1. INTERPRETATION

1.1 **Definitions**. In these Conditions, the following definitions apply:

Authority: The Minister for the Cabinet Office acting through Crown Commercial Service, part of the Crown.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: means the charges in respect of the services to be paid by the Customer to the Supplier as set out in the G-Cloud Order Form;

Commencement Date: has the meaning set out in clause 2.3.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.7.

Contracting Body: means the Authority and any other person as listed in the OJEU Notice or regulation 3 of the Public Contracts Regulations 206, as amended from time to time;

Customer: the purchaser of the G-Cloud Services, normally an entity of the UK Government. identified in the applicable G-Cloud Order Form.

G-Cloud Framework Agreement: the agreement between the Supplier and the Authority governing the provision of the G-Cloud Services to entities within the UK Government, i.e. the Customers.

G-Cloud: the framework set up by the Authority to procure cloud computing services from a range of suppliers.

G-Cloud Call-Off Agreement: means an agreement between the Supplier and a Customer formed upon agreement of a G-Cloud Order Form in accordance with the G- Cloud Framework Agreement and these terms and conditions.

G-Cloud Order Form: means the prescribed form issued by the Authority in connection with the G-Cloud Framework Agreement for ordering G-Cloud Services.

G-Cloud Service Definitions: means the applicable G-Cloud Service Definitions issued by the Supplier in accordance with the G-Cloud Service Framework Agreement and agreed by Supplier and a Customer in a G-Cloud Call-Off Agreement.

G-Cloud Services: the services to be delivered by the Supplier to the Customer as described in a G-Cloud Call-Off Agreement agreed with the Customer in accordance with the G-Cloud Framework Agreement.

Good Industry Standards: means levels of performance which would reasonably be expected from a skilled and experienced provider of services of the same nature of the G-Cloud Services.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the

confidentiality of, confidential information (including know-how), 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.

LIBOR: LIBOR means the British Bankers' Association London Interbank Offered Rate fixed for pounds sterling (GBP).

Supplier: Orchestrato Ltd. (trading as "Orchestrato") registered in England and Wales with company number 08791407.

Supplier Materials: has the meaning set out in clause 4.1(g).

1.2 **Construction**. In these Conditions, the following rules apply:

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

(b) a reference to a party includes its personal representatives, successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(e) a reference to **writing** or **written** includes faxes [and e-mails].

2. BASIS OF CONTRACT

2.1 These Conditions shall:

(a) apply to and be incorporated into all G-Cloud Call-Off Agreement's;

(b) be subject to the provisions of the G-Cloud Framework Agreement and its schedules including the G-Cloud Call-Off Agreement and the G-Cloud Order Form; and

(c) prevail over any inconsistent terms or conditions contained in, or referred to in any other document concerning the provision of the G-Cloud Services by the supplier to the Customer.

2.2 The G-Cloud Order Form constitutes an offer by the Customer to purchase G-Cloud Services from the Supplier in accordance with these Conditions and any specific terms stated in the G-Cloud Call-Off Contract.

2.3 The G-Cloud Order Form shall only be deemed to be accepted when the Supplier issues written acceptance of the G-Cloud Order Form at which point the G-Cloud Call-Off Agreement shall be prepared. On the date of its execution it shall come into existence (**Commencement Date**).

2.4 A separate and individual G-Cloud Call-Off Agreement shall be required to govern individual request for services requested on a G-Cloud Order Form.

2.5 The G-Cloud Call-Off Contract constitutes the entire agreement between the parties in respect of the services requested in a G-Cloud Order Form. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.6 Any material, content on the Suppliers website, samples, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the G-Cloud Services described in them. They shall not form part of the Contract or have any contractual force.

2.7 These Conditions apply to all G-Cloud Call-Off Agreement's to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.8 The parties agree that they shall work and cooperate with each other during the period prior to the Commencement Dates to facilitate the orderly transfer of the provision of the G-Cloud Service to the Supplier.

