

FRAMEWORK AGREEMENT

For

Communications Services

Between

NG Bailey IT Services Limited

And

[Customer]

This Framework Agreement is dated [dd/mm/yyyy] (the “Effective Date”)

The Parties

(1) [insert Customer] incorporated and registered in England with company registered number [xxxxxxxxxxxxxxxx] whose registered office is at [xxxxxxxxxxxxxxxx] (**Customer**)

And

(2) **NG Bailey IT Services Limited** incorporated and registered in England with company registered number 02338401, whose registered office is at 7 Leeds Brown Lane West, Leeds, LS12 6EH (**NG Bailey**)

TOGETHER

The Parties, and separately a Party or the Party.

WHEREAS

(A) The Customer wishes to procure certain Services offered by NG Bailey in accordance with the terms and conditions of this Framework Agreement from time to time; and

(B) NG Bailey agrees to supply the Services to the Customer and the Customer has agreed to purchase and Use the Services on the terms and conditions of this Framework Agreement and the Call Off Contract.

The Parties agree as follows:

1. DEFINITIONS

1.1. In this Framework Agreement the following words and expressions shall have the meanings as set out below and within this Framework, save for any additional words or expressions in the context of each service as may be contained within Annex 1, Call Off Contract to this Framework and the Partner Supplier Terms and Conditions set out in the Appendices to Annex 1 of this Framework.

“Agreement”	means this Framework Agreement, the Annexes and Schedules
“Applicable Data Protection Laws”	i. to the extent the UK Data Protection Legislation applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and ii. to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which NG Bailey is subject, which relates to the protection of personal data.

“Applicable Law”	means all applicable laws, statutes, regulations and codes from time to time in force in England and Wales
“Authorised Representative/Signatory”	Shall mean either Party’s authorised person (s) who has the authority to sign, act on behalf of and to make or enforce contractual and/or operational decisions or outcomes relating to this Agreement and the Call Off Contract
“Charges”	shall mean the payment (s) that become due to NG Bailey by the Customer for the provision of the Service (s) in accordance with the payment terms under the Call Off Contract
“Commencement Date”	shall mean the date or dates set out in the Call Off Contract for the commencement of the provision of the Service(s) by NG Bailey
“Confidential Information”	shall mean any commercial, financial, sensitive, business process, methodology and Personal Data of either Party and any other information marked ‘Confidential’ by the Party’s
“Customer Data”	any information that is provided by the Customer to NG Bailey for the Customer to receive or use the Services, including any information derived from such information
“Customer Personal Data”	any personal data which NG Bailey receives and processes in connection with this Agreement and the Call Off Contract (s), in the capacity of a Data Processor on behalf of the Customer.
“Dependencies”	means the Customer and/or NG Bailey obligation (s), activities and tasks required to be carried out in a timely manner in accordance with the agreed or required timescales to enable NG Bailey (and/or its partner suppliers) to proceed or continue against the agreed Call Off Contract
“End User Licence Agreement”	shall mean the contractual licence agreement directly entered into between the Customer and NG Bailey’s Partner Supplier to receive the Services (as applicable)
“Fees”	shall have the meaning set out in Clause 5.3.
“Good Industry Practice”	means all the reasonable skill care and diligence to be expected of a properly qualified and competent architect or other appropriate designer experienced in designing services of a similar size, scope, nature and complexity to the Services.
“Initial Term”	shall have the meaning set out in Clause 11.2.
“NG Bailey Materials”	means any NG Bailey’s manuals, materials, hardware, software, equipment and tools, drawings, specifications and NG Bailey data (and/or that of its partner suppliers) shared or provided to the Customer for its Use solely in connection with a Customer Procurement Request, NG Bailey Response Document, and/or a Call Off Contract
“Partner Supplier”	the third-party supplier with whom NG Bailey is authorised to directly place orders for Services (or elements of the Services) from time to time
“Partner Supplier Terms and Conditions”	means the Partner Supplier terms and conditions (including an End User Licence Agreement as applicable) for the provision of certain services (as set out in the Call Off Contract) at Appendix 1 to Annex 1 of this Agreement

"Services"	means the Services (and any element of the Services) provided by NG Bailey, including but not limited to: survey works, mobilisation works, project or professional services, support services, managed services, products and materials; licences or software; network services; data centre services or structured cabling services; whether such Services or elements of the Services are performed by NG Bailey directly or supported by its subcontractor and Partner Supplier (s) and whether remotely, from NG Bailey's premises or Customer premises
"Term"	shall mean either i. the term of this Agreement, ii. the period for the supply of the Service and/or each service element under a Call Off Contract.
"Use"	means the proper use of or by or for the intended purpose, by the Customer, including but not limited to its staff, end users or authorised others of NG Baileys Services (including its Partner Supplier services), NG Bailey Materials, equipment, other materials or documentation or any other item provided, electronically, verbally or in paper form, and whether remotely or otherwise or made available or installed (whether permanently or temporarily) at the Customer premises or end user premises for the Customer's receipt of the Services

- 1.2. The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3. References to statutory provisions include those statutory provisions as amended or re-enacted.
- 1.4. The Call Off Contract and the Partner Supplier Terms and Conditions shall form part of (and are incorporated into) this Agreement.
- 1.5. Any phrase introduced by the words including, includes, in particular or for example or similar shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.6. If there is any conflict or ambiguity between the Terms and Conditions of this Agreement, the Call Off Contract or the Partner Supplier Terms and Conditions, the following order of precedence shall apply:
 - i. Partner Supplier Terms and Conditions (Appendix 1)
 - ii. the Call Off Contract (Annex 1), and
 - iii. this Agreement
- 1.7. No rule of construction with regards to drafting will apply in the interpretation of any provision of this Agreement to the advantage of either Party.

2. PROVISION OF SERVICES

- 2.1. NG Bailey shall supply Services to the Customer from time to time in accordance with the terms of this Agreement, the Call Off Contract, including Partner Supplier Terms and Good Industry Practice and with reasonable skill and care. The acceptance to the Agreement shall enable the Customer to procure NG Bailey's Services from time to time on the conditions set out within this Agreement.

- 2.2. This Agreement shall supersede all and any previous arrangements between the Parties, whether written or oral.
- 2.3. This Agreement, the Call Off Contract and the Partner Supplier Terms and Conditions shall apply and prevail over any Customer's Terms and Conditions, whether contained in or referenced in any order confirmation, purchase order, delivery note or invoice or similar document or implied by law, trade customer or practice.
- 2.4. The Customer will be provided with a proposal or quotation following receipt by NG Bailey of a Customer request, NG Bailey will make clear in such document whether the quotation is at budgetary stage only or a firm quotation. NG Bailey reserve the right to reject a Customer request.

3. AGREEMENT AMENDMENT

- 3.1. NG Bailey may make reasonable updates to its' Services (including the deletion and/or addition of products and/or services), from time to time for operational reasons and/or to reflect third-party product or service updates. Such updates shall be notified to the Customer in writing from time to time.
- 3.2. Up to date versions of NG Bailey's Services are available on request.
- 3.3. NG Bailey may amend the Agreement for the purpose of its' compliance with any changes in law, legislation or regulatory change. Such updates shall be notified to the Customer in writing from time to time.
- 3.4. Variations or additions to the Agreement shall come into effect and are contractually binding on the Parties from the date imposed in law, legislation or of the regulatory change, but for the avoidance of doubt, no such addition or variation to the Call Off Contract shall be contractually binding on the Parties unless expressly stated in writing and signed by or acknowledged by an Authorised Representative of both Parties.

4. REQUEST, PROPOSALS, ORDER & CALL OFF CONTRACT

- 4.1. The executed Agreement allows the Customer to procure certain Services from NG Bailey from time to time by way of a written request for response ("**Customer Procurement Request**") submitted formally to NG Bailey by an Authorised Representative of the Customer.
- 4.2. NG Bailey may at its discretion, formally accept or reject a Customer Procurement Request, but if accepted, NG Bailey shall formally respond to a Customer Procurement Request by way of a written quotation or proposal response (the "**Response Document**"), the Response Document will set out a quote validity period aligned to the Service (s) NG Bailey offers. The following are NG Bailey's generic quote validity periods, (save where any alternative periods are specifically stated otherwise in the Response Document), as follows:
 - i. for project or professional services, a quote validity period of sixty (60) days from the Response Document submission date;
 - ii. for products, or licences a quote validity period of seven (7) or fourteen (14) days from the Response Document submission date;
 - iii. for materials or plant, a quote validity period of thirty (30) days from the Response Document submission date;

- iv. quotes for survey works shall be valid for thirty (30) days from the Response Document submission date.
- 4.3. NG Bailey may (if it deems applicable to do so), prior to issuing its Response Document, be permitted to:
- i) conduct a site survey, of the Customer premises and/or the sites within the premises; and
 - ii) to carry out a financial / credit check of the Customer; and
 - iii) request from the Customer a parent company guarantee or other financial security guarantee.

