

## SUPPLIER TERMS FOR G-CLOUD 11

### PART A – MAIN

#### 1. INTRODUCTION

- 1.1 The Supplier Terms set out in this document shall form part of the Call-Off Contract and the Order Form, hereinafter collectively referred to as the **"Call-Off Contract"**. The Parties acknowledge that they are relying on the order of precedence set out in Clause 8.3 of the Framework Agreement as incorporated by Part B Clause 2.1 of the Call-Off Contract in the event of a conflict between the documents referred to in this section.
- 1.2 The Supplier Terms have been split into separate parts to deal with the different types of Services that can be ordered by a Buyer.
- 1.2.1 Parts A (Main) and G (Definitions) of the Supplier Terms shall always apply.
- 1.2.2 Where the Services ordered by a Buyer include or are solely cloud services, then Parts A (Main) and G (Definitions) of the Supplier Terms shall apply.
- 1.2.3 Where the Services ordered by a Buyer include or are solely IT consultancy, systems integration and/or support services (**"IT Services"**), then Part B (IT Services) of the Supplier Terms shall apply in addition to Parts A (Main) and G (Definitions) of the Supplier Terms.
- 1.2.4 Where the Services ordered by a Buyer include or are solely resourcing services on a secondment basis, then Part C (Secondment) of the Supplier Terms shall apply in addition to Parts A (Main) and G (Definitions) of the Supplier Terms.
- 1.2.5 Where the Services ordered by a Buyer include or are solely SAAS (as defined in Part G (Definitions) of the Supplier Terms), then Part D (SAAS) of the Supplier Terms shall apply in addition to Parts A (Main) and G (Definitions) of the Supplier Terms.
- 1.2.6 Where the Services ordered by a Buyer include or are solely Product and Professional Services, then Part E (Product and Professional Services) shall apply in addition to Parts A (Main) and G (Definitions) of the Supplier Terms.
- 1.2.7 Where the Services ordered by a Buyer include or are solely Circuit, then Part F (Circuit) of the Supplier Terms shall apply in addition to Parts A (Main) and G (Definitions) of the Supplier Terms.
- 1.2.8 For the avoidance of doubt, where the Services ordered by a Buyer are a mixture of cloud, IT Services, secondment services, SAAS services, Product and Professional Services and/or Circuit, then Parts A (Main), B (IT Services), C (Secondment), D (SAAS), E (Product and Professional Services), F (Circuit) and G (Definitions) of the Supplier Terms shall apply as relevant to the Service being provided.
- 1.3 In the event of any conflict or inconsistency between the Parts comprising these Supplier Terms, Part A (Main) and Part G (Definitions) shall take precedence over the remaining Parts.
- 1.4 Unless otherwise defined herein, all capitalised terms used within these Supplier Terms shall have the same meaning as ascribed to such terms in the Call-Off Contract.

#### 2. DUE DILIGENCE, SERVICES, IMPLEMENTATION AND COLLABORATION

- 2.1 The Order Form will detail the Services ordered by the Buyer. The Supplier will provide the ordered Services in accordance with the relevant Service Definition.
- 2.2 If the Supplier has responded or clarified matters in relation to the provision of the Services in a tender as required by Clause 3 of the Framework Agreement and these responses are not already covered in the Service Definition then the Supplier's response section of the tender applies and is subject to any assumptions and dependencies raised by the Supplier within the tender. The Supplier will attach its responses to the Order Form. For the purposes of Clause 8.3 of the Framework Agreement, as incorporated by Part B Clause 2.1 of the Call-Off Contract, if there is any conflict or ambiguity between the Service Definitions, tender response or the Buyer's questions then the order of precedence will be: (a) Service Definitions; (b) Supplier's responses in a tender; and (c) Buyer's questions.
- 2.3 Where the Parties have agreed to an implementation plan and/or an exit plan and off-boarding plan in the Order Form, the Supplier shall use its reasonable endeavours to meet the implementation plan and/or exit plan and off-boarding plan and milestone dates (if any) agreed with the Buyer in the Order Form. The implementation plan and/or exit plan and off-boarding plan and milestone dates are subject to any assumptions and dependencies the Supplier has raised with the Buyer and to the Buyer's compliance with the Buyer responsibilities.
- 2.4 In the event that at the Commencement Date the Parties are not able to adequately define the Buyer's requirements for any of the Services then both parties acknowledge that the scope of the Supplier's efforts may change. In such circumstances the initial phase of the Supplier's efforts will be recorded in an Order Form as the preparation and finalisation of the requirements for such Services by the Supplier with all such assistance from the Buyer as the Supplier may reasonably require.
- 2.5 The requirements for such Services determined in section 2.4 of Part A (Main) of the Supplier Terms shall form the basis of a new Order Form to be agreed between the Parties which shall identify and provide specific information in a level of detail sufficient to allow the Supplier to perform the required Services. These finalised requirements shall represent the Buyer's finalised statement of the Buyer's requirements and shall supersede all previous descriptions or statements of requirement. In the event that a contradiction, conflict, or inconsistency between prior statements of requirements and a later approved statements of requirements, the contradiction, conflict, or inconsistency will be resolved in favour of the latest approved statements of requirements.

- 2.6 The Parties acknowledge that the Supplier has established the Services, the Service Definitions, the Service Levels, any implementation plan / on boarding or off boarding plan (including any associated milestones) and the Charges based upon the assumption that the Services (and their costs of delivery) will not change as a function of the operation of Brexit (including by way of any action taken by either the United Kingdom or by the European Union and/or any of its member states following Brexit, or by means of any agreement effected by the United Kingdom and the European Union following Brexit). Should this assumption prove to be untrue the Supplier shall be entitled to make reasonable and proportionate adjustments to the Services, the Service Levels, the Implementation Plan (and any associated milestones), the Charges and otherwise pursuant to the Variation process in Part B Clause 32 of the Call Off Contract, and the Buyer shall not unreasonably withhold or delay its assent to any such adjustment.
- 2.7 No liquidated damages will apply to the Services unless specifically agreed to by the Supplier in the Order Form. If any are agreed in the Order Form then payment of any liquidated damages for failing to meet milestones will only apply to a failure to meet a critical milestone date that is agreed by the Parties, the amount payable will be limited to a maximum threshold proposed by the Supplier, the liquidated damages will only apply if the delay is solely attributable to the Supplier and will be the Supplier's sole financial liability for that delay. Any payments made by the Supplier will be deducted from the overall figure set for the Supplier's limitation of liability.
- 2.8 If in the Order Form the Supplier is required to sign a Collaboration Agreement, then the Supplier will agree with the Buyer the terms and conditions of such Collaboration Agreement, the identity and the number of Buyer's contractors involved, the assistance required and which information will be shared with them. The Supplier may: (a) charge for any collaboration or assistance required; (b) request the Buyer to ensure the relevant third party signs an appropriate confidentiality document; (c) require the Buyer to sign an appropriate licence agreement to share any know-how or intellectual property rights belonging to the Supplier or its licensors with the Buyer or third party; or (d) reject any collaboration as the third party involved is a competitor of the Supplier.
- 3. UPDATES, UPGRADES, NEW VERSIONS AND NEW FUNCTIONALITY**
- 3.1 In respect of Service Elements that the Buyer accesses and/or uses as part of, in connection with or as a Service, the Supplier shall freely be entitled but not obligated to issue at its sole discretion Updates, Upgrades and/or substitute New Versions, which may or may not include any New Functionality thereto at any time at its discretion. The Supplier shall use its reasonable endeavours to notify the Buyer of any material Updates, Upgrades, New Versions or New Functionality in accordance with Part B Clause 20 of the Call-Off Contract. The Supplier will provide advance notice (as reasonably possible) of any material changes to the Service Elements that may affect any baseline services agreed by the Parties at a certain date to form connectivity to the Buyer Elements. The Buyer shall, at its own cost, upgrade Buyer Elements to ensure connectivity and compatibility with the Service Elements.
- 3.2 Updates, Upgrades, New Versions and/or New Functionality may be subject to additional Charges. Where additional Charges are payable in relation to an Update, Upgrade, New Version or New Functionality, the applicable Charges shall either be notified to the Buyer in accordance with Part B Clause 20 of the Call-Off Contract, at the time of the issue of the notice in relation to such Update, Upgrade, New Version or New Functionality or in the Charges description relating to the Service.
- 4. SECURITY AND BACK-UP**
- 4.1 The operation of the Service Elements and any Buyer Elements, may be unencrypted and involve: (i) transmissions over various networks; (ii) changes to conform and adapt to technical requirements of connecting networks or devices; and (iii) transmission to Supplier Parties, including to provide the necessary hardware, software, networking, storage, and related technology required to operate and maintain the Service Elements. Accordingly, unless otherwise agreed by the Supplier in the Order Form or the Service Definition, the Buyer bears sole responsibility for providing and ensuring adequate security, protection and back-up of Buyer Elements. Any log-in credentials and private keys provided to the Buyer as part of the Services are for the Buyer's internal use only, and the Buyer may not sell, transfer or sublicense them to any third party.
- 5. ENVIRONMENT**
- 5.1 The Buyer shall receive no ownership of or interest in: (i) the Supplier's or any Supplier Party's physical or virtual hardware; (ii) any Content the Supplier or any Supplier Party installs (unless that Content is Buyer Content supplied by the Buyer on the Supplier's or the relevant Supplier Party's physical or virtual hardware); (iii) any virtual computer or data storage technology the Buyer accesses and/or uses as part of the Services; or (iv) the Service Elements. Each virtual computer remains the Supplier's or the relevant Supplier Party's exclusive property and accordingly the Buyer shall have no right to download or transfer any virtual computer to any other service provider.
- 5.2 Unless otherwise agreed in the Order Form or set out in the Service Definition, the Supplier may at its discretion provide the Services within a Shared Environment.
- 6. DATA PROTECTION**
- 6.1 Any breach by the Buyer of Data Protection Legislation and/or of any of the data protection provisions set out in the Call-Off Contract (including in the Supplier Terms) shall be deemed to be a Material Breach entitling the Supplier to End the Call-Off Contract in accordance with Part B Clause 18.5 of the Call-Off Contract.
- 6.2 The Buyer shall indemnify the Supplier, Supplier Staff and Supplier Processor Personnel against any and all Losses incurred if the Buyer, the CCS, any End User or any Buyer third party breaches Schedule 4 of the Framework Agreement (as incorporated by Part B Clause 2.1 of the Call-Off Contract), Schedule 7 of the Call-Off Contract, this Section 6, any Data Protection Legislation or the Law.
- 6.3 The Buyer shall, and shall procure that its sub-processors, End Users, Associated Companies, sub-contractors, suppliers, agents and contractors comply with all its obligations under Data Protection Legislation when Processing Personal Data in connection with the Services. In this respect, the Buyer shall obtain and maintain all necessary registrations and authorizations with the competent data protection authorities and valid legal grounds to process Personal Data.

