

NORTHGATE PUBLIC SERVICES (UK) LIMITED (“NPS”)

SUPPLIER TERMS (1)

1. INTERPRETATION

- 1.1 The definitions in this clause apply in these Supplier Terms. Other defined terms shall have the meanings ascribed to them set out in the G- Cloud 10 Framework Agreement and the Call-Off Contract.

Authorised Users: means those employees, agents and independent contractors of the Buyer and employees of the End User (as the case may be) who are authorised by the Buyer to use the Services and the Documentation.

Back-Up Policy: means NPS’ specific arrangements for the back-up of Buyer Data as may be amended from time to time by the Supplier in its sole discretion.

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

Buyer System: the Buyer system including infrastructure and software to which the Supplier is given remote access to enable the Supplier to perform the Services.

Documentation: means, where applicable, the written and/or online descriptions of the Software’s or Services’ features, functions and methods of operation and (where relevant) the user instructions for the Services made available to the Buyer by the Supplier and any deliverables as may be specified by NPS.

End User: means that or those organisations (if any) identified in the Order Form that is or are the ultimate recipient of the Services for which the Buyer is contracting under the Call-Off Contract.

Portal: means the NPS SaaS portal which can be accessed through the URL as may be notified by the Supplier from time to time.

Privacy and Security Policy: means that policy relating to the privacy and security of the Buyer Data as may be amended from time to time by the Supplier in its sole discretion and is available on request.

Services: the services provided by the Supplier to the Buyer under the Call-Off Contract, as set out in the Order Form.

Software: the online software applications provided by the Supplier as part of the Services.

Supplier System: the Supplier system including infrastructure and software used by the Supplier to provide the Services;

Virus: anything or device (including any software, code, file or program) 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 program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program 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.

2. SOFTWARE AS A SERVICE

- 2.1 Subject to the Buyer completing any necessary registration form; paying the Charges; and complying with the restrictions set out herein and the other terms and conditions of the Call-Off Contract, the Supplier hereby grants to the Buyer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Term solely for (i) where there are no End Users, the Buyer's internal business operations or (ii) where there are End Users specified, the End User's internal business operations.

3. SERVICES

- 3.1 The Supplier shall, during the Term, provide the Services and (where applicable) make available the Documentation to the Buyer on and subject to the terms of the Call-Off Contract.
- 3.2 The Supplier:
- (a) does not warrant that the Buyer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Buyer through the Services will meet the Buyer's requirements;
 - (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 Buyer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 3.3 Where the Supplier is granted access by the Buyer to the Buyer System (applicable to private cloud on-premise solution) for the provision of the Services the Buyer shall be responsible for backing up the Buyer Data held on the Buyer System in accordance with its own back-up policy.
- 3.4 Where Buyer Data is held on the Supplier System the Supplier shall be responsible for backing up the Buyer Data in accordance with its archiving procedures for Buyer Data as set out in its Back-Up Policy.
- 3.5 The Supplier shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Buyer Data.

4. BUYER'S OBLIGATIONS

- 4.1 The Buyer shall in good faith:
- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to the Call-Off Contract; 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 Buyer Data and security access information;

- (b) comply with all applicable laws and regulations with respect to its activities under the Call-Off Contract;
- (c) carry out all other Buyer responsibilities set out in the Call-Off Contract in a timely and efficient manner. In the event of any delays in the Buyer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary and reserves the right to charge the Buyer for any costs incurred by the Supplier as a consequence of such delay;
- (d) ensure that (where applicable) the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the Call-Off Contract and shall be responsible for any Authorised User's breach of the Call-Off Contract;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Call-Off Contract, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) save where it is agreed that the Supplier shall put in a fixed communication link, be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Buyer's network connections or telecommunications links or caused by the internet.

5. INDEMNITY

- 5.1 The Buyer 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 Buyer's use of the Services and/or Documentation other than in accordance with the provisions of the Call-Off Contract, provided that:
- (a) the Buyer is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Buyer in the defence and settlement of such claim, at the Buyer's expense; and
 - (c) the Buyer is given sole authority to defend or settle the claim.

6. LIMITATION OF LIABILITY

- 6.1 Except as expressly and specifically provided in the Call-Off Contract:
- (a) the Buyer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Buyer, 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 Buyer in connection with the Services, or any actions taken by the Supplier at the Buyer's direction; and
 - (b) the Supplier shall not be responsible for any failure or delay in its obligations to the extent 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; and

- (c) 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 the Call-Off Contract.

7. TUPE

7.1 The Buyer acknowledges and accepts that the Charges assume that no person will transfer to the Supplier pursuant to the Employment Regulations.

7.2 The Buyer warrants, represents and undertakes to the Supplier that, unless specified elsewhere to the contrary within the Call-Off Contract, there will be no relevant transfer for the purposes of the Employment Regulations of employees from the Buyer to the Supplier. The Buyer agrees to indemnify the Supplier against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Supplier in connection with or as a result of:

- (a) a claim by any person who transfers or alleges that they have transferred to the Supplier as a result of entering into the Call-Off Contract; and/or
- (b) any failure by the Buyer to comply with its obligations under Regulations 13 and 14 of the Employment Regulations, or any award of compensation under Regulation 5 of the Employment Regulations; and/or
- (c) any additional costs incurred by the Supplier as a result of any person transferring to the Supplier pursuant to the Employment Regulations.