NG Bailey shall at its' sole discretion at any time, decide whether to continue to proceed in response to a Customer Procurement Request following the outcome of Clause 4.3. sub-clauses ii. and/or iii where such actions are requested from the Customer by NG Bailey.

- 4.4. If NG Bailey is requested to provide a Response Document without first being granted access to the Customer premises to conduct a site survey (where a site survey is required to validate the Customer Procurement Request), NG Bailey's quote or proposal may be submitted to the Customer as a 'budgetary' quote or proposal only.
- 4.5. Upon acceptance by the Customer of NG Bailey's Response Document, the Customer will promptly, and no later than within seven (7) Working Days of the Customer agreement of the document, place an order (the "**Order**") with NG Bailey for the Services and provide the following:
- i. Confirm acceptance of NG Bailey's Response Document as confirmation that the Document is complete and accurate with its requirements; and
 - ii. issue purchase order (s) for the Service (s) (or elements thereof) in accordance with the terms set out in the Response Document; and
 - iii. provide to NG Bailey evidence or copies of all signed End User Licence Agreement or other licence agreements, planning consents, landlord access and wayleave consents and/or any other required documentation as may be stated in NG Bailey's Response Document or otherwise required for the provision of the Services; and
 - iv. (where applicable) comply with its obligations under The Construction (Design and Management) Regulations 2015 (as amended) where these apply to the Customer Order; for the avoidance of doubt, it will be for the sole obligation of the Customer to determine and if required, formally appoint the Roles under the Regulations and to notify NG Bailey of those respective parties; and
 - v. provide (where requested) to NG Bailey a parent company guarantee or other financial guarantee and/or evidence to NG Bailey when requested; and
 - vi. provide reasonable access to resources, access to its premises and within the premises, including where agreed, provision by the Customer of a secure site storage location as may be required by NG Bailey from the date requested, and for the duration for NG Bailey to provide its Services.

In the event that, the Customer does not place an Order with NG Bailey within seven (7) Working Days of the Customer's agreement of the NG Bailey Response Document, NG Bailey may at its absolute discretion and without liability, withdraw its Response Document.

- 4.6. The placing of an Order by the Customer with NG Bailey shall be in strict compliance, adherence and completion by the Customer of its obligations under Clause 4.5. sub-clauses (i) to (vi).
- 4.7. The placing of an Order by the Customer with NG Bailey will constitute a binding contract between the Parties, (the **"Call Off Contract"**); NG Bailey shall be entitled to reject the Customer Order at its sole discretion if the conditions in Clause 4.5. sub-clauses i. ii. iii. and (where applicable) iv & v. are not met within seven (7) days of the Order being placed. Any failure or delay by the Customer in fulfilling its obligations under sub-clause vi. may result in a delay in the provision of the Services at no cost to NG Bailey.

CHANGE CONTROL

- 4.8. Any change in the Customer's requirements prior to the formal acceptance of NG Bailey's Response Document, including but not limited to the outcome of a completed site survey undertaken by NG Bailey, will be managed as a formal written change whereby, NG Bailey shall issue an updated and version-controlled Response Document for Customer acceptance; this process will be repeated until the Customer determines NG Bailey's proposal meets the specification of the Customer's Procurement Request.
- 4.9. Any changes required to the Services under a Call Off Contract after the Commencement Date, (including where NG Bailey undertakes a site survey) will constitute a change control and a formal change control notice ("**CCN**") will be issued by the requester for both Party's approval; such change shall not be binding or come into force unless signed by both Party's Authorised Representatives.
- 4.10. In addition to Clauses 5.2 and 5.3 below, where the Customer is the requester of the CCN to the Call Off Contract NG Bailey shall be required to:
 - i. provide an updated programme for the works and shall not be liable whatsoever for any previously agreed time bound provisions or obligations set out in the Call Off Contract which cannot be met, are delayed and/or are superseded by the content of the CCN;
 - ii. provide an update of costs for the provision of the Services for agreement; and
 - iii. not be under any obligation to implement a CCN, and commence the varied works, unless agreed and signed by both Parties and a purchase order or uplifted purchase order to NG Bailey in advance.

5. PLACING AN ORDER AND CANCELLATION

- 5.1. Following the execution of the Call Off Contract and receipt of the purchase order (s), NG Bailey may place orders (as applicable) upon its partner suppliers for elements of the Services and provide confirmation to the Customer in writing, including a firm and/or estimated time for delivery.
- 5.2. The Customer shall strictly adhere to the terms and conditions of this Agreement and the Call Off Contract, including the Partner Supplier Terms and Conditions with respect to the required notice period and for written notice to be provided for cancellation of any elements of the Services, including any notice period set out in a CCN. Where the timely provision of and/or written notice is not provided within the stated timescales to NG Bailey, and the order for Services has been

placed with NG Bailey, the Customer shall be liable for the full value of the Services and or any cancellation charges that may be incurred by NG Bailey.

5.3. Notwithstanding Clause 5.2 above, immediately on or after the Commencement Date of the Call Off Contract where any or all of the following have commenced:

- i. Licences are activated or in the process of activation;
- ii. products and/or services are ordered, in transit, and/ or delivered or part delivered;
- iii. installation, or part installation of any products;
- iv. ordered or installed software; and
- v. provision or part provision of NG Bailey/ partner supplier services, including but not limited to professional services, project works or mobilisation services.

and the Customer notifies NG Bailey, whether orally or in writing of its request to delay, cancel or postpone the Call Off Contract (in full or in part) at any time, including the Customer issue of a CCN, the Customer shall indemnify NG Bailey in full and on demand for all charges, costs (whether direct or indirect) and expenses, losses, charges, fees including but not limited to transit, item returns and/or storage fees, any third-party charges, fees and expenses (the “**Fees**”) that arise and /or are incurred by or imposed on NG Bailey.

6. TERM AND WORKING HOURS

- 6.1. The Agreement shall commence on the Effective Date (the date as set out at the beginning of this Agreement) and shall continue thereafter in full force and effect for the duration of the Term unless terminated earlier in accordance with Clause 22.
- 6.2. The date or dates for the commencement of NG Bailey Services shall be stated in the Call Off Contract. The time for delivery (whether known or estimated) of any element of the Services shall be as set out in NG Bailey’s Response Document; where exact times cannot be provided by NG Bailey prior to the Customer placing an Order, NG Bailey may provide estimated delivery times and provide confirmation to the Customer as soon as the information becomes available.
- 6.3. The Customer understands and accepts that certain of NG Bailey’s Services may be set on an ‘auto renewal’ (“**Auto-Renew**”) basis following the Initial Term as stated in NG Bailey’s Response Document; the Customer shall be solely liable for its acknowledgement and compliance with the renewal terms and, if required, for providing NG Bailey with the applicable written notice within the stated time period where it does not wish for the Service or element of the Services to auto-renew.
- 6.4. NG Bailey shall provide its Services during normal working hours, defined as Monday to Friday (“**Working Days**”) between the hours of 08:30 and 17:00, (“**Working Hours**”) excluding English Bank/Public holidays (“**Normal Working Hours**”), unless stated otherwise in the Response Document or any CCN. The Parties may mutually agree from time to time for the provision of certain services to be provided outside of Normal Working Hours, the Customer understands and agrees in these exceptional circumstances or similar, that the Customer shall be liable for additional charges at the rates set out in NG Bailey’s Response Document.
- 6.5. Notwithstanding Clause 6.4, NG Bailey or its’ partner supplier may require access to the Customer premises outside of Normal Working Hours, (whether remotely or otherwise), an (“**Access Request**”) for NG Bailey to meet its’ obligations under the Call Off Contract. NG Bailey will provide the Customer with as much notice as it is reasonably able to give for an access request. In the event the Customer is unable to or delays provision of its consent for an Access Request for the times and duration stated, the Customer accepts it shall become liable for any delay and or charges in the provision of the Services that may arise and are incurred by NG Bailey, which cannot be reasonably mitigated.

7. SUPPLY AND INSTALL

- 7.1. NG Bailey shall provide the Services set out in the Response Document (and subsequent CCN), remotely and/or at the Customer premises (as appropriate).
- 7.2. As soon as is reasonably practical to do so, following the Commencement Date of the executed Call Off Contract, the Parties shall meet to agree and confirm NG Bailey's schedule for delivery of the Services, (the "**Service Planning Schedule**"), which may also include the undertaking of a site survey, mobilisation services and/or professional services.
- 7.3. If NG Bailey is to undertake any project works under a Call Off Contract, the Party's shall also agree the schedule for the works and both Parties Dependencies for the duration of the project (the "**Project Plan**"). The Service Planning Schedule and the Project Plan shall be version-controlled, updated and re-issued from time to time for Customer written approval (within two (2) Working Days) throughout the delivery of the Services.
- 7.4. Where NG Bailey is to conduct a site survey in accordance with a Call Off Contract, NG Bailey shall produce its output in either a survey report, (the "**Survey Report**") or by issuing a revised version-controlled Response Document for Customer consideration.