- 6.4 The Buyer shall notify the Supplier immediately of any changes to Data Protection Legislation or Law that may affect the contractual obligations of the Supplier under the Call-Off Contract and/or which may require a variation to be made to the data protection provisions, the technical and organisation measures, the Charges or the commercial terms. The Supplier may also submit proposals to the Buyer if the Supplier deems a certain change to be necessary to remain compliant with Data Protection Legislation or Law.
- 6.5 The Buyer shall inform the Supplier promptly and comprehensively about any errors or irregularities related to Data Protection Legislation or Law on the Processing of Personal Data that it becomes aware of.
- 6.6 The Parties shall complete the detail set out in Annex 4 of this Part A (Main) in relation to the Processing of Personal Data by a Cloud Services Provider on a case by case basis. Unless otherwise agreed by the Parties, the Buyer agrees that the terms set out in the Cloud Services Provider's Third Party Agreement shall apply to the Processing of Personal Data by the Cloud Services Provider.

**WHERE THE SUPPLIER DOES NOT PROCESS PERSONAL DATA ON BEHALF OF THE BUYER**

- 6.6 Where the Buyer and the Supplier have agreed in the section in the Order Form titled "*Personal Data and Data Subjects*" or otherwise that the Supplier does not Process Buyer Personal Data or Service Personal Data on behalf of the Buyer in the provision of the Services, Part A of Annex 1 to Part A (Main) of these Supplier Terms will apply in addition to other applicable data protection provisions set out in the Call-Off Contract;

**WHERE ANNEX 1 OF SCHEDULE 7 OF THE CALL-OFF CONTRACT APPLIES**

- 6.7 Where the Buyer and the Supplier have agreed in the section in the Order Form titled "*Personal Data and Data Subjects*" that Annex 1 of Schedule 7 of the Call-Off Contract applies, then:
- 6.7.1 where the Buyer is the Controller and the Supplier is the Processor, Section 1 of Part B of Annex 1 to Part A (Main) of these Supplier Terms will apply in addition to other applicable data protection provisions set out in the Call-Off Contract; and
- 6.7.2 where the Supplier is the Controller and the Buyer is the Processor, Section 2 of Part B of Annex 1 to Part A (Main) of these Supplier Terms will apply in addition to other applicable data protection provisions set out in the Call-Off Contract.

**WHERE ANNEX 2 OF SCHEDULE 7 OF THE CALL-OFF CONTRACT APPLIES**

- 6.8 Where the Buyer and the Supplier have agreed in the section in the Order Form titled "*Personal Data and Data Subjects*" that Annex 2 of Schedule 7 of the Call-Off Contract applies, with the parties being Joint-Controllers, then Part C of Annex 1 to Part A (Main) of these Supplier Terms shall apply in addition to other applicable data protection provisions set out in the Call-Off Contract.

**WHERE THE BUYER AND THE SUPPLIER ARE INDEPENDENT CONTROLLERS OF PERSONAL DATA**

- 6.9 Where the Buyer and the Supplier are independent Controllers of Personal Data, Part D of Annex 1 to Part A (Main) of these Supplier Terms will apply in addition to other applicable data protection provisions set out in the Call-Off Contract.

**7. RESPONSIBILITIES**

**BUYER RESPONSIBILITIES**

- 7.1 In addition to any other Buyer responsibilities under the Call-Off Contract, the Buyer is solely responsible and liable at its own cost for:
- 7.1.1 its, its End Users and the Buyer Element's compliance with all applicable Laws, rules and regulations related to the performance of the Buyer's and any End User's obligations that arise under or in connection with the Call-Off Contract;
- 7.1.2 its, its End Users' and the Buyer Element's compliance with the terms of the Call-Off Contract and any Third Party Agreement;
- 7.1.3 ensuring that it, its End Users and the Buyer Elements do not cause any loss, destruction, corruption, degradation or other damage to the property or assets (including technical infrastructure) of the Supplier, its lessors or any Supplier Party, the Service Elements, other Content or any other technical problems;
- 7.1.4 the protection, compliance and integrity of all Buyer Elements, including without limitation, its accuracy, quality, reliability, appropriateness, development, maintenance, use, back-up, technical operation and compatibility with APIs;
- 7.1.5 obtaining, maintaining and upgrading any Buyer Elements or ancillary services needed to access and/or use the Service Elements (including ensuring any connectivity or compatibility with the Service Elements);
- 7.1.6 administering security within the Services (e.g. configuring End User access rights), ensuring reasonable security for integration between Buyer Elements and the Service Elements and maintaining the confidentiality of usernames, passwords and other sensitive information relating to the Buyer Account and the Services. The Buyer shall notify the Supplier immediately if the Buyer has reasonable grounds for believing that there has been any unauthorised access to or use of the Buyer Account or the Service Elements or any password or Buyer Account information is lost or stolen or any other known or suspected breach of security;
- 7.1.7 all activity occurring under the Buyer Account;
- 7.1.8 discharging its obligations and making decisions relating to the Call-Off Contract in accordance with agreed timescales or if no timescales are agreed in a timely manner and in any event within such time as is required for the Supplier to discharge its obligations under the Call-Off Contract;
- 7.1.9 providing the Supplier with access to appropriate members of the Buyer's staff, contractors, suppliers, and those of its agents, as may reasonably be required for the Supplier to discharge its obligations under the Call-Off Contract;
- 7.1.10 providing sufficient, suitable, appropriately qualified, experienced and competent personnel to fulfil the Buyer's roles and duties under the Call-Off Contract;
- 7.1.11 co-operating fully and procuring that its relevant employees, agents, suppliers and sub-contractors co-operate and comply with the reasonable instructions of the Supplier to enable the Supplier to proceed uninterrupted with the provision of the Services;
- 7.1.12 providing the Supplier promptly with all documentation, data and/or other information (including but not limited to, complete and accurate information and instructions upon which the Supplier can rely) concerning its organisation, operations and activities relevant to the Supplier's provision of the Services or that is necessary for the Supplier to perform its obligations under the Call-Off Contract and when requested by the Supplier, shall promptly provide answers to any reasonable questions from the Supplier. The Buyer shall inform the Supplier of any information or developments which may come to the Buyer's notice and which might have a bearing on the Services;

- 7.1.13 the Buyer agrees that the Supplier may receive data, information and material from the Buyer or from other sources in the course of delivering the Services and that the Supplier shall not independently investigate or verify such documentation, data and/or other information and that the Supplier shall be entitled to rely upon the accuracy and completeness of such documentation, data and/or other information in performing the Services. To the fullest extent permitted by law, the Supplier shall not be liable to the Buyer or any End User for any loss or damage suffered by the Buyer or any End User arising from fraud, misrepresentation, withholding of documentation, data and/or other information related to the Services or other default relating to such documentation, data and/or other information, whether on the Buyer's part or that of the other information sources;
- 7.1.14 notwithstanding the Supplier's duties and responsibilities in relation to the Services, the Buyer shall retain responsibility and accountability for: (i) the management, conduct and operation of its business and affairs; (ii) determining its use of, the extent of its reliance on, and any implementation of, the Supplier's advice or recommendations or any other product of the Services supplied by the Supplier; (iii) making any decision affecting the Services, any product of the Services, its interests or its affairs; and (iv) the delivery, achievement or realisation of any benefits directly or indirectly related to the Services which require implementation by the Buyer;
- 7.1.15 where the Services are being performed at the Buyer's premises or using the Buyer Environment, the Buyer shall ensure that all arrangements are made for access (including for the avoidance of any doubt to national and international networks as the Supplier may reasonably require), security procedures, virus checks, facilities (including without limitation desks, access to telephone lines, analogue lines, fax, photocopying and printing and GRA VPN facilities) as may be required. The Buyer accepts that the Supplier may use either the Buyer's network or dialup facilities to access the Supplier's own network and that the Buyer has assessed and accepts any associated risks which may arise;
- 7.1.16 where the Services are being performed at the Buyer's premises, the Buyer shall afford to the Supplier and Supplier Parties full and safe access to the Buyer premises. The Buyer shall advise the Supplier in writing of all rules, regulations, policies and procedures in place at the Buyer premises relating to health, safety or security and the Supplier shall ensure compliance by Supplier Parties with all such reasonable and lawful rules, regulations, policies or procedures of which it is notified in writing;
- 7.1.17 (unless otherwise agreed in writing by the Supplier in the Order Form or the Service Definition the Supplier shall not perform any back-up procedures to protect Buyer Content) establishing back-up procedures to protect and recover Buyer Content. If the Buyer is ordering business continuity and disaster recovery services as part of the Services then the details of the business continuity and disaster recovery will be listed separately in the Order Form or in the Service Definition. Any amendment required to be made by the Supplier to its business continuity and disaster recovery plans to comply with the Buyer's own plans (as may be required under Part B Clause 6.3 of the Call-Off Contract) shall be at the Buyer's cost; and
- 7.1.18 other than any licenses, authorities, approvals and consents required to be provided by the Supplier as part of the Services, obtaining and maintaining throughout the Term of the Call-Off Contract all necessary licenses, authorities, approvals and consents required to permit the Supplier and Supplier Parties to perform the Services and the Buyer to receive the Services and/or that may be required in relation to the Buyer Elements (including any that may be required for the use of such Buyer Elements with the Service Elements).

