

DATED [DATE]

SOFTWARE AND HOSTING SERVICE AGREEMENT

between

FIVIUM LIMITED

and

[CUSTOMER]

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THIS AGREEMENT is dated [Date]

PARTIES

- (1) FIVIUM LIMITED incorporated and registered in England and Wales with company number 5775733 whose registered office is at 16 Great Queen Street, London, WC2B 5AH **Supplier**
- (2) [Customer] of [Address] **Customer**

BACKGROUND

- (A) The Supplier has developed certain software applications and platforms which it makes available to users of the Customer via the PSN or Internet.
- (B) The Customer wishes to use the Supplier's service for purpose of assisting in the running of Customers business.
- (C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Additional Services: those services additional to the Services which are more particularly described in Schedule 3.

Authorised Users: those employees, agents and independent contractors of the Customer as well as members of the public and other Government Departments who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5.

Core Business Hours: the hours indicated in Schedule 4 for the provision of support by the Supplier.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Documentation: the document made available to the Customer by the Supplier from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date of this agreement.

Service Definition: the document identified at Schedule 6.

Service Levels: those service levels set out in Schedule 4.

Services: the subscription services as described in the Service Definition allowing access to the Software and provided by the Supplier to the Customer under this agreement.

Software: the software (as indicated in Schedule 1) provided online by the Supplier as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to the Supplier as set out in Schedule 1.

Subscription Term: has the meaning given in Schedule 2.

Support Services Policy: the Supplier's policy for providing support in relation to the Services as described in Schedule 4.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to writing or written includes faxes and e-mail.
- 1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. CASE LICENCE SUBSCRIPTIONS

2.1 The Supplier hereby grants to the Customer an exclusive, transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term.

2.2 In relation to the Authorised Users, the Customer undertakes that:

- (a) It shall permit only its Authorised Users to have access to the Software and to make use of the Services;
- (b) each Authorised User shall keep a secure password for his use of the Services and Documentation;
- (c) it shall permit the Supplier to audit the Services in order to establish the use being made of the Services by the Authorised Users and to establish whether the use being made of the Services is in accordance with this Agreement. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not substantially to interfere with the Customer's normal conduct of business.

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

- (a) use the Services and/or Documentation to provide services to third parties; or
- (b) subject to clause 19.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

- (c) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.

2.5 Both parties shall prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the other party.

3. TRANSITIONAL SERVICES

3.1 The Parties shall carry out their respective obligations as set out in Schedule 3. The Supplier shall use its reasonable endeavours to comply with any obligations there specified with regard to time, but any such obligation is dependent on any assistance, information or facilities reasonably requested by the Supplier from the Customer or any third party.

4. SERVICES

4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

4.2 At the commencement of the Services, the parties shall follow the On-boarding plan and the Supplier shall use its commercially reasonable endeavours to comply with any dates in that On-boarding plan. Where any user acceptance tests are indicated in the On-boarding plan, then the user must indicate any areas of non-compliance within 5 (five) working days of the time indicated for completion of those tests, otherwise acceptance will be deemed. Use of the Services or any part of them in a live environment shall be deemed to be acceptance for all purposes. Testing is only permitted to have regard to the material conformity of the Services to the Service Definition and no other criteria shall be permitted for the running of tests or for rejecting the Services.

4.3 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- (a) planned maintenance carried out during the maintenance window agreed by the parties;
- (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance;
- (c) any suspension or withdrawal of service at any time imposed by the Supplier's infrastructure provider, currently [Subcontractor], for any reason whatsoever.

4.4 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during

Core Business Hours in accordance with the Supplier's Support Services Policy as set out in Schedule 4.

- 4.5 The Supplier will use its reasonable endeavours to identify service improvement opportunities and will monitor its systems to ensure that, so far as reasonably practicable, it meets the Service Levels.
- 4.6 The Supplier is responsible for providing the Services only up to the boundaries of its own networks (entry to GSI or successor Government networks, and entry to Internet), and accepts no responsibility whatsoever for failures or degradation to the Services of any sort caused or contributed to by transmission over the internet or any network which is not under the Supplier's direct control.
- 4.7 Subject to any specific permissions in Schedule 6 enabling the Supplier to make variations to any element of the Service Description, either party may request the other for a change to the Services.
- (a) On receipt of such a request from the Customer, the Supplier shall provide an impact assessment which shall include the estimated timescales for implementing the change, and changes to the Subscription Fees and such other charges as are to be made for implementing the change;
 - (b) If the request is made by the Supplier, the Supplier shall at the same time supply to the Customer an impact assessment which shall include the estimated timescales for implementing the change, and changes to the Subscription Fees and such other charges as are to be made for implementing the change.
- 4.8 Nothing in clause 4 shall be taken to limit the Supplier's rights to provide security patches or bug fixes in the ordinary course of providing support or the right to introduce major version upgrades according to Schedule 4.
- 4.9 In the event of an emergency, the Supplier will use its commercially reasonable efforts to secure the Customer's agreement to any changes, but if this is not practicable, the Supplier may introduce without the Customer's agreement such changes as are necessary to deal with the emergency. The parties will use their respective reasonable endeavours to record such changes as part of the change control procedure in clause 4.7. The Customer shall be responsible for any reasonable additional charges consequent on any emergency change made necessary by the Customer's act or omission or any breach by the Customer of any of the terms of this Agreement.