8. NG BAILEY OBLIGATIONS

- 8.1. NG Bailey shall:
 - 8.1.1. use suitable skilled, trained, experienced, accredited (where required), vetted and secure cleared (where required) personnel, third-party partners and sub-contractors to fulfill its' obligations under the Call Off Contract;
 - 8.1.2. provide its' Services with reasonable skill and care and in accordance with Good Industry Practice;
 - 8.1.3. provide the Services in accordance with the terms of this Agreement and each Call Off Contract;
 - 8.1.4. comply with all Applicable Law in the undertaking of its' obligations and activities pursuant to each Call Off Contract, including any CCN; and
 - 8.1.5. ensure it and its personnel shall (and use its reasonable endeavors to procure any subcontractors shall) comply with the Customers health and safety procedures, security and site rules at the Customer premises (as made known to NG Bailey).
- 8.2. NG Bailey shall use reasonable endeavors to respond to the Customer ad-hoc requests in relation to any Call Off Contract and shall provide at least one authorised representative for management of the NG Bailey Services at all times.
- 8.3. The Customer hereby permits NG Bailey to engage subcontractors, including specialist contractors in the provision of the Services, NG Bailey shall not be relieved of its obligations by such engagement and shall be liable for the performance of the subcontractors and specialist contractors obligations as if the Services were performed by itself under NG Bailey's supervision.
- 8.4. For the avoidance of doubt NG Bailey shall only be held liable under the Call Off Contract to the extent as stated in this Agreement and shall compensate the Customer in accordance with its' legal liability only for any acts or omissions of its third party supplier; NG Bailey shall not be liable whatsoever for any for the acts or omissions of any other third-party, including a third party supplier whereby the Customer has a direct customer agreement in place with that third party and/or where the Customer is in breach of its obligations or Use of the Services under the terms of this

Agreement, the Call Off Contract and the Supplier Partner Terms and Conditions (including the End User Licence Agreement).

9. CUSTOMER OBLIGATIONS

9.1. The Customer shall:

- 9.1.1. implement all required updates and upgrades as required, in a timely manner to ensure the Customer's software and/or products can be continually supported throughout the Term of the Call Off Contract and reasonably assist and permit NG Bailey to install (and test) the current versions of applicable software to provide its Services from time to time when upgrades or fixes arise;
- 9.1.2. provide access, (remotely or otherwise) to its' sites and within its' premises during Normal Working Hours and at other such times as may be agreed between the Parties strictly for the purpose for NG Bailey to provide the Services;
- 9.1.3. provide reasonable access to the Customer's facilities and a practical working area, (including power and lighting) to NG Bailey during the provision of the Services from time to time, subject to NG Bailey's strict compliance with the Customer site policies and procedures;
- 9.1.4. provide to NG Bailey the secure site storage location for the duration of the Services, (where applicable);
- 9.1.5. provide its cooperation and reasonable assistance to NG Bailey in all matters relating to the Services as reasonably requested, including but not limited to the undertaking of its' Dependencies (if any) in a timely manner and its' timely response to each Access Request and any CCN that may be raised during the term of the Call Off Contract;
- 9.1.6. provide NG Bailey with all health and safety information, registers, instructions and site records required by NG Bailey to carry out its Services safely at its or its end client premises;
- 9.1.7. strictly adhere and comply to the terms and conditions of this Agreement, the Call Off Contract and the Partner Supplier Terms and Conditions (including an End User Licence Agreement).
- 9.1.8. provide its reasonable assistance and follow the reasonable instructions of NG Bailey to support the resolution of any Services defects;
- 9.1.9. where NG Bailey requires access to any Customer data, systems, equipment or software (and/or where the Customer is in possession of such) which is necessary for NG Bailey to perform its obligations under a Call Off Contract, the Customer shall grant or use its reasonable endeavors to grant to NG Bailey a non-exclusive, royalty free, licence for the duration required solely for NG Bailey's to carry out the Services;
- 9.1.10. Use the Services lawfully in accordance with the terms this Agreement, Partner Supplier Terms and Conditions (including the End User Licence Agreement) and the Call Off Contract and for the purpose intended under the Call Off Contract; and ensure any passwords issued to the Customer are kept secure and from third-party use; and
- 9.1.11. fully virus-check any data, including the Customer data supplied to NG Bailey under this Agreement and/or any Call Off Contract.

- 9.2. Where any End User Licence Agreement or terms of Use are required to be entered into by the Customer and NG Bailey's partner supplier directly for the receipt or Use of the Services by the Customer, the Customer agrees that such End User Licence Agreement or terms of Use shall form part of the Call Off Contract and this Agreement and further, the Customer, its' staff, personnel and end users and any other persons of the Customer (as to whom these may apply) shall comply in full with such End User Licence Agreement terms and shall indemnify NG Bailey for any costs or losses incurred as a result of any breach of the same.
- 9.3. The Customer shall ensure that for all third-party software, products and systems, the Customer has all required, suitable and applicable licences in place and associated manuals and other such documentation to ensure that NG Bailey has full use to provide the Services under the Call Off Contract.
- 9.4. The Customer shall not and shall not allow Use or access to NG Bailey Services or Materials under any Call Off Contract:
- i. by any other suppliers, contractors or third parties without the prior written approval of NG Bailey;
 - ii. to send, share, knowingly receive, upload, download or use any material which is or is deemed offensive, abusive, indecent, defamatory, obscene or menacing or in breach of copyright, confidence, privacy or any other rights;
 - iii. to send, share, open, provide or, knowingly receive responses to, any spam or unsolicited advertising, email or promotional material; negligently or knowingly transmit electronic material, including viruses, which may or is likely to cause harm or a degradation to any system, computer systems or address of NG Bailey (whether owned or otherwise in NG Baileys custody or possession);
 - iv. in connection with dishonest, criminal, fraudulent activity, or any other illegal activity;
 - v. in any manner which prevents, restricts or inhibits any other user from using or to the fullest extent offered, to use NG Bailey's Services.

Notwithstanding any other rights or entitlements that NG Bailey has under the terms of this Agreement, the Call Off Contract and the Partner Supplier Terms and Conditions or in law, a breach of Clauses 9.2 and/or 9.4, including sub-clauses i. to v. and/or any other unauthorised Use of the Services may entitle NG Bailey to suspend the Services or any element of the Services until NG Bailey is satisfied such compliance is met in full; or the activity or unauthorised Use has desisted.

- 9.5. The Customer shall provide NG Bailey with no less than twenty one (21) days prior notice of any intended or scheduled moves, adds or changes, ("**MAC's**"), of the Customer's estate that will or is reasonably understood may directly impact on NG Bailey's Services; if such prior notice is not provided, NG Bailey may have to attend the Customer premises or access its systems remotely to undertake any necessary activities to remedy the Customer's systems for NG Bailey to continue to support the Customer at the Customer's sole cost and expense.
- 9.6. NG Bailey shall not be held liable for any third-party costs, expenses or losses (whether direct or indirect) incurred or imposed on the Customer whatsoever, where such third-party costs, expenses or losses have arisen due to matters outside of NG Baileys direct control and/or where the Customer has not complied in full with NG Bailey's instructions and the terms of this Agreement, the Call Off Contract (s) and the Partner Supplier Terms and Conditions.

10. PRICING AND PAYMENT

- 10.1. NG Bailey shall be entitled to submit interim invoices to the Customer for the Services pursuant to the Call Off Contract (s) for prompt and full payment in pounds sterling within thirty (30) days from the date of invoice. In addition, the Customer agrees to pay the amount specified within the time period specified, (where stated in the Response Document), upon NG Bailey placing an order for Services with its partner supplier as may be required in advance to secure such Services at the quantities required or specified prices.
- 10.2. NG Bailey's Charges are exclusive of all taxes including VAT, which shall be added to all invoices at the prevailing rate.
- 10.3. If the Customer intends to withhold payment in relation to a genuine invoice dispute, the Customer must notify NG Bailey within ten (10) days of the date of the NG Bailey invoice and the Customer may only withhold payment of any invoiced amount that is agreed with NG Bailey as being under dispute. For the avoidance of doubt, the Customer shall be liable to pay all undisputed invoiced amounts in accordance with Clause 10.1.
- 10.4. Subject to Clause 22.1.4., and without prejudice to any other remedy that NG Bailey may have if the Customer fails to pay any properly submitted invoice for the Charges due by the due date for payment, NG Bailey may charge interest, at a rate of 3% (three percent) above the Bank of England base rate, on any overdue amount. Such interest shall accrue daily from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.5. Subject to Clause 10.3, the Customer may not exercise any right of set off, retention, deduction, or any other withholding against amounts of the NG Bailey invoices (including where invoices have been issued late or incorrectly and subsequently amended) by NG Bailey.