8. ACCESS TO THE NPS SOFTWARE AS A SERVICE ("SAAS")

8.1 Upon signature of the Call-Off Contract, the Buyer Administrator shall be permitted to access the NPS Software through the Portal and it shall be the Buyer Administrator's responsibility to configure the set up of the NPS Software, within the parameters set out within the Documentation, to reflect the Buyer's own policies on application assessment and decision making.

8.2 The Buyer Administrator, in accordance with the Documentation, shall be permitted to set up further users authorised to access the NPS Software on behalf of the Buyer. It is the Buyer Administrator's responsibility to set the controls on and levels of access for each further user authorised. For the avoidance of doubt, the Buyer Administrator and the further users set up by the Buyer Administrator under this clause 8.3 shall be the "**Authorised Users**" for the purposes of the Call-Off Contract.

8.3 In relation to the Authorised Users, the Buyer undertakes that:

- (a) each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than every ninety (90) days and that each Authorised User shall keep his password confidential;
- (b) at the Start Date, it shall notify the Supplier of the list of Authorised Users so that the Supplier can issue specific log in and password details for the Portal;

- (c) it shall maintain a written, up to date list of the current Authorised Users and provide such list to the Supplier within five (5) Working Days of the Supplier's written request at any time or times;
- (d) it shall permit the Supplier to audit the Services. 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 to substantially interfere with the Buyer's normal conduct of business; and
- (e) if any of the audits referred to in clause 8.4(d) reveal that any unauthorised access has occurred, then without prejudice to the Supplier's other rights, the Buyer shall promptly disable such accounts.

8.4 In relation to the Buyer Administrator, the Buyer undertakes that:

- (a) the Buyer Administrator will review and act upon any update information or reasonable instructions of the Supplier, including disseminating such applicable update information and instructions to other Authorised Users; and
- (b) the Buyer Administrator shall monitor the Authorised Users and ensure that they act in accordance with the terms of the Call-Off Contract.

8.5 The Buyer and its Authorised Users 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 Buyer, to disable the Buyer's access to any material that breaches the provisions of this clause.

8.6 The Buyer and its Authorised Users shall not:

- (a) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except:
 - (i) as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; and
 - (ii) to the extent expressly permitted under the Call-Off Contract.
- (b) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

- (c) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - (d) use the Services and/or Documentation to provide services to third parties, other than any third parties who are expressly set out in the Call-Off Contract as being permitted to receive and use the Services and/or Documentation. For the avoidance of doubt, citizens or landlords using web-based functionality shall not be deemed to be third parties for the purposes of this clause; or
 - (e) subject to the Buyer's rights to assign or novate in the Call Off Contract, 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
 - (f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 8.7.
- 8.7 The Buyer shall use all reasonable endeavours to 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 Supplier.
- 8.8 The Buyer shall ensure that it only imports related Buyer Data from local systems into the NPS Software in accordance with the Documentation and outside the hours of 9.00am – 5.30pm on Working Days and the hours of 1.00am and 3.00am.
- 8.9 The Buyer shall where possible, as part of the relevant NPS SaaS user group, provide feedback and suggestions for improvements and enhancements on the Services and, in particular, the relevant NPS Software.
- 8.10 The Buyer shall access the NPS SaaS by network communications agreed between the parties as set out in the Call-Off Contract.
- 8.11 The Buyer shall be responsible for acceptance testing of changes to the NPS Software to establish that such changes are compatible with the Buyer's configuration of the NPS Software and for disaster recovery testing. If the Buyer fails to conduct such tests any subsequent rework will be charged at SFIA rates.

9. BUYER DATA

- 9.1 The Buyer recognises that the NPS SaaS is a hosted solution. Depending on the NPS SaaS being used the Buyer Data held within the NPS SaaS will either not be visible to other Buyers of the Supplier using the same NPS SaaS or where the NPS SaaS is a multi-tenanted solution, the Buyer consents to certain Buyer Data being accessible to other Buyers using the NPS SaaS for enforcement of regulation and anti-fraud purposes.
- 9.2 The Supplier confirms that the NPS Software contains functionality which shall permit the Buyer to run standard reports (as detailed within the Documentation) based on its Buyer Data within the NPS Software at any time. However, the Supplier recommends that heavy report usage should be

undertaken outside of the hours 9.00am – 5.30pm on Working days to avoid potential performance impacts.

10. SAAS AVAILABILITY AND SUPPORT

10.1 The Supplier shall use commercially reasonable endeavours to make the Services available as set out in the Service Definition.

10.2 The Supplier shall use reasonable commercial endeavours to resolve incidents in accordance with the Service Levels set out in the Service Definition. The Supplier shall have no obligation to:

- (a) correct any error reported by the Buyer if such reported error is not reproducible by the Supplier in the NPS Software;
- (b) correct any Priority 4 reported errors and reserves the right to abandon attempts to provide a fix where the costs are likely to be excessive or the commercial benefits to Supplier's Buyers at large are likely to be negligible; or
- (c) correct any error if such error arises from misuse and abuse of the NPS SaaS.