## **8. END USERS AND DEVICES**

- 8.1 Unless otherwise agreed by the Supplier in the Order Form, the Buyer shall provide the Supplier with a list of End Users to be permitted access to and/or use of the Buyer Account and the Services under the Call-Off Contract. The Supplier shall, where relevant to the Service, provide the Buyer with a list of Devices that may be used with the Service. The number of End Users to be permitted access to and/or use of a Service and the number of Devices that may be used with a Service shall be set out in the Charges description relating to the Service. Should the Buyer wish to add additional End Users or Devices over and above the number permitted with respect to the Services ordered it shall lodge a request with the Supplier. Should the Supplier agree to the addition of such additional End Users and/or Devices the Buyer shall inform the Supplier in writing of the details of such End Users and/or Devices and pay the relevant additional Charges. Charges relating to additional End Users and/or Devices over and above the number allowed with respect to the Service ordered are set out in the Charges description relating to the Service or, if not set out in the Charges description relating to the Service shall be notified to the Buyer at the time of such request.

## **9. CHARGES AND PAYMENT**

- 9.1 All Charges are exclusive of Taxes and expenses which shall, in addition, be payable by the Buyer. Any Taxes due shall be charged at the rate prevailing at the date of the invoice. Expenses shall, unless otherwise agreed in the Order Form or set out in the Charges description relating to the Service, be charged at cost.
- 9.2 Unless otherwise provided for in the Order Form or set out in the Charges description relating to the Service, all expenses, fees and other amounts shall be invoiced monthly in arrears.
- 9.3 If the Buyer disputes any amounts in any invoice submitted by the Supplier it shall follow the procedure set out in Part B Clause 7.11 of the Call-Off Contract. In the event that the Buyer does not advise the Supplier of any disputes within ten (10) Working Days of the receipt of the invoice, the invoice shall be deemed to have been accepted without dispute and the Buyer shall pay the same forthwith together with any interest to which the Supplier is entitled under Part B Clause 7.10 of the Call Off Contract.

## **10. TAXES**

- 10.1 All Charges payable by the Buyer are exclusive of any Taxes. Part B Clauses 7.7 and 7.8 of the Call-Off Contract deal with VAT. If the Supplier is required to pay any other Taxes for which the Buyer is responsible, then such Taxes will be added to the invoice.
- 10.2 The Buyer will provide the Supplier with any information it reasonably requests to determine whether it is obligated to collect any Taxes from the Buyer, including the Buyer's VAT identification number or equivalent local sales, purchase or turnover tax number. If the Buyer is legally entitled to an exemption from any Taxes, the Buyer is responsible for providing the Supplier with legally-sufficient tax exemption certificates for each taxing jurisdiction. The Supplier will apply the tax exemption certificates to amounts due under the Call-Off Contract occurring after the date it receives the tax exemption certificates.
- 10.3 If any deduction or withholding is required by law, the Buyer will notify the Supplier and the Buyer will pay the Supplier any additional amounts necessary to ensure that the net amount that the Supplier receives, after any deduction and withholding, equals the amount the Supplier would have received if no deduction or withholding had been required. Additionally, the Buyer will provide the Supplier with documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority.

- 10.4 All Taxes shall be charged at the rate ruling at the tax point (being the date of the invoice).
- 10.5 The Buyer shall provide a reciprocal indemnity to the Supplier in relation to Taxes as that provided for in Part B Clause 7.9 of the Call-Off Contract.

## **11. TITLE, INTELLECTUAL PROPERTY RIGHTS AND INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

### ***TITLE AND INTELLECTUAL PROPERTY RIGHTS***

- 11.1 Nothing under the Call-Off Contract shall affect any of the Buyer's Intellectual Property Rights and, save as provided in this section 11, the Supplier will obtain no rights under the Call-Off Contract from the Buyer to Buyer Elements. The Buyer hereby grants (or shall procure the grant) to the Supplier a royalty-free, non-exclusive, world-wide licence (with the right to sub-licence to Supplier Parties) to access and/or use the Buyer Elements solely to the extent necessary for providing the Services in accordance with the Call-Off Contract.
- 11.2 The Buyer agrees that title and all Intellectual Property Rights of whatever nature in the Service Elements and all other materials supplied or developed under the Call-Off Contract in whatever form including any hardware, software, firmware and documentation are and shall remain vested in the Supplier and its licensors (including, for the avoidance of doubt any relevant Supplier Party) (as the case may be). The Buyer shall do all such acts and things as the Supplier may reasonably require for the purpose of preserving or perfecting the Supplier's, its licensors' and the relevant Supplier Party's title and Intellectual Property Rights.
- 11.3 The Buyer agrees that:
- 11.3.1 in Part B Clause 11.2 of the Call-Off Contract, the licence to "use" the Supplier Background IPRs embedded in the Project Specific IPRs shall mean to use the Supplier Background IPRs solely as part of the Project Specific IPRs and the Buyer shall not disclose, provide access to, sub-licence, disassemble, decompile, reverse engineer, modify or transfer any Supplier Background IPRs to an Associated Company or third party without the Supplier's prior written consent;
  - 11.3.2 the word "transferable" in the licence granted in Part B Clause 11.2 of the Call-Off Contract shall mean transferable in accordance with Clause 8.35 of the Framework Agreement as incorporated by Part B Clause 2.1 of the Call-Off Contract; and
  - 11.3.3 the words "ordinary business activities" in the licence granted in Part B Clause 11.2 of the Call-Off Contract shall mean for the Buyer's internal ordinary business activities only.
- 11.4 In accordance with Part B Clause 11.4 of the Call-Off Contract, the Supplier hereby informs the Buyer that it is not able to comply with Part B Clause 11.3 of the Call-Off Contract and:
- 11.4.1 the Buyer and the Supplier shall work together to agree licence terms acceptable to the Buyer (acting reasonably) at the time;
  - 11.4.2 in the absence of an agreement by the parties, the parties agree that the default licence position in relation to any Background IPRs and third party IPRs (including any Supplier Party IPRs) embedded in the Project Specific IPRs shall be as set out in Part B Clause 11.2 of the Call-Off Contract and section 11.3 above and the Buyer agrees that such licence terms are acceptable to it. For the avoidance of doubt, section 11.3.1 above shall be construed to apply to the use of third party IPRs (including any Supplier Party IPRs) under the default licence position.
- The Buyer agrees that it shall reimburse the Supplier for any cost, expense or licence fee payable by the Supplier in relation to the grant of a licence in third party IPRs (including any Supplier Party IPRs) embedded in Project Specific IPRs. The Buyer shall, and shall procure that all End Users shall, comply with such licence terms and the Supplier Terms, and if requested by the Supplier, the Buyer shall sign (or shall procure that End Users' sign) any document containing such licence terms and the Supplier Terms.
- 11.5 The Buyer hereby acknowledges and approves (in accordance with Part B Clause 15 of the Call-Off Contract (and notwithstanding anything else to the contrary in the Call-Off Contract)), the right of the Supplier to create software in such format as it thinks fit in its sole and absolute discretion and the Buyer shall not require any software to be created in a format, or able to be converted into a format, which is suitable for publication by the Buyer as open source software, and the Buyer shall have no right to publish, whether in open source or otherwise, any software or other IPR created or provided by the Supplier (or on its behalf) (including, for the avoidance of doubt, any Supplier IPR, Supplier Party IPR or other third party IPR) or any Service Elements.
- 11.6 Subject to Part B Clause 11.2 to 11.4 of the Call-Off Contract, sections 11.2 to 11.5 above, section 11.7 below and any licence provided in Part D (SAAS), Part E (Product and Professional Services) and Part F (Circuit) of the Supplier Terms, the Supplier hereby grants to the Buyer a worldwide, revocable, non-exclusive, non-sub-licensable, non-transferrable licence to access and use the Services ordered under the Call-Off Contract and the applicable Supplier Content in an environment hosted by or on behalf of the Supplier solely for the Buyer's own internal business operations in accordance with the Call-Off Contract and for the Term of the Call-Off Contract (the "**Licence**").
- 11.7 Access and/or use of Third Party Content, Third Party Services and/or a Third Party Environment may be provided in connection with, as part of or as a Service offered by the relevant third party itself or by the Supplier on behalf of such third party. Any such Third Party Content, Third Party Service or Third Party Environment (as the case may be) and its access and/or use will be subject to and licensed in accordance with the Supplier Terms and the applicable Third Party Agreement (which may include separate fees and charges) and is for use only in connection with the Services and unless otherwise agreed, only for the Term of the Call-Off Contract. The Buyer shall, and shall procure that all End Users shall, comply with the terms of the Supplier Terms and any such Third Party Agreement, and if requested by the Supplier, the Buyer shall sign (or shall procure that End Users' sign) any document containing the terms of the Supplier Terms and any such Third Party Agreement. The Parties shall complete the detail set out in Annex 4 of this Part A (Main) in relation to such Third Party Agreements on a case by case basis.
- 11.8 The Buyer or any End User may provide Submissions to the Supplier or Supplier Parties. To the extent the Buyer or any End User provide any Submissions to the Supplier or Supplier Parties, it shall grant to the Supplier (and anyone authorised by the Supplier) a royalty free, perpetual, irrevocable, non-exclusive, unrestricted, worldwide licence to use, copy, modify, transmit, sell, sub-licence, exploit, create derivative works from, distribute, and/or publicly perform or display such Submissions, in whole or in part, in any manner or medium (whether now known or hereafter developed), for any purpose that the Supplier may choose. For the avoidance of doubt, the parties agree that IPR in Feedback, as defined in Section 6 of Part F (Circuit) of the Supplier Terms, shall be dealt with in accordance Section 6 of Part F (Circuit) of the Supplier Terms.

- 11.9 Save for any licence granted in accordance with Part B Clause 11.2 of the Call-Off Contract and section 11.3 above, all licenses granted to the Buyer under the Call-Off Contract are subject to and conditional upon the full payment by the Buyer of all sums properly due under the Call-Off Contract, the Buyer's and End Users' compliance with the terms of the Call-Off Contract and the Buyer's and End Users' compliance with the terms of the relevant licence and will immediately and automatically terminate if the Buyer or any End User breaches any term or condition of the Call-Off Contract or the relevant licence.
- 11.10 Unless expressly permitted by applicable mandatory law, the Buyer shall not (and shall procure that End Users shall not):
- 11.10.1 modify, alter or remove the copyright identifications, trademarks and/or any other intellectual property notice or label, appearing in and/or on any Service Elements, or which enable their identification;
  - 11.10.2 create any software product(s) that interface with or are interactive with the Service Elements (or any part thereof);
  - 11.10.3 reproduce, download, or make copies of the Service Elements (or any part thereof), remove the Service Elements (or any part thereof) from the server, or attempt to perform such acts;
  - 11.10.4 sell, rent, licence, sublicense, resell, transfer, assign, distribute or otherwise commercially exploit or make available any rights granted to it hereunder, whether in part or entirely, by any means whatsoever;
  - 11.10.5 modify, adapt, enhance, supplement, alter, tamper with, repair or otherwise create derivative works from the Service Elements (or any part thereof);
  - 11.10.6 translate, reverse assemble, disassemble, reverse engineer, decompile, recreate or otherwise reduce to human readable form the Service Elements (or any part thereof), any object code generated by the Service Elements (or any part thereof), or apply any process or procedure to derive any source code of the Service Elements (or any part thereof),
- without the Supplier's prior written consent, nor shall the Buyer permit any End User or third party to do the same. This is not an exhaustive list of restrictions and all rights not expressly granted hereunder are reserved by the Supplier, its lessors and Supplier Parties (as the case may be).