CHARGES ADJUSTMENTS

- 10.6. NG Bailey reserves the right to adjust or vary the Charges:
 - 10.6.1. (and adjust the time for completion of the provision of the Services) where such changes are enforced on NG Bailey due to any Applicable Law, or by any regulatory authority after providing the Customer with reasonable written notice via a CCN; and
 - 10.6.2. where any of the Charges for the Services under a Call Off Contract are variable; these will be adjusted by NG Bailey by the amount equal to the change in annual Consumer Price Index (CPI) rate, published by the Office of National Statistics (ONS); NG Bailey shall apply the % index value to the Charges (or the applicable Charges element) on the contract year anniversary date; and
 - 10.6.3. to reflect any rises in a foreign currency exchange rate after providing the Customer with reasonable written notice; and
 - 10.6.4. with effect from the end of an Initial Term of a Service (s) under a Call Off Contract and subsequent anniversaries thereafter, by providing the Customer not less than thirty (30) days written notice; and
 - 10.6.5. at any time to reflect any rises in Partner Supplier and/or manufacturer rates or costs, and/or energy costs, whether reasonably anticipated or not (inclusive of any foreign currency exchange rate changes); or

- 10.6.6. from the end of a fixed price period of supply and/or the Initial Term and subsequent anniversaries thereafter or at any other time where such price changes are enforced on NG Bailey in respect of the Services it provides, after providing the Customer with a minimum of thirty (30) days written notice.
- 10.7. Where NG Bailey provides the Customer with notice to adjust any of the Charges under a Call Off Contract in accordance with Clause 10.6.6. and the Customer does not agree to the increase in the Charges, the Customer may terminate the Call Off Contract providing NG Bailey with a written termination notice of not less than thirty (30) Working Days. During such termination notice period, the increase in Charges under Clause 10.6.6. shall not apply.
- 10.8. NG Bailey invoices shall be sent to:
- email address [tbc] detailing:
- i. the correct invoice amount (in pounds sterling);
 - ii. purchase order number; and
 - iii. Response Document Reference (date & version number)
- 10.9. In the event the Customer requests or is the cause of any delay (save for a Force Majeure event); the Customer shall remain liable for all Charges and Fees, set out in the Call Off Contract.
- 10.10. The Customer shall be invoiced the agreed amount of the Services in accordance with the invoicing schedule for that Service or element of the Services as detailed within the Call Off Contract for prompt payment in accordance with the payment terms. Any failure to pay the amount due or for any software assurance or support services provided by NG Bailey, the Customer acknowledges and agrees that late or failure to make the required payment by the due date may result in any or all of the following:
- i. discounts being withdrawn;
 - ii. increase in Charges or fees e.g., reconnection fees;
 - iii. delay in the receipt of the Services or products;
 - iv. payment in full being due on demand;
 - v. storage costs being levied; and
 - vi. unsupported Services (for the non-payment period).

11. TERM AND INITIAL TERM

- 11.1. Where the Customer is made aware in the Response Document and places an Order with NG Bailey under a Call Off Contract for Services, those Services shall be provided for the Term of the Call Off Contract, subject to the Terms of this Agreement, the Call Off Contract and the Partner Supplier Terms and Conditions (including the End User Licence Agreement).
- 11.2. If the Term for the provision of the Services is also subject to an initial period of supply, (the “**Initial Term**”), the Customer shall not be entitled to terminate the Service (s) and/or the Call Off Contract for its convenience prior to the expiry of the Initial Term, SUBJECT ALWAYS to the condition in Clause 22.3 being met or save for a material breach by NG Bailey under Clause 22.4.1. (and such breach is not remedied or capable of remedy).

12. AUDIT

- 12.1. Either Party shall be entitled to conduct a general audit of the other Party's records in respect of the performance of its obligations under this Agreement and/or the Call Off Contract (s) at a rate of no more than once per contract year, subject to:
- i. agreement in advance by both Parties of the date, time, content, duration, attendees and process; and
 - ii. the audit being undertaken during a Normal Working Day during Normal Working Hours; and
 - iii. the audit being conducted so as not to disrupt or delay the Party's normal business activities; and
 - iv. shall in the case of the Customer initiated audit, be undertaken by Customer employed persons only i.e., a non-competitor party of NG Bailey; and
 - v. the Party conducting the audit adhering at all times during the audit in full to the procedures and practices in place at the Party's business, including but not limited to security and health & safety rules and regulations.
- 12.2. Audits shall be conducted at each Party's own expense.
- 12.3. During the undertaking of the general audit, where a Party is found to be:
- i. non-compliant with its obligations under the Agreement and/or the Call Off Contract (s), it shall promptly put in place or make good the non-compliance within ten (10) Working Days of the date of the audit; and
 - ii. where any under or overpayment is evidenced, promptly make such payment or provide a credit note for any overpayment amount within thirty (30) days from the date of the audit.
- 12.4. If during an audit it is evidenced that the Customer has failed to comply with its' obligations under this Agreement, and/or the Call Off Contract, and the matter is deemed a material breach of the Agreement and/or the Contract, then without prejudice to any other of NG Bailey's rights or entitlements under this Agreement, the Call Off Contract or in law, NG Bailey may immediately suspend the Services or any element of the Services or terminate the Call Off Contract and this Agreement.
- 12.5. In addition to a general audit, NG Bailey acknowledges the Customer may be subject to a regulatory audit from time to time and in this event, NG Bailey shall provide its' reasonable assistance, (at the Customer's expense) to assist the Customer for the duration of a regulatory audit as may be required to audit NG Bailey's records for its' compliance with its regulatory obligations pertaining to NG Bailey's performance of this Agreement and the Call Off Contract (s) and, reasonable access to NG Bailey's (and NG Bailey shall use its reasonable endeavours to procure the same of its partner supplier, if applicable) to its' premises and records for a regulatory audit.

13. TIME FOR PERFORMANCE

- 13.1. Where NG Bailey performs the Services or any elements of the Services in accordance with any agreed key performance indicators ("**KPIs**") and/or service level agreements ("**SLAs**") (the "**Measures**"), NG Bailey shall seek to meet or exceed those performance Measures on a reasonable endeavors basis only and time is not of the essence in respect of these KPIs, SLAs and Measures in the performance by NG Bailey of the Services.

14. HEALTH AND SAFETY

- 14.1. NG Bailey reserve the right to refuse to carry out the Services (or any element of the Services) where in the reasonable opinion of NG Bailey the activities involve a hazard to health and safety. The Customer shall be immediately informed of the difficulty and NG Bailey's activities shall not resume until the hazard has been removed to the satisfaction of NG Bailey.
- 14.2. NG Bailey reserves the right to cease works on the Customer premises if in the reasonable opinion of NG Bailey asbestos is present and constitutes a hazard to health and safety.
- 14.3. Failure to carry out provision of the Services on the grounds of health and safety concerns shall not constitute a breach of this Agreement (or any Call Off Contract) by NG Bailey and shall not excuse the Customer from its payment obligations to NG Bailey.
- 14.4. It is the duty of the Customer under the Health and Safety at Work Act 1974 to draw the attention of NG Bailey to any potential hazard associated with the provision of the Services.
- 14.5. It is the duty of the Customer to keep asbestos registers up to date and make such registers available to NG Bailey personnel.
- 14.6. The Customer shall indemnify NG Bailey in full in the event that any NG Bailey employee, subcontractor, or agent suffers death or personal injury on the Site due to an act or omission of the Customer including (but not limited to) any breach of this clause 14.

15. DATA PROTECTION

- 15.1. NG Bailey shall promptly notify the Customer in writing of any loss or damage to the Customer Data. In the event of any loss or damage to Customer Data, NG Bailey shall use its reasonable endeavours to restore the lost or damaged Customer Data its latest backup of Customer Data. NG Bailey shall not be responsible whatsoever, for any loss, destruction, alteration or unauthorised disclosure of Customer Data caused by any third party.
- 15.2. For the purposes of this Clause 15, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the Applicable Data Protection Laws.
- 15.3. Both Parties will comply with all applicable requirements of the Applicable Data Protection Laws. This Clause 15 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Applicable Data Protection Laws.
- 15.4. Each Party undertakes to the other Party that it will process personal data in compliance with the Data Protection Act 2018 and the UK GDPR and any codes of conduct or guidelines issued by the relevant regulatory authorities.
- 15.5. The Party's acknowledge that for the purposes of the Data Protection Act 2018, the Customer is the data controller and NG Bailey is the data processor in respect of any Customer Personal Data.
- 15.6. NG Bailey shall only process the Customer Personal Data within the United Kingdom and only for the purpose of fulfilling its obligations under this Framework Agreement, the Call Off Contract and/or in accordance with the Customers reasonable written instructions provided in advance to NG Bailey from time to time.

