contract in all material respects.

3.2 The Supplier shall use reasonable endeavours to meet any performance dates and/or the Milestones specified in the Order Form or which are provided for in the Proposal but expressly adopted under the Order Form. Any dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.

3.3 The Supplier has appointed a Supplier's Representative and has notified the identity of that person to the Buyer. That person shall have authority to contractually bind the Supplier on all matters relating to the Services (including by signing any change orders varying in any manner the Call-Off Contract). The Supplier shall use all reasonable endeavours to ensure that the same person acts as the Supplier's manager throughout the term of this agreement, but may replace that person from time to time where reasonably necessary.

3.4 The Supplier shall use reasonable endeavours to observe all health and safety and security requirements that apply at any of the Buyer's premises and that have been communicated to it in writing, provided that it shall not be liable under the Call-Off Contract if, as a result of such observation, it is in breach of any of its obligations under the Call-Off Contract.

4. Buyer Responsibilities

4.1 The Buyer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) have at all times a manager for receipt of the Services. That person shall have the authority to contractually bind the Buyer on matters relating to the Services (including by signing change orders);
- (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Buyer's premises, office accommodation, data and other facilities as reasonably required by the Supplier;
- (d) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Buyer or any third party) reasonably required by the Supplier in the course of providing the Services and ensure that they are accurate and complete;
- (e) inform the Supplier of all health and safety and security requirements that apply at any of the Buyer's premises. If the Buyer wishes to make a change to those requirements which will materially affect provision of the Services, it can only do with the agreement of the Supplier, agreement not to be unreasonably withheld or delayed;
- (f) if relevant ensure that all the Buyer's equipment made available for use by the Supplier is in good working order and suitable for the purposes for which it is used;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to the installation of the Supplier's Equipment, the use of all Buyer Materials and the use of the Buyer's Equipment insofar as such licences, consents and legislation relate to the Buyer's business, premises, staff and equipment, in all cases before the date on which the Services are to start;

4.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Buyer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall

be allowed an extension of time to perform its obligations equal to the delay caused by the Buyer.

5. Charges and payment

5.1 In consideration of the provision of the Services by the Supplier, the Buyer shall pay the Charges as provided for in the Order Form.

5.2 Unless expressly provided for under the Call-Off Contract payment through the Government Procurement Card is not agreed and payment of all sums due to the Supplier shall be by remittance to the bank account nominated by the Supplier.

5.3 Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay the Supplier any sum due under this agreement on the due date the Supplier may suspend all or part of the Services until payment has been made in full.

5.4 All sums payable to the Supplier under this agreement:

- (a) are exclusive of VAT, and the Buyer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Intellectual property rights

6.1 In relation to the Deliverables:

- (a) Having regard to clause 11.4 of the Call-Off terms and conditions, the Supplier and its licensors shall (except as expressly specified in the Order Form, retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Buyer Materials;
- (b) Where ownership does transfer as contemplated in clause 6.1(a) the Supplier here by assigns with full title guarantee and with full waiver of moral rights the Intellectual Property Rights that are so specified in the Order Form existing and future to the Buyer;
- (c) Where and to the extent that ownership does not transfer to the Buyer as provided for by clause 6.1(b) the Supplier grants the Buyer, or shall procure the direct grant to the Buyer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding the Buyer Materials) for the purpose of receiving and using the Services and the Deliverables for the purposes specified by the Buyer in its request that the Supplier submit its Proposal; and
- (d) the Buyer may sub-license the rights granted in 6.1(c) to any successor to the Buyer that reasonably requires the rights concerned and

6.2 In relation to the Buyer Materials, the Buyer:

- (a) and its licensors shall retain ownership of all Intellectual Property Rights in the Buyer Materials; and

(b) grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Buyer Materials for the term of this agreement for the purpose of providing the Services to the Buyer.

6.3 The Supplier:

(a) warrants that the receipt, use of the Services and the Deliverables by the Buyer shall not infringe the rights, including any Intellectual Property Rights, of any third party;

(b) shall, subject to 9 (Limitation of liability), indemnify the Buyer in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Buyer arising out of or in connection with any claim brought against the Buyer for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and

(c) shall not be in breach of the warranty at 6.3(a), and the Buyer shall have no claim under the indemnity at 6.3(b), to the extent the infringement arises from:

(i) the use of the Buyer Materials in the development of, or the inclusion of the Buyer Materials in any Deliverable;

(ii) any modification of the Deliverables or Services, other than by or on behalf of the Supplier; and

(iii) compliance with the Buyer's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Supplier shall notify the Buyer if it knows or suspects that compliance with such specification or instruction may result in infringement.

6.4 The Buyer:

(a) warrants that the receipt and use of the Buyer Materials in the performance of this agreement by the Supplier, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party to the extent that infringement results from copying; and

(b) shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use in the performance of this agreement of the Buyer Materials.