3. SUPPLY OF G-CLOUD SERVICES

3.1 The Supplier shall supply the G-Cloud Services to the Customer in accordance with:

(a) The G-Cloud Call-Off Agreement agreed between the parties;

(b) All legal requirements applicable to the provision of the G-Cloud Services from time to time; and

(c) Good Industry Standards and with reasonable skill, care and diligence.

3.2 The Supplier will maintain throughout the duration of each G-Cloud Call-Off Agreement security practices as described in the G-Cloud Service Definitions (as applicable).

3.3 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the G-Cloud Order Form but any such dates shall be estimates only and time shall not be of the essence for performance of the G-Cloud Services.

3.4 The Supplier shall have the right to make any changes to the G-Cloud Services which are

necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the G-Cloud Services, and the Supplier shall notify the Customer in any such event.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

(a) ensure that the terms of the G-Cloud Order and any information it provides in the G-Cloud Service Definitions, and a G-Cloud Call-Off Agreement are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the G-Cloud Services;

(c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to fulfil the requirements of the G-Cloud Order Form;

(d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the G-Cloud Services, and ensure that such information is accurate in all material respects;

(e) If requested prepare the Customer's premises for the supply of the G-Cloud Services;

(f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the G-Cloud Services are to start;

(g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

4.2 If the Supplier's performance of any of its obligations under a G-Cloud Call-Off Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the G-Cloud Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from

the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

5.1 The Charges will be calculated in accordance with the applicable G-Cloud Call-Off Agreement and are exclusive of any value added tax in other applicable sales tax or duty which be added to the sum in question.

5.2 The Supplier will invoice the Customer in accordance with the timescales specified in the G-Cloud Call-Off Agreement. The Customer shall pay all Charges in pound sterling within Thirty (30) days from the date of invoice.

5.3 No payment will be deemed received until the Supplier has received the payment in cleared funds.

5.4 All sums payable to the Supplier under a G-Cloud Call-Off Agreement will become due immediately upon termination of a G-Cloud Call-Off Agreement.

5.5 All payments to be made by the Customer under a G-Cloud Call-Off Agreement will be made in full and without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding.

5.6 If any sum payable under a G-Cloud Call-Off Agreement which is not the subject of a bona fide dispute is not paid within 5 Business Days after the due date then (without prejudice to the supplier other rights and remedies), the Supplier reserves the right to charge interest on such sum on a day to day basis (after as well as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of four percent (4%) per annum over the LIBOR base rate (or such other London Clearing Bank as the Supplier may nominate) from time to time in force until payment is made in full both before and after any judgment. Such interest shall be paid on demand by the Customer.

5.7 If G-Cloud Services are performed in stages the Supplier reserves the right to invoice

each instalment or stage as and when delivery is made to the Customer or the performance of a stage commences in which case payment shall be due in accordance with Clause 5.1 above notwithstanding non-delivery of other instalments or stages or fulfilment of the entire Order.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 All Intellectual Property Rights in or arising out of or in connection with the G-Cloud Services shall be owned by the Supplier. The Customer shall have no title to or interest in any such Intellectual Property Rights except to the extent specifically set out in a G-Cloud Call-Off Agreement.

6.2 The Supplier shall be free to utilise for the benefit of its other customers any skill and/or know-how that it may develop or acquire in the performance of the G-Cloud Services.

6.3 The Customer shall notify the Supplier immediately if it becomes aware of any illegal or unauthorised use of any of the Intellectual Property Rights in the G-Cloud Services and will assist the supplier and/or its suppliers in taking steps necessary to defend the owners' rights.