- 15.7. In relation to Customer Personal Data the applicable Call Off Contract shall set out the scope, extent and purpose of the processing of such Customer Personal Data by NG Bailey, the duration and the types of personal data and categories of a data subject.
- 15.8. Each Party acknowledges that compliance with Applicable Data Protection Laws includes its responsibilities in relation to any relevant third-party subcontractors.

16. CONFIDENTIALITY

16.1. Each Party will keep in strict confidence all Confidential Information disclosed to it and will:

- i. only disclose Confidential Information to those of its employees, agents, Group Companies, officers, directors, advisers, insurers, subcontractors and suppliers, who need to know it for the purpose of that Party discharging its obligations or receiving a benefit under this Agreement and/or any Call Off Contract, and will ensure that those receiving Confidential Information under this Clause 16.1 comply with the obligations set out in this Clause 16 as though they were a party to this Agreement and any Call Off Contract;
- ii. only disclose Confidential Information as required by Applicable Law, any Authority or by a court of competent jurisdiction. Before making any such disclosure, the receiving Party will, to the extent that it is not prevented from doing so by such Applicable Law, order or requirement:
 - a. promptly notify the disclosing Party in writing of the details of the ordered or required disclosure; and
 - b. if so requested and so far as is reasonable, assist the disclosing Party, at the disclosing Party's cost, in seeking a protective order or other assurance with respect to maintaining the confidentiality of such Confidential Information; and
 - c. not use or exploit the Confidential Information in any way except as necessary for the purpose of that Party discharging its obligations or receiving a benefit under this Agreement and/or any Call Off Contract.

16.2. Clause 16.1 will not apply to Confidential Information that:

- i. is or becomes available to the public other than as a result of a breach of this Agreement or any Call Off Contract;
- ii. was lawfully available to a Party on a non-confidential basis prior to disclosure by the disclosing Party;
- iii. the Parties agree in writing is not Confidential Information; or
- iv. was developed by or for the receiving Party independently of the information disclosed by the disclosing Party.

16.3. Upon written request from a Party, the other Party will return or destroy any Confidential Information received from the requesting Party within a reasonable time period and provide written confirmation on request by the requesting Party.

16.4. This Clause 16 will survive termination or expiry of this Agreement and any Call Off Contract for a period of three (3) years from the termination or expiry of this Agreement or the Call Off Contract (as appropriate).

16.5. Any breach of this Clause 16 by the Customer will be deemed to be a material breach for the purpose of the indemnity in Clause 18.1.

- 16.6. The Parties agree that if either of them breaches this Clause 16, damages may not be an adequate remedy for the disclosing party and it will have the right to apply for injunctive relief or specific performance of the recipient's obligations.
- 16.7. The Party's shall ensure that any persons in receipt of Confidential Information are bound by no less onerous confidentiality terms to those in this Clause 16.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1. During the Term of this Agreement and/or the Call Off Contract (as applicable) and subject to any restrictions expressly set out in this Agreement and the relevant Call Off Contract, NG Bailey grants a non-exclusive, non-transferable, worldwide licence to the Customer as is necessary for the Customer to:
- i. make use of the Services;
 - ii. use NG Bailey Materials to the extent necessary to receive the benefit of the Services; and
 - iii. use the documentation and manuals for the Customer's use of the Services.
- 17.2. Save for any deliverables that are exclusively created and until paid for in full by the Customer ("the **Customer Deliverables**") such Customer Deliverables will be fully defined in the Call Off Contract (if applicable), NG Bailey and its licensors (as applicable) shall own all Intellectual Property Rights in its Services and all other rights arising out of this Agreement and any Call Off Contract in the provision of the Services by NG Bailey, unless otherwise prior agreed in writing by NG Bailey.
- 17.3. Where Customer Deliverables are provided in accordance with Clause 17.2, NG Bailey shall use reasonable endeavours to assign to the Customer (or will use its reasonable endeavours to procure the assignment of) full title guarantee in the Intellectual Property Rights in the Customer Deliverables (excluding Intellectual Property Rights in any NG Bailey Services). NG Bailey will execute (or will use its reasonable endeavours to procure the execution of) any documents required to perfect such assignment and procure waivers of any moral rights in relation to the Customer Deliverables (excluding any NG Bailey Services). All other deliverables and NG Bailey Services are, following receipt in full of the required Charges, licensed to the Customer as part of the relevant Service in accordance with Clause 17.1 and the provisions of the Call Off Contract and relevant Partner Supplier Terms and Conditions (as applicable).
- 17.4. The Customer agrees without condition to adhere to, comply and be bound by the terms and conditions of any software licence agreements, including an End User Licence Agreement that it may enter into whether between NG Bailey and the Customer and/or directly between itself and a Partner Supplier and the Customer shall have no right to assign, sublicensing or transfer such software licences or Agreements.
- 17.5. NG Bailey may, at its expense, modify or replace the Services to avoid any alleged or actual infringement or breach. NG Bailey shall use its reasonable endeavours to ensure that any such modification or replacement shall not adversely affect the provision, performance or functionality of the Services, unless as otherwise agreed in writing by the Party's.

18. INDEMNITIES AND CONDUCT OF CLAIMS

- 18.1. Without prejudice to any other accrued rights or remedies available to NG Bailey, the Customer indemnifies, defends and hold harmless NG Bailey in full and on demand against all liabilities arising out of or in connection with:

- i. any actual or infringement of a third-party's Intellectual Property Rights or duty of confidentiality towards a third-party by the use or possession or use of any other act permitted under this Agreement and/or a Call Off Contract of the Services; and
 - ii. any breach of its obligations under Clause 17.4; and
 - iii. any breach of its obligations under Clause 21.1; and
 - iv. any breach of its obligations Clause 27; and
 - v. Part 1 of the Consumer Protection Act 1987 (or any equivalent product liability legislation) and the Consumer Rights Act 2015 in relation to the Services; and
 - vi. loss of or damage to any property to the extent arising as a result of the negligence or willful acts or omissions of the Customer or Customer personnel in relation to the performance of this Agreement or any Call Off Contract.
- 18.2. Save in relation to a claim by NG Bailey under Clause 18.1 i. (third-party IPR indemnity), if a claim is brought by a third party against NG Bailey or any third party that is expressly stated as being the beneficiary of an indemnity under this Agreement, or the Call Off Contract ("Indemnified Party"), the Indemnified Party will notify the indemnifying Party ("Indemnifying Party") promptly in writing of any such claim and subject to the Indemnified Party being reasonably satisfied with the Indemnifying Party's conduct of the defence to such claim:
- 18.2.1. the Indemnifying Party will indemnify the Indemnified Party in relation to such claim at the Indemnifying Party's expense, such litigation and negotiations for a settlement of the claim; and
 - 18.2.2. the Indemnified Party will at the request and expense of the Indemnifying Party, provide the Indemnifying Party with all assistance required by the Indemnifying Party in support of any such defence or action, provided always that the Indemnifying Party will not admit or settle any such claim without the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed.
- 18.3. Where the Indemnifying Party assumes the defence of the claim set out in Clause 18.2 above, the Indemnifying Party will:
- 18.3.1. promptly and in any event within a period of ten (10) Business Days from the Indemnifying Party's notification as set out in Clause 18.2, notify the Indemnified Party that it has assumed such defence;
 - 18.3.2. at all times have regard for the interests and reputation of the Indemnified Party; and
 - 18.3.3. consult and keep the Indemnified Party regularly informed and updated in relation to any negotiations, settlement or litigation.
- 18.4. If the Indemnifying Party does not assume the defence of the claim set out in Clause 18.2 above, the Indemnified Party may defend the claim in such manner as it may deem appropriate without the need to consult with the Indemnifying Party or seek its written consent to any step taken, and the Indemnifying Party will indemnify the Indemnified Party in relation to such claim regardless.