#### **INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

- 11.11 In addition to the exclusions set out in Part B Clause 11.7 of the Call-Off Contract, Part B Clauses 11.5 and 11.6 of the Call-Off Contract shall not apply and the Supplier shall have no liability to the extent that an IPR Claim arises out of or relates to:
- 11.11.1 the Buyer and/or any End User exceeding any licence limits or otherwise being in breach of any licence terms;
  - 11.11.2 the access, use or combination of the Services Elements (or any part thereof) with third party products or services;
  - 11.11.3 the access and/or use by the Buyer and/or any End User of the Service Elements (or any part thereof) in a manner or for a purpose for which the Service Elements were not proscribed by the Call-Off Contract, by the Supplier or the relevant Supplier Party at the time of provision of the Service Elements;
  - 11.11.4 any modification or combination made by any person other than the Supplier or their authorized representatives;
  - 11.11.5 any modifications to the Service Elements (or any part thereof) made by the Supplier or their authorised representatives pursuant to the Buyer's specific instructions;
  - 11.11.6 the use of an older version when a more recent version made available to the Buyer would have avoided the IPR Claim;
  - 11.11.7 the refusal or failure by the Buyer, pursuant to Part B Clause 11.6 of the Call-Off Contract, to: (i) provide prompt approval; (ii) accept modified Services; (ii) accept substitute Services; or (iii) accept reasonable and/or standard third party licence terms; or
  - 11.11.8 any access, use or combination by or on behalf of the Buyer and/or any End User of the Service Elements (or any part thereof) with any item (including any Buyer Elements) not supplied by the Supplier where such access, use or combination directly gives rise to the IPR Claim.
- 11.12 In relation to all IPR Claims the Buyer agrees to:
- 11.12.1 notify the Supplier promptly if it receives any notice, demand, letter or other document concerning any IPR Claim for which it appears that the Buyer or any End User is, or may become entitled to indemnification under Part B Clause 11.5 of the Call-Off Contract;
  - 11.12.2 not make any admissions nor attempt to settle or compromise any such IPR Claim without the Supplier's prior written consent;
  - 11.12.3 give the Supplier the sole conduct of the defence to any such claim, demand or action;
  - 11.12.4 use its best endeavours to mitigate any costs, losses, charges, damages, expenses, claims, demands or actions whatsoever covered by the indemnity;
  - 11.12.5 act in accordance with the reasonable instructions of the Supplier and give the Supplier such assistance as the Supplier shall reasonably require in relation to any such IPR Claim; and
  - 11.12.6 not unreasonably withhold or delay any approval the Buyer is required to provide in relation to an IPR Claim.
- Without prejudice to any other rights the Supplier may have whether under the Call-Off Contract, at law or otherwise, Part B Clauses 11.5 and 11.6 of the Call-Off Contract shall not apply and the Supplier shall have no liability to the Buyer in relation to any IPR Claim if the Buyer fails to meet any obligation under this section.
- 11.13 The Buyer agrees that the Supplier's liability under Part B Clause 11.5 and 11.6 of the Call-Off Contract shall be in lieu of any other liability whatsoever in respect of alleged or actual infringement of any Intellectual Property Rights (including those of any third party).

#### **12 WARRANTIES AND INDEMNITIES**

- 12.1 The Buyer undertakes, warrants and represents that:
- 12.1.1 it has full power and authority to enter into the Call-Off Contract, to apply for and maintain an Account and to access and/or use the Services;
  - 12.1.2 all documentation, data and information furnished to the Supplier by the Buyer and any End User is current, complete, true, accurate and of appropriate quality for the Supplier's use in discharging its obligations under the Call-Off Contract. The Supplier shall not take any steps to independently investigate or verify such documentation, data and/or information, shall be entitled to rely upon such documentation, data and/or information in performing the Services and shall not be liable for any errors in the accuracy or completeness thereof;

- 12.1.3 the Buyer Elements (including all data that the Buyer provides to the Supplier or any Supplier Party) have been checked by the Buyer and are free from any type of Malicious Software and virus;
  - 12.1.4 the Buyer Elements and the Buyer's and/or any End User's access to and/or use of the Buyer Account or the Buyer Elements in connection with the Service Elements (or any part thereof) or their access to and/or use of the Service Elements (or any part thereof) themselves (including any connectivity to them) will not infringe the Supplier's, its lessors, any Supplier Party's, or any other third party rights (including any Intellectual Property Rights);
  - 12.1.5 the Supplier's or any Supplier Party's receipt of, access to and/or use of any item supplied directly or indirectly by the Buyer for use in connection with the provision of the Service Elements shall not cause the Supplier or any Supplier Party to infringe any third party's rights (including any Intellectual Property Rights) in such item;
  - 12.1.6 Buyer Content shall not contain any: (i) credit, debit or other payment card data; and/or (ii) data of national security or relating thereto;
  - 12.1.7 the Buyer shall not access and/or use the Service Elements where a failure or fault of the Service Elements (or any part thereof) could lead to death or personal injury and in particular (by way of example and not limitation) the Service Elements should not be used for production services associated with mass transit systems, nuclear or chemical facilities, or medical support devices;
  - 12.1.8 the Buyer conducts its business in accordance with good ethical standards and in compliance with the processes required under the Bribery Act 2010 and any other analogous regulations or laws in any relevant jurisdiction; and
  - 12.1.9 that any rights or licences granted in relation to any hardware, software or third party contracts shall not be compromised by Brexit.
- 12.2 The Buyer shall assume all responsibility and liability in respect of its and its End Users' access to and/or use of the Service Elements. Accordingly, the Buyer will and hereby does indemnify and hold the Supplier, its lessors and all Supplier Parties harmless from and against any and all claims, losses, damages, liabilities, costs and expenses (including reasonable legal fees) arising out of or in relation to any third party claim arising from, including but not limited to,: (i) a breach of or non-compliance with any obligations or warranties under the Call-Off Contract; (ii) the Buyer Elements; (iii) any act or omission of the Buyer, any End User or any third party acting on the Buyer's or any End User's behalf or arising directly or indirectly from the Buyer's and/or any End Users possession, operation, access, use, modification or supply to a third party of anything provided under or otherwise out of or in connection with the Call-Off Contract; and (iv) any dispute arising between the Buyer and any End User.
- 12.3 The Supplier shall deliver the Services by appropriately experienced, qualified and trained personnel and in a professional manner with reasonable care, skill and diligence.
- 12.4 The Supplier will, so far as it is permitted, pass to the Buyer the benefit of any warranties in respect of any Third Party Content, Third Party Service and/or Third Party Environment where such Third Party Content, Third Party Service and/or Third Party Environment is provided by the Supplier to the Buyer as part of, in connection with or as a Service.
- 12.5 Save for any express warranties given hereunder, the Service Elements are provided on an "as is" and "as available" basis and, accordingly the Supplier, its lessors and each Supplier Party expressly disclaim any and all warranties of any kind or nature to the fullest extent permitted by law, whether express, implied, statutory or otherwise, relating to the Service Elements, including without limitation any warranties of title, non-infringement, merchantability, accuracy of informational content, satisfactory quality, fitness for a particular purpose or quiet enjoyment, together with any warranties arising out of any course of dealing, usage or trade.
- 12.6 Neither the Supplier nor its lessors or any Supplier Party make any representation or warranty regarding the results to be obtained from the Service Elements, that the Service Elements will meet the Buyer's or any End User's requirements, that the Service Elements will be uninterrupted, timely, error-free, free from harmful components or that all errors can be corrected, or that any Content or Buyer Elements will be secure or not otherwise lost or damaged.
- 13 SUSPENSION**
- 13.1 The Supplier may suspend any right to access and/or use the Service Elements, the Buyer Account or the Buyer Elements (within its control) or any part thereof (whether by the Buyer and/or any End User or any third party acting on their behalf) immediately without notice to the Buyer if the Supplier determines, at its sole discretion, that:
- 13.1.1 the access to and/or use of the Service Elements, the Buyer Account and/or the Buyer Elements (within its control) or any part thereof:
    - (i) poses a security risk (including any security risk to third parties);
    - (ii) may have an adverse impact upon the Service Elements, the Buyer Account and/or the Buyer Elements or any part thereof;
    - (iii) may have an adverse impact upon the relevant systems;
    - (iv) may have an adverse impact on any other Supplier customer and/or end user; or
    - (v) may subject the Supplier, its lessors, any Supplier Party or any third party to any liability;
  - 13.1.2 the Buyer, or any End User, is in breach of the Call-Off Contract (including where the Buyer fails to make payment of any undisputed Charges upon the date that payment is due (including any Charges that are deemed to be undisputed in accordance with section 9.3 above));
  - 13.1.3 there is or has been any attack on the system, notably via a virus, which may alter the capacity, the integrity and/ or the security of the Service Elements, the Buyer Account and/or the Buyer Elements or any part thereof; or
  - 13.1.4 suspension or restricted access to the Service Elements, the Buyer Account and/or the Buyer Elements (within its control) or any part thereof is requested by a judicial or administrative authority.
- 13.2 The Supplier may suspend any right to access and/or use the Service Elements, the Buyer Account or the Buyer Elements (within its control) or any part thereof (whether by the Buyer and/or any End User or any third party acting on their behalf) immediately without notice to the Buyer in any circumstances in which the Supplier is otherwise entitled to terminate the Call-Off Contract.
- 13.3 If the Supplier suspends the Buyer's and/or any End User's access to or use of the Service Elements, the Buyer Account and/or the Buyer Elements (within its control) or any part thereof:
- 13.3.1 other than for Buyer and/or End User default:
    - (i) the Buyer shall remain liable for all amounts payable up to and including the date of suspension; and

- (ii) the Buyer shall remain liable for all amounts payable for any Services to which the Buyer and/or any End User continue to have access and/or use of during the period of suspension.
- 13.3.2 for Buyer and/or End User default:
  - (i) the Buyer shall remain liable for all amounts payable for all Services provided, including any Services suspended by the Supplier in accordance with this section.
- 13.4 The Supplier may, at its sole discretion lift a suspension (or part thereof) at any time. The Buyer shall be responsible for all Charges payable for the Services provided after the date that the suspension has been lifted and, where the suspension is as a result of a Buyer and/or End User default, the Buyer shall in addition be liable for the Re-Activation Charge.
- 13.5 The Supplier's right to suspend the Buyer's and/or any End User's right to access and/or use the Service Elements, the Buyer Account and/or the Buyer Elements (within its control) or any part thereof is in addition to any other right the Supplier may have under the Call-Off Contract, at law or otherwise.