5. CUSTOMER DATA

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

- 5.2 The Supplier shall follow its archiving procedures for Customer Data as set out in the Service Definition. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in the Service Definition. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services specifically related to Customer Data maintenance and back-up).
- 5.3 The Supplier shall, in providing the Services, comply with its Privacy and Security Policy at Schedule 5 relating to the privacy and security of the Customer Data, as such document may be amended from time to time by the Supplier in agreement with the accreditor of the RMADS referred to in Schedule 5.
- 5.4 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:
- (a) personal data may only be stored in the UK without prejudice to the ability of the Authorised Users to access such data from anywhere in the world;
 - (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
 - (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - (d) the Supplier shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and
 - (e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

6. THIRD PARTY PROVIDERS

Not used

7. SUPPLIER'S OBLIGATIONS

- 7.1 The Supplier undertakes that the Services will be performed in accordance with the Documentation and with reasonable skill and care.

7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, the Supplier:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

7.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier;in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
 - (e) ensure that all Authorised Users undertake the required training for use of the Services and further ensure that new Authorised Users receive the required training at the Supplier's normal rates for such training prior to being permitted to use the Services;
 - (f) obtain and shall maintain necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
 - (g) ensure that its network and systems are adequate to ensure proper usage of the Services and do not include any elements such as are notified to the Customer from time to time by the Supplier; and
 - (h) be solely responsible for procuring and maintaining its network connections and telecommunications links (GSI or successor networks and Internet) from its systems to the network as indicated as applicable to the Customer in the Service Definition, and the Customer shall be solely responsible for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 8.2 If the Customer is in breach of any of its obligations in clause 8.1 above and such breach causes the Supplier additional cost or expense, then the Supplier may charge for such additional cost or expense. In particular, the Supplier may charge for any additional support required by the Customer as a result of its failure to comply with clause 8.1(e).
- 8.3 The Supplier shall not be liable for the degradation to the Services suffered by the Customer's failure to comply with clause 8.1(g) and in particular the Service Levels shall not apply in the event of any breach by the Customer of clause 8.1(g).
- 9. CHARGES AND PAYMENT**
- 9.1 The Customer shall pay the Subscription Fees to the Supplier in accordance with this clause 9 and Schedule 1. The Supplier may increase any or all the Subscription Fees in Schedule 1 at each 12 (twelve) month interval after the commencement of the Subscription Term by reference to the lesser of 2% *per annum* or the actual rise in the Consumer Prices Index in the previous 12 (twelve) months.
- 9.2 The Supplier shall, as from the commencement of the Subscription Term, invoice the Customer for each month of the Subscription Term in advance. The Customer shall settle such invoice in full without set-off or deduction within 30 (thirty) days of receipt of the invoice.
- 9.3 If the Supplier has not received payment within 30 (thirty) days after the due date stated on the invoice, and without prejudice to any other rights and remedies of the Supplier:

- (a) interest shall accrue on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Supplier's bankers in the UK at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.4 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling;
- (b) are non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

10. PROPRIETARY RIGHTS

10.1 The Parties acknowledge and agree that the Customer and/or its licensors own all intellectual property rights in the Software and the Documentation. Except as expressly stated herein, this agreement does not grant the Supplier any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software and the Documentation. Any intellectual property rights in the Services shall remain vested at all times in the Supplier or its licensors.

10.2 The Supplier confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

11. CONFIDENTIALITY

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third

party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 11.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 This clause 11 shall survive termination of this agreement, however arising.

12. INDEMNITY

- 12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
 - (a) the Customer is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - (a) the Supplier is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing.

- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 12.5 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. LIMITATION OF LIABILITY

- 13.1 This clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a) arising under or in connection with this agreement;
 - (b) in respect of any use made by the Customer of the Software, the Services and Documentation or any part of them; and
 - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 13.2 Except as expressly and specifically provided in this agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement.
- 13.3 Nothing in this agreement excludes the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 13.4 Subject to clause 13.2 and clause 13.3:

- (a) the Supplier shall not be liable, except when at fault, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any other type of loss or damage if it is special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement;
 - (b) The Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any delay or failure in performance to the extent such delay or failure is attributable to any of its sub-contractors, and the Supplier's sole liability in such a case is to use its reasonable endeavours to work around any problems experienced and to resolve them using measures that are commercially reasonable;
 - (c) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the Licence Subscriptions during the 12 months immediately preceding the date on which any claim arose or, in the first 12 (twelve) months of this agreement, shall be equal to the first month's Subscription Fees multiplied by 12 (twelve); and
 - (d) The Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise for all claims whatsoever arising shall not exceed the total of the Subscription Fees paid as at the time when any claim is made provided that in the first 12 (twelve) months of this agreement, the Supplier's liability for all claims shall be equal to the first month's Subscription Fees multiplied by 12 (twelve).
- 13.5 No claim by the Customer shall be permitted more than 24 months after the event (or, if more than one, the first of them) giving rise to the claim, or (if later) 24 months after the time when the Customer should with reasonable diligence have discovered such event.