19. LIMITATION OF LIABILITY

- 19.1. Subject to Clause 19.5. neither Party shall be liable under or in connection with this Agreement or any Call Off Contract for any indirect, special or consequential loss or damage.
- 19.2. Subject to Clause 19.1 and Clause 19.5 NG Bailey's entire aggregate liability in connection with its obligations under this Agreement and all Call Off Contracts for all liabilities, whether in breach

of contract (including under any warranty), in tort (including negligence), under statute or otherwise per event or series of events is limited to:

- 19.2.1. in respect of damage to property shall be limited to five hundred thousand (£500, 000) pounds sterling; and
 - 19.2.2. in respect of any and all indemnities, other claims, loss or damage, under this Agreement shall in no event exceed one million pounds (£1,000,000.00) pounds sterling; and
 - 19.2.3. in respect of any and all indemnities, other claims, loss or damage under a Call Off Contract shall in no event exceed one hundred percent (100%) of the Charges paid for the Services under the Call Off Contract pursuant to the claim during the twelve (12) months preceding the date on which the claim arose; and
 - 19.2.4. in addition to each of the above, NG Bailey's liability is limited to any actual direct cost necessarily incurred in rectifying any defect in the provision of the Services if NG Bailey fails to do so in accordance with this Agreement. NG Bailey has no liability for all other losses, costs, expenses, or legal fees (including but not limited) to loss of use, loss of profits, loss of contracts, increased operating costs and liquidated damages arising directly or indirectly from defects in design or workmanship whether founded in contract, tort (including negligence) or otherwise, except for liability which cannot by law be limited or excluded.
- 19.3. Subject to Clause 19.1 and Clause 19.5 and save in respect of the Customer's liability for payment of any Charges and Fees, the Customer's entire aggregate liability in connection with its obligations under this Agreement:
- 19.3.1. in respect of damage to property per event or series of events shall be limited to two million pounds sterling (£2,000,000.00); and
 - 19.3.2. in respect of all liabilities, other claims losses or damages whether in breach of contract (including under any warranty), in tort (including negligence), under statute, or otherwise per event or series of events is limited to one million pounds sterling (£1,000,000.00).
- 19.4. Subject to Clause 19.1 and Clause 19.5 and, in respect of the Customer's liability for payment of the Charges and Fees, the Customer's entire aggregate liability in connection with its obligations under a Call Off Contract whether in breach of contract (including under any warranty), in tort (including negligence), under statute or otherwise per event or series of events is limited to the greater of:
- 19.4.1. five million (£5,000,000.00) pounds sterling, and
 - 19.4.2. one hundred and fifty percent (150%) of the Charges paid or payable during the twelve (12) months preceding the date on which the claim arose.
- 19.5. Nothing in this Agreement and/or any Call Off Contract will exclude or in any way limit:
- 19.5.1. the Customer's liability under Clauses 5.2 and 5.3;
 - 19.5.2. either Party's liability for any breach of Clause 16 (Confidentiality);
 - 19.5.3. the Customer's liability for any breach of Clause 17 (Intellectual Property Rights);

- 19.5.4. the Customer's liability under the indemnity set out in Clause 18.1 i. (Third-Party IPR indemnity)
 - 19.5.5. death or personal injury caused by its negligence;
 - 19.5.6. the Customer's liability for any fines, levies, penalties by any government or regulator body resulting directly from a breach of Applicable Law by the Customer or any Customer personnel;
 - 19.5.7. the Customer's liability for willful misconduct, willful default or willful abandonment;
 - 19.5.8. fraud or fraudulent misrepresentation; or
 - 19.5.9. any other liability that cannot be excluded or limited under Applicable Law.
- 19.6. The Party's shall use their reasonable endeavours to mitigate any costs and/or expenses arising as a result of a claim under this Agreement and the Call Off Contract (s).
- 19.7. In no event will NG Bailey be liable for non-provision or delay in the provision of the Services or Partner Supplier services under a Call Off Contract whatsoever, whether in connection with or due to the acts or omissions of the Customer, its employees, sub-contractors, agents or end users.

20. INSURANCE

- 20.1. Throughout the Term of this Agreement and each Call Off Contract and for a further twelve (12) months following the expiry or termination of the Agreement and/or the Call Off Contract (whichever is later) and/or for the minimum period required in law, the Customer will obtain and maintain in full force and effect all required insurance policies with a reputable insurer, in each case to sufficiently cover its liabilities under this Agreement and each Call Off Contract and in accordance with all Applicable Law.
- 20.2. The Customer shall also obtain and maintain adequate insurance cover for any equipment, product or software equitably owned or leased by them which may form part of the Services under the Call Off Contract or fall under the control of either Party in the provision of the Services under the Call Off Contract. For the avoidance of doubt the insurance cover required under this Clause 20.2 shall be sufficient to meet the Customer's liability and/or loss that may flow from such Services.
- 20.3. The Customer shall provide NG Bailey on written request with evidence of the Customer insurance policies within 5 (five) Working Days.

21. WARRANTIES

- 21.1. The Customer warrants that:
- i. it has the rights and authority to grant any rights to NG Bailey under this Agreement and a Call Off Contract (s);
 - ii. it has full capacity and authority to enter into and perform its obligations under the Agreement, including a Call Off Contract (s);
 - iii. it has in place or obtained licences, consent, permits and rights to use and to licence to NG Bailey any materials necessary for NG Bailey to fulfill its' obligations under this Agreement and a Call Off Contract (s)

- iv. in connection with this Agreement and a Call Off Contract (s) where the Customer has provided NG Bailey with any third-party materials, hardware or equipment, the Customer warrants that use by NG Bailey of the same shall not cause NG Bailey to infringe the rights, and/or Intellectual Property Rights of any third party.
- 21.2. NG Bailey warrants and represents that:
- i. It will comply with all Applicable Law in performing its obligations under this Agreement, including the Call Off Contract (s);
 - ii. It has full capacity and authority to enter into and perform its obligations under this Agreement, including the Call Off Contract (s);
 - iii. it has obtained valid or owns the required valid licences, consents, permissions and rights to enable NG Bailey to comply with this Agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of its obligations under this Agreement including for Customer's Use and receipt of the Services; NG Bailey shall not knowingly breach or cause breach of the provisions of any such necessary licences, consents, permissions and rights;
 - iv. it shall use reasonable endeavors to transfer to the Customer the benefit of any third-party warranty given to NG Bailey in respect of any third-party hardware and software provided by NG Bailey under this Agreement and the Call Off Contract (s); and
 - v. its obligations under this Agreement and a Call Off Contract will be discharged and performed with reasonable skill and care; in accordance with all applicable regulations, using suitably qualified and trained personnel.
- 21.3. Where the Customer makes a valid claim in respect of any defect in the Services provided by NG Bailey, NG Bailey's obligation to remedy any defect is valid for a period of ninety (90) days from the date of the performance by NG Bailey of the relevant Service, and NG Bailey shall, within a reasonable time, and at its option either, repair or replace any such hardware; re-perform any Service to the extent it considers necessary or is able to remedy any defect.
- 21.4. Both Parties agree that the warranties set out in this Clause 21 are in lieu of and exclude all other terms, conditions or warranties implied by statute, law or otherwise as to the satisfactory quality, to the fullest extent permitted by law. The actions of NG Bailey set out in Clause 21.3 shall be the Customer's sole remedy in respect of all defects under this Agreement and a Call Off Contract (s), save as may be set out in a Call Off Contract with respect to a product warranty and/or a support and maintenance service provided to the Customer by NG Bailey.
- 21.5. Any warranty provided by NG Bailey shall not cover whatsoever any fraudulent or misuse by the Customer of the Services provided under this Agreement or a Call Off Contract (s).
- 21.6. NG Bailey's warranty under this Clause 21 do not extend to any defect in the Services caused by a failure in the Customers security, including malicious software, viruses or hacking; or for any fair wear and tear; deliberate, negligent or accidental damage by the Customer or a third party or modifications made to the Services where the modifications were not carried out by NG Bailey.

22. SUSPENSION AND TERMINATION

- 22.1. NG Bailey reserves the right to suspend and/or may also terminate the Services (if such matter is not resolved to NG Baileys satisfaction or to comply with any applicable law or regulation) without incurring any liability to the Customer and with immediate effect upon written notice to the Customer in the event that:

- 22.1.1. NG Bailey reasonably believes or has cause to believe that the Services are being used in an unauthorised or illegal manner for the period of investigation until the investigation is concluded to NG Bailey's satisfaction;
 - 22.1.2. the Customer is in material breach of any of its obligations under this Agreement or a Call Off Contract (s) or Partner Supplier Terms and Conditions (including an End User Licence Agreement);
 - 22.1.3. due to any regulatory authority matter arising which requires NG Bailey to suspend the Service (s);
 - 22.1.4. the Customer fails to make payment within thirty (30) days of the due date of any valid invoiced amount, (provided that NG Bailey has notified the Customer that such payment is overdue) and the Customer has failed to make the payment amount within thirty (30) days of the date of such notice; or
 - 22.1.5. the Customer fails to carry out necessary maintenance.
- 22.2. Where the Service (s) under a Call Off Contract are set on an Auto-Renew basis at the expiry of the Term, the Customer must provide NG Bailey with ninety (90) days prior written notice of its intention not to renew the Service (s); failure to notify NG Bailey in writing with ninety (90) prior written notice may result in:
- i. the Services being renewed for a further term; and
 - ii. Customers liability to pay NG Bailey early terminations fees (to include demobilisation and exit costs if applicable); and
 - iii. Customers liability to pay NG Bailey a full contract year of the Service Charges in accordance with Clause 10.1. payment terms
- 22.3. Subject to Clause 11.2 of this Agreement, the Call Off Contract, or a Service (or an element thereof) under a Call Off Contract may be terminated for convenience by the Customer following expiry of the Initial Term by giving not less than ninety (90) days prior written notice to NG Bailey or where the Customer is not in agreement under Clause 10.7.
- 22.4. Either Party may terminate this Agreement, without prejudice to its other rights or remedies under this Agreement, a Call Off Contract or in law immediately following written notice if the other Party:
- 22.4.1. is in material breach of any of its obligations under this Agreement and/or the Call Off Contract and either that breach is incapable of remedy, or that other Party has failed to remedy that breach within thirty (30) days of receiving written notice requiring it to do so; or
 - 22.4.2. has or a Party has reasonable grounds to believe that an act of bribery has been committed directly pursuant to this Agreement and/or the Call Off Contract.
- 22.5. Either Party may terminate this Agreement, any Call Off Contract by notice in writing if the other Party:
- 22.5.1. being a company, has a petition presented for its liquidation or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986 or calls a meeting to propose a resolution for its liquidation or a resolution for its winding up is passed (other than solely for a bona fide solvent amalgamation or reconstruction) or an application is made for the appointment of an administrator to it or for an administration order, or a notice of intention to appoint administrators is given to any party or has a liquidator, administrator, receiver or administrative receiver or similar officer appointed over it or any of its assets or makes any voluntary arrangement with its creditors or a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

- 22.5.2. being an individual (or if a firm or partnership, any of its partners or members), is the subject of an interim order (under section 252 of the Insolvency Act 1986), county court administration order, debt repayment plan, enforcement restriction order, debt relief order, voluntary arrangement, bankruptcy petition or order or any similar procedure or (in the case of a firm or partnership) proposes or has presented against it a petition for its dissolution or application for strike off; or
- 22.5.3. in either case undergoes any analogous event in any jurisdiction where it resides.
- 22.6. In the event of termination of this Agreement and/or the Call Off Contract (s) by NG Bailey either under Clause 22.1 or as a result of Customer breach under Clause 22.4.1 above or any other such termination rights invoked by the Customer (save for Customer's termination as a result of NG Bailey's breach), or where the Customer has failed to notify NG Bailey under Clause 22.2:
- 22.6.1. the Customer shall be liable to pay NG Bailey the early termination fees (including any demobilisation and exit costs) under Clause 22.2.;
- 22.6.2. the Customer shall be liable for any outstanding amounts for the Services provided, including the Charges under Clause 22.2 sub-clause iii; and
- 22.6.3. all rights granted to the Customer under any licence granted under the Call Off Contract shall cease and the Customer shall cease all activities authorised by the applicable licence.
- 22.7. Termination of this Agreement and/or the Call Off Contract (s) shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at the date of termination.
- 22.8. On termination or expiry of this Agreement and/or any Call Off Contract, the Customer shall permit NG Bailey with immediately access to its premises to recover any items of NG Bailey's property in the Customer's possession without delay.
- 22.9. On termination of this Agreement and/or any Call Off Contract for any reason, NG Bailey shall be entitled to submit invoices for any Charges or fees for Services delivered or scheduled to be delivered (save where the Service or any element thereof is not delivered subject to a Force Majeure Event) up to the termination date and the Customer shall make prompt payment of those invoices within fourteen (14) days, including for any outstanding unpaid valid invoices together with any interest due to NG Bailey.
- 22.10. Other than is owing and due as set out in this Clause 22, neither Party shall have any further obligation, including by the Customer to pay the Charges or fees pursuant to the Service (or element thereof) and/or the Call Off Contract which has been terminated after the termination date.
- 22.11. In the event and reasonable opinion of NG Bailey during the term of this Agreement and/or any Call Off Contract, the provision of the Services (or any element thereof) becomes commercially unviable for NG Bailey, NG Bailey may terminate this Agreement and/or Call Off Contract by providing the Customer sixty (60) days' written notice, or other such period as otherwise agreed between the Parties.
- 22.12. The following Clauses shall continue to apply after the termination of this Agreement: Clauses 1, 9.1.8, 10, 12, 14.6, 16, 16, 17, 19, 20, 12 and 24.

23. GOVERNANCE AND REPORTING

- 23.1. The Parties shall provide an authorised representative for attendance at regular performance review meetings not less than quarterly in each Contract year to discuss the performance of the Agreement and any potential future requirements of the Customer. The

Parties shall hold the meeting at a mutually agreed location and agree an agenda for each meeting for presentation to the attendees one (1) month prior to the agreed date of the meeting.

- 23.2. The Customer and NG Bailey shall also each provide an authorised representative for attendance at (not less than) monthly meetings to oversee and manage the performance of the Services, including any KPI's and/or SLA's under each Call Off Contract. The Parties authorised representative shall have the authority to discuss (and where applicable) amend the Service Planning Schedule review and approve any proposed CCN (s) or Access Request (s), any future MAC's and address any matters which have arisen in the previous month (s) for resolution.
- 23.3. Where the Services include project works, the Parties authorised representatives may also meet at times during the project as reasonably required to discuss the Project Plan and the progress of the project works.
- 23.4. NG Bailey shall on a weekly basis during the Term of the Agreement, record management information, ("**MI Report**") in a format determined by NG Bailey, in respect of the performance of the Agreement, the Services under each Call Off Contract and any Project services.
- 23.5. The relevant MI Report, (or consolidated MI Report for the purpose of Clause 23.1) shall be made available to all meeting attendees not less than two (2) Working Days prior to the relevant and agreed meeting date, except for the Agreement performance meeting, whereby NG Bailey shall provide the consolidated MI Report with the agenda, one (1) month prior to the quarterly meeting.

24. NON-SOLICITATION

- 24.1. Neither Party shall directly entice or solicit the employment of any of the other's staff at any time during the Term of this Agreement or within a period of six (6) months after termination of this Agreement howsoever arising. For the avoidance of doubt, any general recruitment advertisement placed by or on behalf of either Party in the public domain shall not constitute solicitation or inducement under this Clause.
- 24.2. In the event of breach by either Party of this Clause 24, the Party in breach shall pay to the other immediately upon receipt of a written demand a sum equivalent to twenty-five percent (25%) of the gross annual salary of the relevant employee.

25. REMEDIATION

- 25.1. If the Customer is in breach of the performance of its obligations under the Agreement and/or the Call Off Contract (excluding its' payment obligations) and/or the Partner Supplier Terms and Conditions, NG Bailey shall provide written notice of such breach, detailing the nature of the breach and provide thirty (30) Working Days' notice for the Customer to remedy such breach entirely at its own cost and expense and if NG Bailey, at its sole discretion, deem the breach capable of remedy.
- 25.2. If the Customer fails to remedy the notified breach by the expiry of the notice period in Clause 25.1. (or such other period for remedy as agreed by NG Bailey) or NG Bailey deem the breach incapable of remedy, NG Bailey may either terminate or suspend the Services under the applicable Call Off Contract without prejudice to any pre-existing rights and obligations of either Party. NG Bailey shall not be liable or have any obligation in the event that the Services or any element of the Services are delayed or fail to comply with the applicable

Call Off Contract, KPI's or SLA's in place where the breach was as a direct result of the Customer (including without limitation any of its employees, staff, third-parties, suppliers or subcontractors) being in breach of its obligations under the Call Off Contract, and/or the Partner Supplier Terms and Conditions (including the End User Licence Agreement) and/or this Agreement.

26. FORCE MAJEURE

- 26.1. Neither Party shall be deemed in breach of this Agreement and/or the Call Off Contract (s) if prevented from fulfilling or performing its obligations as a result of a Force Majeure, which shall mean any matter beyond its reasonable control including (without limitation) fire, flood, explosion, epidemic, war, civil disorder, act of God, act of government, or widespread industrial dispute.
- 26.2. In the event of Force Majeure, any outstanding obligation shall be fulfilled by the Party affected as soon as reasonably possible after the Force Majeure has ended, save to the extent that fulfillment is no longer possible.
- 26.3. Force Majeure events shall not excuse the Customer from its payment obligations to NG Bailey.
- 26.4. If an event that Force Majeure prevents performance for more than ninety (90) days, either Party may terminate this Agreement or the relevant Call Off Contract by giving thirty (30) Working Days prior written notice to the other party.