## **14 TERM, TERMINATION, CONSEQUENCES OF TERMINATION, EXIT AND HANDOVER TO REPLACEMENT SUPPLIER**

### **TERM**

- 14.1 The Buyer agrees that the Supplier shall be entitled to charge for any costs and/or expenses (including any transfer or licence fees payable thereto) incurred or assistance provided by the Supplier in connection with its compliance with Part B Clauses 21.3 to 21.8 of the Call-Off Contract.

### **TERMINATION**

- 14.2 In addition, and without prejudice to any other right of termination the Supplier may have under the Call-Off Contract, at law or otherwise, the Supplier may terminate the Call-Off Contract immediately by written notice to the Buyer without incurring liability for such termination if:
  - 14.2.1 any misuse, act or omission by the Buyer, an End User or any third party acting on the Buyer's or an End User's behalf results in the suspension of any right to access and/or use the Service Elements, the Buyer Account, the Buyer Elements and/or any part thereof for a period of more than thirty (30) days, save in relation to the failure by the Buyer to pay any undisputed Charges where the Supplier shall be entitled to terminate the Call-Off Contract in accordance with Part B Clause 18.6 of the Call-Off Contract and the Order Form;
  - 14.2.2 it considers that the activities the Buyer and/or any End User are engaged in might be detrimental to the Supplier's or any Supplier Party's reputation; or
  - 14.2.3 it reasonably suspects that there might be fraudulent or illegal activity in connection with the Buyer's access and/or use of the Service Elements (or any part thereof); or
  - 14.2.4 the Supplier is required to do so in order to comply with an applicable Law (including any national or international foreign trade or customs requirements or any embargoes or other sanctions) or order or direction of any regulatory authority of competent jurisdiction.

### **CONSEQUENCES OF TERMINATION**

- 14.3 Upon the expiry or termination for any reason of the Call-Off Contract:
  - 14.3.1 all the Buyer's and any End User's rights and permissions under the Call-Off Contract (including any Third Party Agreement) shall immediately terminate;
  - 14.3.2 the Buyer shall, and shall procure that all End Users shall, immediately cease to use the usernames, passwords and other sensitive information, and for the avoidance of doubt, the Buyer shall, and shall procure that all End Users shall, immediately cease to access and/or use the Services and the Buyer Account;
  - 14.3.3 the Buyer will immediately deliver up or, if directed by the Supplier, destroy, all Confidential Information, Supplier Content and Third Party Content, and all copies of the same, in the Buyer's possession, custody or control and shall at the Supplier's request certify in writing to the Supplier that the same has been done;
  - 14.3.4 the Supplier shall be entitled to enter upon Buyer premises for the purposes of recovering any equipment or materials (including work-in progress) which are the Supplier's or a Supplier Party's property, for which purpose the Buyer hereby grants the Supplier an irrevocable licence to enter any such premises; and
  - 14.3.5 the Buyer shall pay the Supplier all sums due under the Call-Off Contract up to the date of termination or expiry.
- 14.4 The Supplier shall be entitled to take such actions as it considers necessary to delete Buyer Content (save for any Buyer's Circuit User's Circuit User Content as defined in Part F (Circuit) of the Supplier Terms, which shall be dealt with in accordance with section 14.2 of Part F (Circuit) of the Supplier Terms) from the Services on instruction from the Buyer or twelve (12) calendar months from the expiry or termination of the Call-Off Contract (whichever is the earlier) in accordance with Part B Clause 19.5 dot point four of the Call-Off Contract without incurring liability to the Buyer, any End User or any third party. During the said period, subject to the Buyer having paid all outstanding amounts due under the Call-Off Contract (including any Charges for use of the Services following such termination), the Supplier shall provide the Buyer with access to the Buyer Content so that the Buyer may remove or delete Buyer Content from the Services.
- 14.5 The Buyer agrees that the Supplier shall be entitled to charge for any costs and/or expenses incurred or assistance provided by the Supplier in connection with its compliance with Part B Clauses 19.5 and 22 of the Call-Off Contract where the Call-Off Contract has expired or is terminated before the end of term other than for Supplier cause.

### **EXIT AND HANDOVER TO REPLACEMENT SUPPLIER**

- 14.6 The Buyer agrees that:
  - 14.6.1 reference to "data (including Buyer Data)" in dot point one of Part B Clause 22.1 of the Call-Off Contract shall only extend to data belonging to the Buyer and shall not include any data forming part of Supplier Content or Third Party Content.



## 15 BUYER CAUSE

- 15.1 The Supplier shall not be in breach of its obligations nor incur any liability whatsoever to the Buyer or any End User where it is prevented and/or delayed from complying with and/or performing any of its obligations under the Call-Off Contract by reason of:

- 15.1.1 any act, omission or default of the Buyer, any End User or any third party acting on behalf of the Buyer or any End User;
- 15.1.2 any delay or failure by the Buyer or any End User or any third party acting on behalf of the Buyer or any End User to comply with any of its obligations as set out in the Call-Off Contract; or
- 15.1.3 the non-fulfilment of any assumptions or dependencies set out in the Call-Off Contract

and, the Supplier shall have the right to an extension of time to perform its obligations by such reasonable period having regard to the nature of such prevention and/or delay, and the right to be paid all reasonable costs, charges and losses sustained or incurred by the Supplier as a result thereof and any part of the Charges which would but for such act, omission, default or non-fulfilment have been payable pursuant to the Call-Off Contract.

## 16 LIMITATION OF LIABILITY

- 16.1 The Buyer's liability to pay the Supplier in accordance with the Call-Off Contract shall not be limited by this section 16, by Part B Clause 24 of the Call-Off Contract or by Clauses 4.2 to 4.7 of the Framework Agreement as incorporated by Part B Clause 2.1 of the Call-Off Contract.

- 16.2 The Buyer will be liable for the following types of loss which will be regarded as direct and will be recoverable by the Supplier:

- 16.2.1 any regulatory losses or fines arising directly from the Buyer's breach of any Laws;
- 16.2.2 any additional operational or administrative costs and expenses from any material breach of the Buyer;
- 16.2.3 any wasted expenditure or unnecessary costs and expenses the Supplier pays because of the Buyer's default; and
- 16.2.4 any other liabilities suffered by the Supplier in connection with the loss of, corruption or damage to any Service Elements.

- 16.3 The Parties agree that the exclusions and limitations of liability set out in the Call-Off Contract (including those sections incorporated by Part B Clause 2.1 of the Call-Off Contract) shall exclude and limit each Party's liability to the other in respect of all matters arising out of or in connection with the Call-Off Contract whether in contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.

- 16.4 Save in respect of any liability for death or personal injury resulting from negligence, the Buyer shall not claim in contract, tort (including negligence) or for breach of statutory duty, indemnity or otherwise against any Supplier or Supplier Associated Company or their officers, directors, employees or agents in respect of any matter arising out of or in connection with the Call-Off Contract. The Buyer agrees that no such person owes the Buyer a duty of care in respect of any such matter. The Parties agree that the benefit of this section 16.4 shall be enforceable by the Supplier, each Associated Company and its or their officers, directors, employees or agents in accordance with the Contracts (Rights of Third Parties) Act 1999 or any other law which gives a person who is not a party to a contract the right to enforce any of its provisions.

## 17 LOSS OF BUYER CONTENT

- 17.1 Except as provided in Clause 4.2 of the Framework Agreement (as incorporated by Part B Clause 2.1 of the Call-Off Contract) and save for any liability for Buyer Data which shall be dealt with in accordance with Part B Clause 24 of the Call-Off Contract and Clauses 4.3 to 4.7 of the Framework Agreement (as incorporated by Part B Clause 2.1 of the Call-Off Contract), the Supplier shall not be liable (whether in contract, tort (including negligence), breach of statutory duty, indemnity or otherwise) for any losses consequent upon the unauthorised access to, loss of, damage or destruction to, or corruption or degradation of any Buyer Content (including for the avoidance of doubt any systems or programs) nor the cost of reconstituting the same (whether such loss or damage was foreseeable, known or otherwise). Subject to Clause 4.2 of the Framework Agreement (as incorporated by Part B Clause 2.1 of the Call-Off Contract), Part B Clause 24 of the Call-Off Contract and Clauses 4.3 to 4.7 of the Framework Agreement (as incorporated by Part B Clause 2.1 of the Call-Off Contract), any liability of the Supplier for loss or damage of any Buyer Content (including for the avoidance of doubt any systems or programs) which is not Buyer Data (whether the back-up is the responsibility of the Buyer or of the Supplier) shall be limited to the cost of re-loading the last viable back-up copy (if any).

## 18 TUPE

- 18.1 The Buyer acknowledges that the Charges for the Services do not include any costs or expenses relating to TUPE. If the Employment Regulations apply, the Buyer agrees that the Supplier shall be entitled to charge for all unavoidable costs and expenses relating to TUPE in addition to the Charges for the Services.