6.4 To the extent that the Customer provides the Supplier, for the purpose of or in connection with providing the G-Cloud Services, with any materials, including the data, materials, and/ or software supplied by the Customer, in respect of which the Customer owns (or is licensed by a third party to use) the Intellectual Property Rights, the Supplier acknowledges and agrees that nothing in a G-Cloud Call-Off Agreement grants to the Supplier any right, title or interest in such materials other than a limited non-exclusive right to use or process those materials solely for the purposes of providing the G-Cloud Services. All Intellectual Property Rights in such materials are and shall remain the exclusive property of the Customer or (if applicable) its third party licensors.

6.5 Subject to the provisions of this Clause 6, the Customer undertakes that it shall not (and that it shall not employ nor permit any third party to) attempt to copy, adapt, amend, disassemble, de-compile or reverse engineer any software supplied by the Supplier under a G-Cloud Call-Off Agreement except to the extent allowed by English law.

6.6 The Customer acknowledges that, in respect of any third-party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

6.7 All Supplier Materials are the exclusive property of the Supplier.

7. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.2 Subject to clause 8.1:

(a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the G-Cloud Call-Off Contract; and

(b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the G-Cloud Call-Off Agreement to which the G-Cloud Services relate.

8.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of a G-Cloud Call-Off Agreement.

9. TERMINATION

9.1 Without limiting its other rights or remedies, either party may terminate a G-Cloud Call-Off Agreement with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the G-Cloud Call- Off Agreement or the G-Cloud Framework Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

(b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e) the other party (being an individual) is the subject of a bankruptcy petition or order;

(f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

(h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative

receiver;

(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(b) to clause 9.1(i) (inclusive);

(k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

(l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.2 Without limiting its other rights or remedies, the Supplier may terminate a G-Cloud Call-Off Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under a G-Cloud Call-Off Agreement on the due date for payment and fails to pay all outstanding amounts within 30days after being notified in writing to do so.

9.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the G-Cloud Services under a G-Cloud Call-Off Agreement or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(b)) to clause 9.1(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under a G-Cloud Call-Off Agreement on the due date for payment.

10. CONSEQUENCES OF TERMINATION

10.1 The termination of a G-Cloud Call-Off Agreement or the global G-Cloud Framework Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either the Customer or the Supplier accrued prior to termination and all provisions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination).

10.2 On termination of a G-Cloud Call-Off Agreement for any reason:

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

Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

(b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of a G-Cloud Call-Off Agreement which existed at or before the date of termination or expiry; and

(c) clauses which expressly or by implication survive termination shall continue in full force and effect.

11. FORCE MAJEURE

11.1 For the purposes of these conditions, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

11.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under a G-Cloud Call-Off Agreement as a result of a Force Majeure Event.

11.3 If the Force Majeure Event prevents the Supplier from providing any of the G-Cloud Services for more than 6 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate a G-Cloud Call-Off Agreement immediately by giving written notice to the Customer.

12. GENERAL

12.1 **Assignment and other dealings.**

(a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under a G-Cloud Call- Off Agreement and may subcontract or delegate in any manner any or all of its obligations under a G-Cloud Call-Off Agreement to any third party or agent.

(b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under a G-Cloud Call-Off

Agreement

12.2 **Notices.**

(a) Any notice or other communication given to a party under or in connection with a G-Cloud Call-Off Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 **Severance.**

(a) If any provision or part-provision of these terms and conditions or a G-Cloud Call-Off Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If any provision or part-provision of a G-Cloud Call-Off Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.4 **Waiver.** A waiver of any right under a G-Cloud Call-Off Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under a G-Cloud Call-Off Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 **No partnership or agency.** Nothing in a G-Cloud Call-Off Agreement is intended to, or

shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

12.6 **Third parties.** A person who is not a party to G-Cloud Framework Agreement shall not have any rights to enforce its terms.

12.7 **Variation.** Except as set out in these Conditions, no variation of a G-Cloud Call-Off Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

12.8 **Governing law.** A G-Cloud Call-Off Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

12.9 **Jurisdiction**. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with any G-Cloud Call-Off Agreement or its subject matter or formation (including non-contractual disputes or claims).