27. COMPLIANCE

- 27.1. The Party's shall comply with all Applicable Laws, statutes, regulations, codes and policies relating to anti-slavery and human trafficking, including but not limited to the Modern Slavery Act 2015, and any NG Bailey policies which may be notified to the Customer from time to time.
- 27.2. The Customer shall have and maintain and enforce its own policies and procedures to ensure compliance with the Modern Slavery Act 2015 and to ensure that modern slavery (as it is defined in the Modern Slavery Act 2015) does not take place in any part of the Customer's business or its supply chain.
- 27.3. The Parties shall comply with all Applicable Laws and policies relating to anti-bribery including but not limited to the Bribery Act 2010, and any of the NG Bailey policies which may be notified to the Customer from time to time including NG Bailey's Code of Integrity for Business Partners (available on request or at www.ngbailey.com).
- 27.4. The Customer shall have, maintain and enforce its own policies and procedures to ensure compliance with the Bribery Act 2010 and any other applicable laws, statutes, regulations, codes and policies relating to anti-bribery and anti-corruption.

28. WAIVER

- 28.1. No failure or delay by a Party to exercise any right or remedy provided under this Agreement and/or the Call Off Contract (s), or by law shall constitute a waiver of that or any other right or remedy, neither shall it preclude or restrict the further exercise of that or any other right

or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

29. SEVERANCE

- 29.1. If any provision of this Agreement and/or the Call Off Contract (s) is to be held by any court of competent jurisdiction to be contrary to Applicable Law and/or unenforceable, such provision shall be considered severed from this Agreement and/or the Call Off Contract but all remaining provisions shall continue and remain in full force and effect.

30. ASSIGNMENT

- 30.1. The Customer shall not be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement, including the Call Off Contract (s) whether in whole or in part without the prior written consent of NG Bailey.

31. THIRD-PARTY RIGHTS

- 31.1. A person who is not a party to this Agreement and/or the Call Off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, or the Call Off Contract, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

32. NOTICES

- 32.1. Any, contractual notice, legal or regulatory notice which either Party is required or permitted to serve on the other under this Agreement and/or the Call Off Contract (s), will be in English sent to the other Party's Authorised Representative:

For NG Bailey:
Mark Choules
Commercial Director

10th & 11th Floor
20 Farringdon Street,
London
EC4A 4AB

Mark.choules@ngbailey.co.uk

For the Customer:

[Name]

[Title]

[Address]

[Address]

by first class or registered post to its registered Company address (or such other address as is notified by the Party in writing).

- 32.2. For any other notices, which are not contractual notice, legal or regulatory, but may include invoices, purchase orders, a change control notice (CCN); these may be sent to that Party by email to the email address notified by the other Party for that purpose.

- 32.3. A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received forty-eight (48) hours after posting. A notice sent by email will be deemed to have been received at 9am on the next Working Day after the email was sent provided the sender has not been notified that the email was not delivered.
- 32.4. Either Party may at any time notify the other of a change of address or person for the purposes of the serving of notices ("**Notice**")

33. DISPUTE RESOLUTION

- 33.1. Any dispute which arises between the Parties under this Agreement and/or the Call Off Contract (s), shall first be discussed in good faith, and if possible, resolved by the appointed Authorised Representatives of each Party. Any dispute that cannot be resolved within ten (10) Working Days will be escalated to the respective Party's senior management or director level.
- 33.2. Without prejudice to the right of either Party to refer any dispute or difference to adjudication at any time should a resolution not be reached between the Parties in accordance with Clause 33.1, then either Party, by giving written notice to the other, may enter into an alternative dispute resolution procedure with the assistance of a mediator agreed by the Parties, appointed at the request of either Party by the UK Centre for Dispute Resolution (CEDR) or such other similar body as is agreed.

34. PUBLICITY

- 34.1. Neither Party will or cause at any time during or after the Term of this Agreement and any Call Off Contract, any adverse publicity, public criticism or damage to the reputation of the other Party.
- 34.2. Neither Party will:
 - 34.2.1. make any announcement, publicity statement or communication relating to this Agreement or any Call Off Contract (other than within that Party's own organisation); or
 - 34.2.2. use, reproduce, share or alter any trademark, branding or logo relating to the other, its Group Companies, partner suppliers or any other company or third-party directly or indirectly associated to this Agreement or the Call Off Contract,

without the prior written consent of the other Party (except as required by Applicable Law or by any Authority).

35. ENTIRE AGREEMENT

- 35.1. This Agreement, or any Call Off Contract (as applicable) constitutes the whole agreement between the Party's with respect to the subject matter and supersedes any and all prior oral or written understandings, arrangements, negotiations, communications and or representations between them.
- 35.2. Any Customer terms and conditions whether attached to, enclosed with, shared, or referred to in any other agreement, including but not limited to a purchase agreement or in any pre-

contractual discussion and/or negotiations at any time will have no effect whatsoever and will not apply.

- 35.3. Each Party acknowledges that, in entering into this Agreement and/or any Call Off Contract, or any NG Bailey partner supplier agreements including but not limited to an end user licence agreement, that it has not relied on any representation, warranty, collateral contract or other assurance, other than those set out in this Agreement or the relevant Call Off Contract and waives all rights and remedies that, but for this Clause 35, might otherwise be available to it in respect of any such reliance.
- 35.4. Nothing in this Agreement or any Call Off Contract will operate to limit or exclude any liability for any fraudulent misrepresentation or for any other matter in respect of which liability cannot lawfully be limited or excluded.

36. GOVERNING LAW AND JURISDICTION

- 36.1. This Agreement, including any Call Off Contract and any matters arising out of or in connection with it shall be governed by English and Welsh law and shall be subject to the exclusive jurisdiction of the English courts.
- 36.2. If any terms of this Agreement including any Call Off Contract are held to be invalid under English law this shall not affect the validity of the remainder of the terms.

This Agreement has been entered into on the day and year stated at the beginning of it.

Signed for and on behalf of:
NG Bailey IT Services Limited

Signed for and on behalf of:
the **Customer**

.....

.....

Name:

Name:

Position:

Position:

Date:

Date:

ANNEX 1

Call Off Contract (Template)

*Guidance Note to be deleted on completion of the Call Off Contract

[The relevant information inserted under the following sub-clauses to each head clause of this Template Call Off Contract by NG Bailey shall align to the Customer's Order for Services as set out in the accepted NG Bailey's Response Document in each case].

Dated: dd/mm/ 2023

1. Summary

- 1.1. The Services provided under this Call Off Contract are performed in accordance with the terms and conditions of the Agreement, this Call Off Contract and the Partner Terms at Appendix 1.
- 1.2. [make ref: Customer Procurement Request & summary of the Services to be ordered and NG Bailey Response Document Rev x Date xx/xx/2023]

2. Service (s) Commencement Date & Term

- 2.1. Commencement Date / Expiry Date
(for each Service as applicable)
- 2.2. [Services] Initial Term /Subscription Term

3. Services Provision & Period of Supply

- 3.1. Survey Undertaking (if applicable)
 - 3.1.1. Survey Report
(standard template)
- 3.2. Project Services
 - 3.2.1. Mobilisation (if applicable)

3.2.2. Normal Working Hours / Out of Hours

3.2.3. Service Planning Schedule

3.2.4. Project Plan

3.3. Professional Services

3.4. Products & Licences

3.4.1. Partner Supplier (s)

3.4.2. Software & Licences

3.4.2.1. End User Licence Agreement

3.5. Support and Maintenance Service

3.6. Service Exclusions

4. Security Clearances / Accreditations

5. Training Requirements

6. Helpdesk Service

7. Service Management

8. Customer Locations / Sites

9. SLAs & KPIs

10. Parties Dependencies

11. Pricing

Project Management	Description	Total
<i>Survey</i>		
<i>Mobilisation</i>		
<i>Prelims</i>		

Products & Materials	Description	Total

Equipment & Plant	Description	Total

Licences/ Subscriptions	Description	Total

Optional Costs	Description	Total

11.1. Delivery Lead Times

11.2. Up Front Payments

11.3. Subscription Term

11.4. Payment Terms & VAT

12. Manufacturers Warranties

13. Governance, Meetings & Reporting

13.1. Parties Authorised Representatives

13.2. Meetings

13.3. Escalation Representatives contact details

13.4. Meetings

13.5. Reports & Frequency

This Call Off Contract (including the Annexes and Appendices) has been entered into on the date stated at the beginning of it.

Signed for and on behalf of:
NG Bailey IT Services Limited

Signed for and on behalf of:
the **Customer**

.....

.....

Name:

Name:

Position:

Position:

Date:

Date:

Appendix 1 to Annex 1

Partner Supplier Terms and Conditions

*Guidance Note to be deleted on completion of the Call Off Contract

[The relevant Partner Supplier Terms to be inserted by NG Bailey shall align to the Customer's Order for Services as set out in the accepted NG Bailey's Response Document in each case].