- 18.2 Where the Employment Regulations apply in respect of the Services to be supplied under the Call-Off Contract, the contracts of employment of certain employees of the Buyer and/or third parties ("**Transferring Staff**") shall transfer to the Supplier in accordance with the Employment Regulations and, the Buyer in this regard, hereby undertakes, warrants and represents to the Supplier that:

- 18.2.1 the Supplier has been provided with a complete and accurate set of Transferring Staff contracts and records (including remuneration and severance costs) and that there are no disciplinary or competence matters which do not appear on the Transferring Staff's personnel records. If inspection of the records identifies matters which, in the Supplier's reasonable opinion, would have led the Supplier to increase the costs and expenses charged to the Buyer in relation to TUPE under section 18.1 above, the Supplier shall be entitled to charge such additional costs and expenses to the Buyer;
- 18.2.2 no employee of the Buyer or any third party other than those made known to the Supplier and listed in the Schedule of Transferring Staff shall transfer to the Supplier;
- 18.2.3 the Transferring Staff are competent and reasonably skilled and have all the qualifications and experience necessary to perform the Services;
- 18.2.4 the Buyer knows of no reason why any of the Buyer's offices from which services will be provided will have to be relocated;

- 18.2.5 the Buyer has (and has procured that any relevant third parties have) made a full and frank disclosure in writing of any material fact in respect of all of the Transferring Staff and which is relevant to the Supplier's decision to enter into the Call-Off Contract;
- 18.2.6 the Transferring Staff have been paid all emoluments due or accrued on the date of transfer including all bonuses, deferred or otherwise, but excluding accrued holiday entitlements and holiday remuneration of which full particulars shall have been disclosed to the Supplier prior to the date of the Call-Off Contract;
- 18.2.7 the Buyer has (and has procured that any relevant third parties have) complied with its obligations to inform and consult with trade unions, staff associations and other worker representatives;
- 18.2.8 the Buyer has (and has procured that any relevant third parties have) settled all outstanding claims and debts with the Transferring Staff and that there are no claims (whether actual, threatened or foreseeable) which are currently outstanding which have not already been disclosed to the Supplier in writing;
- 18.2.9 in relation to the Transferring Staff:
- (i) there are no actual or threatened industrial disputes which might affect the Transferring Staff;
  - (ii) details of all collective agreements, and the current state of all negotiations and consultations with trade unions or worker representatives have been disclosed to the Supplier and are accurate;
  - (iii) there has been no dismissal connected with a transfer which is not for an economic, technical or organisational reason entailing changes in the workforce;
  - (iv) relevant pension notices due to be given to Transferring Staff have been given or will be given by the Relevant Transfer date;
  - (v) details of all contracts in respect of all permanent and temporary staff which terminate on more than three (3) months' notice have been disclosed to the Supplier;
  - (vi) there are no formal investigations or enquiries being carried out by the Equal Opportunities Commission or the Commission for Racial Equality;
  - (vii) the Buyer has (and has procured that any relevant third parties have) paid all PAYE taxes, NI and other liabilities in respect of Transferring Staff's employment up to the Relevant Transfer date; and
  - (viii) there has been and will be no alteration to the terms and conditions of the employment contracts of any Transferring Staff without the prior written consent of the Supplier.

The above undertakings, warranties and representations shall be deemed to be repeated by the Buyer immediately prior to the Relevant Transfer date.

- 18.3 The Buyer shall indemnify the Supplier for any loss, damage, cost, claims or expenses (including the consequences of any deterioration of the Services and the cost of rectification thereof) arising as a result of any claims or demands by any employee, trade union, staff association or worker's representative in respect of redundancy, unfair dismissal or wrongful dismissal, sexual or racial discrimination or otherwise arising prior to the Relevant Transfer date or as a result of any failure to inform or consult any staff.
- 18.4 The Buyer shall also indemnify the Supplier and keep the Supplier indemnified from any costs the Supplier may incur on account of using any resources from within the European Union following Brexit where it transpires that the Transferring Staff and their dependents do not have a right to reside within the United Kingdom following Brexit.

#### **Exit**

- 18.5 The Buyer agrees that if any obligation under Part B Clause 29 of the Call-Off Contract would cause the Supplier to breach any legal obligation (including any obligation under applicable Data Protection Legislation) or do any unlawful act, the Supplier shall do such things as are reasonably practicable to comply with its obligations without breaching any legal obligation or doing any unlawful act, including, if relevant, providing information in an anonymised form.
- 18.6 The Buyer agrees that:
- 18.6.1 any information to be provided by the Supplier under Part B Clause 29.2 of the Call-Off Contract shall be provided subject to and in accordance with applicable Data Protection Legislation; and
  - 18.6.2 in relation to Part B Clause 29.3 of the Call-Off Contract, the Supplier will only permit the Buyer to use and disclose such information to any prospective Replacement Supplier subject to, and in accordance with, applicable Data Protection Legislation.
- 18.7 If any Relevant Staff do not transfer to the Buyer or the new third party supplier in accordance with the Employment Regulations, the Buyer shall indemnify the Supplier for any redundancy payments or other compensation that is or becomes payable in respect of the Relevant Staff.
- 18.8 The Supplier shall use all reasonable endeavours to re-deploy any Relevant Staff who do not transfer to the Buyer or the new third party supplier in accordance with the Employment Regulations or such other Relevant Staff as the Buyer shall advise.
- 18.9 In respect of any Relevant Staff that transfer to the Buyer or a new third party supplier, the Buyer shall indemnify the Supplier for any loss, damage, cost, claims or expenses arising as a result of any claims or demands by any Relevant Staff, trade union, staff association or worker's representative in respect of redundancy, unfair dismissal or wrongful dismissal, sexual or racial discrimination or otherwise where the cause of the claim or demand arises on or after the Relevant Transfer date save to the extent that the cause of the claim or demand arises as a result of any negligent act or omission of the Supplier.
- 18.10 In addition, and without prejudice to section 18.8 above, the Buyer will indemnify the Supplier for any loss, damage, cost, claims or expenses arising as a result of:
- 18.10.1 its and any new third party supplier's failure to comply with the provisions of this section 18; and
  - 18.10.2 any claim by any employee or person claiming to be an employee (or their employee representative) of the Buyer or any new third party supplier which arises or is alleged to arise from any act or omission by the Buyer or a new third party supplier on or after the Relevant Transfer date.

- 18.11 Part B Clause 29.8 of the Call-Off Contract shall also apply to this section 18 and Part B Clause 27.1 of the Call-Off Contract shall also be construed accordingly.

## **19 CONFIDENTIALITY**

- 19.1 The Buyer shall not unreasonably withhold or delay its approval of any media releases, public announcements and public disclosures by the Supplier or any Supplier Party relating to the Call-Off Contract or its subject matter, including promotional or marketing materials.
- 19.2 Notwithstanding Clause 8.51 of the Framework Agreement (as incorporated by Part B Clause 2.1 of the Call-Off Contract) the Supplier and its Associated Companies shall be entitled to publicly announce that the Buyer is a customer of the Supplier and disclose the same to its present and potential Buyers after signature of the Call-Off Contract without the consent of the Buyer.
- 19.3 The Buyer shall not, and shall procure that its End Users shall not, do anything which may disparage the Supplier, any Supplier Party or the Service Elements (or any part thereof) or portray the Supplier, any Supplier Party or the Service Elements (or any part thereof) in a false, competitively adverse or bad light. The Supplier may terminate the Call-Off Contract for Material Breach where the Buyer or any End User, by any act or omission, causes material adverse publicity relating to or affecting the Supplier, any Supplier Party, the Service Elements (or any part thereof) or the Call-Off Contract. This is true whether or not the act or omission in question was done in connection with the performance by the Buyer of its obligations hereunder.

## **20 SECURITY**

- 20.1 The Buyer confirms that the Supplier is not required to provide a Security Management Plan or an Information Security Management System for the purposes of the Call-Off Contract.
- 20.2 The Buyer agrees to pay for any costs and expenses incurred by the Supplier in carrying out any Supplier Staff vetting required by the Buyer under Part B Clause 4.1 of the Call-Off Contract.
- 20.3 The Buyer agrees to pay for any costs and expenses incurred by the Supplier in carrying out any modifications to the Service Elements in order to ensure that they comply with the Buyer's security policy as required by Part B Clause 13.3 of the Call-Off Contract.
- 20.4 The Buyer agrees to pay for any costs and expenses incurred by the Supplier in complying with any security requirements specified by the Buyer in the Order Form as required by Part B Clause 13.6 of the Call-Off Contract.

## **21 IMPORT/EXPORT**

- 21.1 Equipment, services, software and technical information (including any Content, technical assistance and training) provided, accessed and/or used under this Call-Off Contract may be subject to import and export laws, conventions or regulations, and any use or transfer of the equipment, products, software and technical information must be in compliance with all such laws, conventions and regulations. The Parties will not use, distribute, transfer, or transmit the equipment, services, software or technical information (even if incorporated into other products) except in compliance with such laws, conventions and regulations.
- 21.2 The Supplier shall use its reasonable endeavours, if necessary, to obtain and maintain all necessary governmental authorizations for the delivery of the Service Elements. The Buyer shall provide the Supplier in a timely manner with all information and documents necessary for obtaining governmental authorizations, such as end user statement and program descriptions.
- 21.3 The Buyer shall be solely responsible for complying with import and export control laws, conventions and regulations for all equipment, software or technical information (including any Buyer Elements and Service Elements) that the Buyer or any End User downloads, moves, transfers, re-exports or transmits between countries in its access and/or use of the Buyer Elements and/or the Service Elements.
- 21.4 The Buyer is solely responsible for compliance related to the manner in which the Buyer or any End User chooses to access and/or use the Buyer Account, the Buyer Elements and/or the Service Elements, including the Buyer's or any End User's transfer and processing of Buyer Elements, the provision of Buyer Elements to End Users, and the region in which any of the foregoing occurs.
- 21.5 The Buyer warrants that neither the Buyer Elements nor the Service Elements shall be used for design, development, or production of any nuclear, military, ballistic, biological or chemical weapons.
- 21.6 The Buyer shall inform the Supplier immediately in the event of a breach of such regulations and/or in the event of an investigation by the relevant national authorities.
- 21.7 The Buyer shall be responsible for and shall indemnify, defend and hold the Supplier harmless from and against any and all claims, losses, liabilities, costs, expenses (including reasonable legal fees) and damages in connection with the Buyer's, and any third party authorised by the Buyer (including any End User's), transfer of Controlled Data in connection with the access and/or use of the Service Elements, the Buyer Elements or the Buyer Account.
- 21.8 If due to circumstances attributable to the Buyer, the Supplier is questioned by judicial or administrative authorities, the Buyer shall be held responsible and shall indemnify, defend and hold the Supplier harmless from and against any and all claims, losses, liabilities, costs, expenses (including reasonable legal fees) and damages in connection thereto.
- 21.9 If, without any default of the Supplier, or as a result of a Force Majeure event such as embargoes, unpredictable license refusal by the authorities or unacceptable constraints due to export control regulations for the execution of the Services, the Supplier is unable to deliver the Services (in whole or in part), the Supplier shall not be held liable or responsible and shall be entitled, at its sole discretion, to terminate the Call-Off Contract, in whole or in part.