14. TERM AND TERMINATION

- 14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Subscription Term as set out in Schedule 2.
- 14.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other if:
- (a) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from

carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, 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 or telecommunications 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 sub-contractors, provided that the Customer is notified of such an event and its expected duration. In the event that the Supplier is prevented or delayed in its performance for a period of 30 (thirty) days or more, then the Supplier may by written notice to the Customer terminate this Agreement.

16. WAIVER

- 16.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 16.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

17. SEVERANCE

- 17.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18. ENTIRE AGREEMENT

- 18.1 This agreement, and any documents referred to in it form part of a wider agreement and recognise the order of precedence specified in the Call Off Agreement Clause CO-1.
- 18.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

19. ASSIGNMENT

- 19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 19.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

20. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. NOTICES

- 22.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by recorded delivery post or email to the other party at its address or email address set out in this agreement, or such other address as may have been notified by that party for such purposes.
- 22.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery).

23. GOVERNING LAW AND JURISDICTION

- 23.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 23.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

This agreement has been entered into on the date stated at the beginning of it.

Signed by [Customer Name]	
for and on behalf of [Customer]	[Title]
Signed by [Director Name]	
for and on behalf of Fivium	Director

Schedule 1 Subscription Fees

As per the G-Cloud 11 Order Form

Schedule 2 Subscription Term

1. The Subscription Term shall be 2 (two) years as from [Date].
2. The parties may by agreement agree to extend the Subscription Term either by a further fixed term or by a rolling monthly term, in the latter case subject to termination by either party on 30 days' written notice to the other.
3. If the Supplier continues to provide and the Customer continues to use the Services beyond the Subscription Term, then the terms of this agreement shall apply to such continued use as if the parties had agreed to an extension on a rolling monthly basis subject to termination by either party on 30 days' written notice to the other.
4. If the parties agree a rolling monthly term under paragraph 2 above, or if the Supplier continues to provide the Services under paragraph 3 above, then the monthly Subscription Fees shall be based on the annual Subscription Fees current at the end of the Subscription Term divided by 12 (twelve) and increased by 20 (twenty) *per cent*.

Schedule 3 Additional Services

On-boarding Services

[On-boarding Services]

Schedule 4 Support Services Policy

[As Required]

Schedule 5 Privacy and Security Policy

As part of the Services, the Supplier will provide to the Customer a template RMADS document detailing compliance with the SPF v8.0 Mandatory Requirement 8 and providing a reasonable level of detail concerning the technical risk assessment of the Services. The Supplier will maintain the template RMADS on an annual basis, including penetration testing. This does not include a Business Impact Analysis or a Privacy Impact Assessment in respect of the Customer Data. If the Customer should require any further assessment beyond the template RMADS, the Supplier will provide a reasonable level of assistance, but beyond this, the Customer must request Additional Services from the Supplier, which will be supplied at the Supplier's standard rates.

The infrastructure is provided by [Subcontractor], and is accredited as per the Pan Government Accreditation (PGA) to Official standard, but the Supplier is not responsible for achieving or maintaining this standard.

It is the Customer's responsibility to select the correct Business Impact Level in Schedule 1.

The Supplier will ensure that all staff having administrative, support or development access to the Live environment hold a current SC clearance.

Both Parties shall be solely responsible for the management of password access by the Authorised Users and shall report any security incident to the Supplier as soon as reasonably practicable. The Supplier shall not be liable for the consequences of any security breach resulting from any failure by the Customer to maintain the security of passwords by Authorised Users, including the failure by an individual Authorised User to maintain proper security of his or her password.

The Supplier retains the right to disable the access of any Authorised User in the event of any lapse in security regarding that Authorised User's password howsoever caused.

Schedule 6 Service Definition

[Service Definition]

The Supplier may vary any element contained in this Service Definition at its discretion and at any time. Such variations may consist in additions, deletions or changes. However, the Supplier will not make any such variation if it will lead to a failure on the Supplier's part to be able to comply with the Service Levels in Schedule 4. If any variation will lead to a failure to comply with those Service Levels, the Supplier will give the Customer at least 30 days' written notice of the proposed variation the effect on the Service Levels: if the Customer fails to object to such notice within the notice period given, then the Supplier shall be entitled to make the variation as notified and the Service Levels shall altered as set out in the Supplier's notification. If the Customer objects within the notice period, the Parties shall agree, acting in good faith and using their reasonable endeavours, such variation as is acceptable to the Parties.