6.5 If either party (the **Indemnifying Party**) is required to indemnify the other party (the **Indemnified Party**) under this 6, the Indemnified Party shall:

(a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at 6.3(b) or 6.4(b) (as applicable) (**IPRs Claim**);

(b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the

Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

(c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and

(d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

7. Compliance with laws and policies

7.1 In performing its obligations under this agreement, the Supplier shall comply with:

(a) the Applicable Laws; and

(b) the policies and procedures of the Buyer that have been notified to the Supplier prior to submission of the Buyer's Proposal or which are subsequently agreed to in writing by the Supplier (agreement not to be unreasonably withheld or delayed) but which may affect the completion of all or part of the Service and may impact upon the Charges payable by the Buyer.

7.2 Changes to the Services required as a result of changes to the Applicable Laws or any policy or procedural change required shall be agreed via the change control procedure applicable to the Call-Off Contract.

8. Confidentiality

8.1 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

9. Limitation of liability

9.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Buyer is responsible for making its own arrangements for the insurance of any excess loss.

9.2 References to liability in this 9 include every kind of liability arising under or in connection with this agreement as provided for and qualified (including by way of limitation) in the Call-Off Contract.

9.3 Neither party may benefit from the limitations and exclusions set out in the Call-Off Contract in respect of any liability arising from its deliberate default.

9.4 Nothing in this this 9 shall limit the Buyer's payment obligations under this agreement.

9.5 Subject to 9.3 and to agreement as to liabilities which cannot legally be limited as provided for in the Call-Off terms and conditions, the Supplier's total liability to the Buyer:

(a) for damage to property caused by the negligence of its employees and agents in connection with this agreement shall not exceed £[TO BE AGREED ON A PROJECT BY PROJECT BASIS] for any one event or series of connected events;

(b) for loss arising from the Supplier's failure to comply with its data processing obligations under the Call-Off terms and conditions shall not exceed £[TO BE AGREED ON A PROJECT BY PROJECT BASIS]; and

(c) for all other loss or damage which does not fall within subclause (a) or (b) shall not exceed £[TO BE AGREED ON A PROJECT BY PROJECT BASIS].

9.6 Subject to 9.3 (no limitations in respect of deliberate default) and to agreement as to liabilities which cannot legally be limited as provided for in the Call-Off terms and conditions the Buyer's total liability to the Supplier shall be as provided for by clause 8.4 of the Call-Off terms and conditions.

9.7 The caps on the Buyer's liabilities shall not be reduced by:

(a) amounts awarded or agreed to be paid under 6 (IPR indemnities); and

(b) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.

9.8 Unless the Buyer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Buyer became, or ought reasonably to have become, aware of the event having occurred and shall expire six months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

10. Termination

10.1 The rights of each party to terminate the Call-Off Contract are acknowledged.

10.2 In the event that a Collaboration Agreement has been entered into and the Buyer considers that it is necessary to terminate the participation of any party to that Collaboration Agreement other than the Supplier it shall at the earliest practicable time consult with the Supplier concerning the consequences of that termination and the effect this may have upon the Supplier's continued participation in that Collaboration Agreement.

11. Obligations on termination and survival

11.1 Obligations on termination or expiry

On termination or expiry of this agreement:

(a) the Buyer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

(b) the Buyer shall, within a reasonable time, facilitate access to any premises of the Buyer at which the Supplier has left any equipment, documents or other materials and permit the Supplier to take back such items as contemplated by clause 26.2 of the Call-Off terms and conditions.; and

(c) the Supplier shall on request return any of the Buyer Materials not used up in the provision of the Services.

11.2 Survival

(a) On termination or expiry of this agreement, the following clauses shall continue in force: **1** (Interpretation), **6** (Intellectual property rights), **8** (Confidentiality), **9** (Limitation of liability), **11** (Consequences of termination), **15** (Governing law) and **16** (Jurisdiction).

(b) Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

12. Assignment and other dealings

12.1 In the event that the Buyer considers transferring all or part of its interest in the Call-Off Contract to a third party or such transfer is to occur by reason of any act of government including a statutory scheme or under a statutory power or by Royal prerogative then the Buyer shall consult with the Supplier at the earliest opportunity.

13. Entire agreement

13.1 This agreement constitutes the entire set of Supplier terms and conditions adopted by the parties as part of any Call-Off Contract and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

14. No partnership or agency

14.1 This agreement shall come into effect in conjunction with all other terms and conditions of a Call-Off Contract. It is not intended to, nor shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

14.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

15. Governing law

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

16. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

Signed by [NAME OF
DIRECTOR] for and on behalf
of PUBLIC GROUP
INTERNATIONAL LIMITED

.....

Director

Signed by [NAME OF
DIRECTOR] for and on behalf
of [NAME OF CUSTOMER]

.....

Director