## **22 NON-SOLICITATION**

- 22.1 While the Call-Off Contract remains in effect, and for a period of twelve (12) months thereafter, the Buyer shall not solicit for employment any employee of the Supplier or any Supplier Party who has been named by the Supplier, works closely with the Buyer and/or was involved in the subject matter of the Call-Off Contract without the prior written agreement of the Supplier. This prohibition shall not prevent the Buyer at any time from running bona fide recruitment advertising campaigns nor from offering employment to any of the Supplier's or a Supplier Party's officers, directors or employees, as the case may be, who may respond to any such campaigns.

## **23 WAIVER AND CUMMULATIVE REMEDIES**

- 23.1 Without prejudice to Clause 8.92 and 8.93 of the Framework Agreement (as incorporated by Part B Clause 2.1 of the Call-Off Contract), the Parties agree that unless a right or remedy of the Supplier is expressed to be exclusive, the exercise of it by the Supplier is without prejudice to the Supplier's other rights and remedies.

## **24 CHANGE IN LAW**

- 24.1 For the avoidance of doubt, the Buyer agrees that although the Supplier may not increase the Framework Agreement prices as a result of a general change in Law or a Specific Change in Law, without prior written approval from CCS, the Supplier will be entitled to charge the Buyer for any additional costs, losses and expenses (whether direct or indirect) incurred as a result of a general change in Law or a Specific Change in Law on a times and materials basis at the Supplier's rates set out in the Framework Agreement or the Call-Off Contract (as the case may be), including any costs in relation to any changes in Law or Specific Changes in Law or regulation arising as a result of Brexit.

## **25 FORCE MAJEURE**

- 25.1 It is acknowledged that Brexit shall not be considered a Force Majeure event, save unless the political, economic or other consequences have, or are liable to have, a material adverse impact upon the ability of the Supplier to provide the Services in accordance with the commercial model that it generated prior to this Call-Off Contract being executed by both parties.

## **26 CORPORATE SOCIAL RESPONSIBILITY**

- 26.1 The Buyer agrees that the Supplier shall be entitled to charge for any costs and/or expenses incurred or assistance provided by the Supplier in connection with its compliance with section 8.91, 8.92, 8.93 dot point 8, Part B Clauses 21.3 to 21.8 of the Call-Off Contract.

## **27 AUDIT**

- 27.1 The Supplier (or any third party appointed by the Supplier) may audit the Buyer's and/or any End User's compliance with the terms of the Call-Off Contract. The Buyer shall (and shall procure that all End Users shall):

- 27.1.1 cooperate with the Supplier (and any third party appointed by the Supplier) with respect to the audit; and
- 27.1.2 provide all reasonable assistance and access to any information that the Supplier may request.

- 27.2 The Supplier shall use its reasonable endeavours to ensure that any such audit does not unreasonably interfere with the Buyer's normal business operations.

- 27.3 Where an audit determines that:

- 27.3.1 the Buyer and/or any End User is accessing and/or using the Service Elements (or any part thereof) in excess of its rights under the Call-Off Contract, the Buyer agrees to pay within thirty (30) days of written notification from the Supplier any charges or fees applicable to its access and/or use of the Service Elements (or any part thereof) in excess of its rights under the Call-Off Contract;
- 27.3.2 the Buyer and/or any End User is in breach of any warranty or obligation under the Call-Off Contract, the Buyer shall, if such breach can be remedied, remedy or, procure the remedy, of such breach within thirty (30) calendar days of receiving written notification from Supplier requiring it to be remedied.

- 27.4 If the Buyer does not pay the charges and fees due under section 27.3.1 or remedy the breach the Supplier may:

- 27.4.1 suspend any right to access and/or use the Service Elements, the Buyer Account or the Buyer Elements or any part thereof (whether by the Buyer and/or any End User); and/or
- 27.4.2 terminate the Call-Off Contract,

immediately on notice to the Buyer without incurring any penalty or liability to the Buyer or any End User.

- 27.5 The Buyer agrees that the Supplier shall not be responsible for any costs the Buyer or any End User may incur in relation to an audit. All the Supplier's costs in relation to an audit shall be borne by the Supplier, save for where section 27.3 or 27.4 apply, in which case the Buyer will reimburse the Supplier for all costs and expenses in relation to such audit on first demand.

## ANNEX 1

### DATA PROTECTION

#### **PART A - WHERE THE SUPPLIER IS NOT PROCESSING PERSONAL DATA**

- 1.1 Where the Buyer and the Supplier have agreed that the Supplier is not Processing Personal Data on behalf of the Buyer in the provision of the Services then the following will apply:
- 1.1.1 The Buyer hereby expressly confirms that, as part of the provision of the Services, it does not transmit to the Supplier any Personal Data (as defined under applicable Data Protection Legislation) and that the Supplier will not be processing, even incidentally, any Personal Data.
- 1.1.2 The Buyer hereby expressly acknowledges and agrees that, should the Supplier identify that, notwithstanding the Buyer's confirmation above, the Services provided involve the processing of Personal Data, then the Supplier shall not be under any responsibility or liability in connection with such processing until such time as the Buyer, upon having been informed by the Supplier that the Supplier has become aware that the provision of the Services involves the processing of Personal Data, provides the Supplier with documented instructions in relation to the processing of such Personal Data and that the parties agree appropriate amendments to the Call-Off Contract, through the Variation procedure, pursuant to such instructions.
- 1.1.3 Should the Buyer decide to request from the Supplier that it processes Personal Data for the purposes of the provision of the Services under the Call-Off Contract, it is expressly agreed between the Parties that:
- (i) such processing of Personal Data will have a direct impact on the delivery of the Services which may require a review and modification of the terms of the Call-Off Contract, including, the scope of the Services, the amount of the Charges and the applicable commercial terms;
  - (ii) they shall negotiate in good faith the necessary modifications to the terms of the Call-Off Contract and any additional Charges related thereto;
  - (iii) subject to any modifications agreed as a result of (ii) above, the applicable data protection provisions in the Call-Off Contract and Part B Section 1 of this Annex 1 of Part A (Main) shall govern the processing of Personal Data;
  - (iv) the Buyer shall provide the Supplier with adequate documented instructions ("**Instructions**") regarding the processing of Personal Data. The Parties agree that the Buyer Instructions shall form part of Annex 1 of Schedule 7 (*GDPR Information*) of the Call-Off Contract which shall also contain details of the approach and technical and organisational measures deployed in relation to data processing including any sub-contract arrangements. Annex 1 of Schedule 7 (*GDPR Information*) of the Call-Off Contract shall be duly completed and agreed by the Parties via the Variation process;
  - (v) the Buyer shall not initiate any transmission of Personal Data to the Supplier prior to the signature of a Variation to the Call-Off Contract governing the processing of personal data as well as any other relevant modification of the terms of the Call-Off Contract and the implementation of the agreed measures regarding the processing of Personal Data.

#### **PART B – WHERE ANNEX 1 OF SCHEDULE 7 OF THE CALL-OFF CONTRACT APPLIES**

##### **SECTION 1 - WHERE THE SUPPLIER PROCESSES PERSONAL DATA**

- 1.1 Where the Buyer and the Supplier have agreed in the section in the Order Form titled "*Personal Data and Data Subjects*" that Annex 1 of Schedule 7 of the Call-Off Contract applies and the Parties have expressly agreed that the Buyer is the Controller and the Supplier is the Processor for the Personal Data processed for the purpose of the provision of the Services under the Call-Off Contract and, unless otherwise agreed in a Variation to the Call-Off Contract, the following will apply in addition to the other applicable data protection provisions in the Call-Off Contract:

##### **BUYER'S PROCESSING**

- 1.2 The Buyer, as Data Controller, shall ensure that any Buyer Personal Data or Service Personal Data processed by the Supplier on its behalf for the purposes of the Call-Off Contract is processed in accordance with applicable Data Protection Legislation and complies with the principles stated in the GDPR. Accordingly, Buyer agrees and confirms that:
- 1.2.1 any Buyer Personal Data and Service Personal Data is processed on the basis of an adequate legal ground as permitted under applicable Data Protection Legislation;
- 1.2.2 any Buyer Personal Data and Service Personal Data is processed for a defined, explicit and legitimate purpose;
- 1.2.3 any Buyer Personal Data and Service Personal Data processed is relevant and non-excessive in consideration of the purpose of the processing;
- 1.2.4 any Buyer Personal Data and Service Personal Data is and will be maintained accurate and up to date for the entire term of the provision of the Services under the Call-Off Contract;
- 1.2.5 a term of retention has been defined for Buyer Personal Data and Service Personal Data, which is legitimate in consideration of the purpose of the processing and the nature of Buyer Personal Data and Service Personal Data processed;
- 1.2.6 complete, clear and accurate information is provided to the Data Subjects whose Personal Data is processed under the Call-Off Contract, including, if relevant, information about the fact that Personal Data may be transferred outside the EU;
- 1.2.7 Data Subjects whose Personal Data is processed under the Call-Off Contract are granted adequate and effective means to exercise their rights with regards to the processing of their Personal Data in accordance with applicable legislation (access, rectification, update, erasure, etc. as applicable);
- 1.2.8 all adequate and necessary formalities, if any, or internal documentation, as per applicable Data Protection Legislation, have been completed with all competent authorities, completed or otherwise retained internally by Buyer;
- 1.2.9 it has conducted all relevant verifications and obtained all relevant information which it deems necessary regarding the Supplier and is satisfied that the Supplier provides sufficient safeguards to process Buyer Personal Data and Service Personal Data in accordance with the requirements of applicable Data Protection Legislation; and
- 1.2.10 it shall maintain a register of data processing activity.

## **BUYER'S PROCESSING INSTRUCTIONS**

- 1.3 As Data Controller, the Buyer shall provide the Supplier with documented instructions "**Instructions**" regarding the processing of Buyer Personal Data and Service Personal Data. The Parties agree that the Buyer's Instructions are a condition for Supplier to be in a position to adequately assist Buyer with complying with its obligations under applicable Data Protection Legislation.
- 1.4 The Buyer's Instructions shall include, at least, a description of the purposes of the processing, the nature of the processing operations conducted on Buyer Personal Data and Service Personal Data, the list of the categories of Personal Data Processed, the categories of Data Subjects whose data is being Processed and the applicable terms of retention of the Buyer Personal Data and Service Personal Data Processed.
- 1.5 The Parties agree that Buyer Instructions shall form part of Annex 1 of Schedule 7 (*GDPR Information*) to the Call-Off Contract and which shall also contain details of the approach and Protective Measures deployed in relation to data processing including any sub-contract arrangements. Annex 1 of Schedule 7 (*GDPR Information*) shall be duly completed by the Parties.
- 1.6 Should the Buyer wish to implement modifications to its Instructions, it shall, in accordance with Part B Clauses 32.1 and 32.3 of the Call-Off Contract, put forward a Variation request. Such Variation request shall be provided in writing to the Supplier and the Supplier shall have at least thirty (30) days in which to evaluate the Buyer's proposed modifications with the Buyer. In the event Buyer requests the implementation of modifications to its Instructions, it is expressly agreed between the Parties that:
  - 1.6.1 such modifications may have a direct impact on the delivery of the Services which may require a review and modification of the terms of the Call-Off Contract, including, the scope of the Services, the amount of the Charges and the applicable commercial terms;
  - 1.6.2 they shall negotiate in good faith the necessary modifications to the terms of the Call-Off Contract as necessary, including, the term of implementation of requested modifications and any additional Charges related thereto;
  - 1.6.3 the parties shall use the Variation procedure under the Call-Off Contract for the purpose of effecting the changes referred to in 1.6.1 and 1.6.2 above.

## **SUPPLIER'S ROLE AND OBLIGATIONS**

- 1.7 Compliance with Buyer's instructions
  - 1.7.1 The Supplier shall process Personal Data on behalf of Buyer only in accordance with the Instructions received from the Buyer as documented in Annex 1 of Schedule 7 (*GDPR Information*) unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Buyer before Processing the Personal Data unless prohibited by Law.
  - 1.7.2 Any modification to, amendment to or replacement of such Instructions by the Buyer shall take place in accordance with the terms of section 1.6 of this Section 1, Part B Annex 1 of Part A (Main) of these Supplier Terms.
  - 1.7.3 If, for whatever reason, the Supplier is unable to comply with Buyer's Instructions in accordance with the above, the Supplier shall inform the Buyer as soon as possible of its inability to comply, in which case, the Buyer shall review and amend its Instructions to allow the Supplier to remain in compliance with its obligations or terminate the Call-Off Contract in accordance with Part B Clause 32.3 of the Call-Off Contract. In such case the parties agree that Part B Clause 18.3 of the Call-Off Contract shall apply.
  - 1.7.4 If the Supplier becomes aware of the fact that all or part of the Buyer's Instructions may constitute an infringement of any applicable Data Protection Legislation or any relevant applicable Law, it shall inform the Buyer of such potential infringement and request revised Instructions, unless applicable Data Protection Legislation or other applicable Law prohibits the provision of such information. The Buyer shall adapt its Instructions, with the reasonable assistance of the Supplier, in order to comply with such legislation. Such modifications may have a direct impact on the delivery of the Services which may require a review and modification of the terms of the Call-Off Contract, including, the scope of the Services, the amount of the Charges and the commercial terms; in which case the Parties shall negotiate in good faith the necessary revisions to the terms of the Call-Off Contract as necessary via the Variation procedure, including, the term of implementation of requested modifications and any additional Charges related thereto.
  - 1.7.5 The Supplier shall in no event be liable or bear any responsibility for any breach of applicable Law (including applicable Data Protection Legislation) for complying with the Buyer's Instructions.
  - 1.7.6 In any event, the Buyer hereby expressly acknowledges and accepts that the Supplier shall not be bound by any Buyer Instructions breaching applicable Law (including applicable Data Protection Legislation). As such, the Supplier shall be entitled to suspend performance of such Instructions until the Buyer conforms or modifies such Instructions. In such a case, the Supplier shall, where possible, provide prior notice to the Buyer of such intended suspension.
- 1.8 Assistance to the Buyer
  - 1.8.1 Data Subjects' rights
    - (i) While the Buyer is responsible for determining the manner in which it responds to Data Subjects requests to exercise their rights under applicable Data Protection Legislation, the Supplier shall, in accordance with Part B Clause 12.2 of the Call-Off Contract, Section 8 of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract) and applicable Data Protection Legislation and taking into account the nature of the processing, assist the Buyer by appropriate technical and organizational measures, insofar as possible, for the fulfilment of the Buyer's obligation to respond to such requests.
    - (ii) Where the Data Subject's request is addressed directly to the Supplier, the Supplier shall promptly inform the Buyer. In such a case, unless duly and expressly agreed between the Parties as part of the Services under the Call-Off Contract, the Supplier shall not directly answer to Data Subject requests.

- (iii) The Supplier shall not be liable in cases where Buyer fails to respond to the Data Subject's request in total, correctly, or in a timely manner.
- (iv) Where the parties have agreed that the Supplier shall be responsible to address Data Subjects requests, the Supplier shall respond to requests in accordance with the terms of the Call-Off Contract relating to such responses as part of the agreed Services.
- (v) The cost of any assistance provided by the Supplier under this section 1.8.1, Part B Clause 12.2 of the Call-Off Contract, Section 8 of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract) or applicable Data Protection Legislation in this regard shall be invoiced and payable by the Buyer at the Supplier's then applicable rates.

#### 1.8.2 Security of processing

- (i) Where Buyer requests and deems necessary, Supplier shall, in accordance with applicable Data Protection Legislation and taking into consideration the nature of the processing, assist Buyer in ensuring compliance with its obligation to define adequate technical and organizational measures to ensure the security and confidentiality of the Personal Data Processed under the Call-Off Contract.
- (ii) The cost of assistance provided by the Supplier under this section 1.8.2 shall be invoiced and payable by the Buyer at the Supplier's then applicable rates and any change to the Services or otherwise to the terms of the Call-Off Contract pursuant to this exercise shall be subject to the Variation procedures under the Call-Off Contract.

#### 1.8.3 Data Protection Impact Assessments

- (i) Any request for assistance under Section 4 of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract) shall be provided by the Buyer (acting reasonably) to the Supplier in writing. The Supplier shall only be obliged to provide the Buyer with information the Supplier has reasonable access to and that is relevant regarding processing of Personal Data performed by the Supplier under the Call-Off Contract, in order to enable the Buyer to complete any reasonably necessary documents – such as the Data Protection Impact Assessment - or to enable the Buyer to comply with its obligations to demonstrate or implement adequate technical and organizational measures for the purpose of ensuring the security of Buyer Personal Data and Service Personal Data. For the avoidance of doubt, the Buyer agrees that the Supplier shall only be obliged to provide an assessment of the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data under Section 4(d) of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract).
- (ii) Any assistance to be provided by the Supplier in relation to Section 4 of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract) or (i) above shall be invoiced and payable by the Buyer at the Supplier's then applicable rates.

#### 1.9 Records of processing activities

- 1.9.1 Without prejudice to the Buyer's own obligation under section 1.2.10 above, the Supplier shall maintain records in accordance with its obligations under the Call-Off Contract.

#### 1.10 Other

- 1.10.1 The Buyer agrees that the cost of any assistance provided by the Supplier under Sections 8(b) and 8(e) of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract) shall be invoiced and payable by the Buyer at the Supplier's then applicable rates.

### **SUB-CONTRACTING**

- 1.11 The Buyer hereby acknowledges and agrees that the Supplier shall be entitled to share Buyer Personal Data and/or Service Personal Data or subcontract (in whole or in part) the Processing for the purpose of the provision of the Services under the Call-Off Contract to any of its Sub-Contractors.
- 1.12 Buyer is hereby duly informed of the identity of the Sub-Contractors, and hereby expressly authorises them, which may be used by Supplier for the provision of the Services as set out in the Order Form and/or Annex 1 of Schedule 7 (*GDPR Information*).
- 1.13 In the event that Supplier intends to use a new subcontractor which is not identified as a Sub-Contractor in the Order Form and/or in Annex 1 of Schedule 7 (*GDPR Information*), it shall follow the process set out in Section 12 of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract).. In order to exercise its right to object to the Supplier's use of such a new subcontractor, the Buyer shall notify the Supplier in writing within ten (10) Working Days after receipt of the Supplier's written notice. In the event the Buyer objects to a new subcontractor with access to Buyer Personal Data and/or Service Personal Data, it shall justify its material or legal reasons for such objection.

### **TRANSFERS OF BUYER PERSONAL DATA TO THIRD PARTY COUNTRIES**

- 1.14 By entering into the Call-Off Contract, Buyer hereby expressly acknowledges and agrees that Buyer Personal Data and Service Personal Data may be transferred to and/or processed by Supplier Sub-Contractors as provided for in *Sub-Contracting* above, including when these entities are located outside the EU.
- 1.15 Supplier and all its Associated Companies are bound by Binding Corporate Rules (Controller and Processor) as approved by the European data protection authorities (the "BCR").
- 1.16 Buyer acknowledges that, in the event that Supplier transfers Buyer Personal Data or Service Personal Data to any Sub-Contractor who is an Associated Company located outside the EU, the BCR constitute a sufficient safeguard to establish that such entity provides an adequate protection to Personal Data as required under applicable Data Protection Legislation.

- 1.17 Where a Sub-Contractor is a Supplier Associated Company, the Supplier shall provide the Buyer with a copy of the BCR listing such Supplier Associated Company as being bound by the BCR, and the Supplier commits to comply with the terms of the BCR. Accordingly, Buyer hereby expressly consents that Buyer Personal Data and Service Personal Data may be transferred to any Supplier Associated Company (agreed as Sub-Contractors in the Order Form or Annex 1 of Schedule 7 (*GDPR Information*)) which are bound by the terms of the BCR. Buyer commits to provide adequate information to Data Subjects regarding use of Supplier as processor (including Supplier Associated Companies located outside the EU) as well as the BCR which are available at [www.atos.net/privacy](http://www.atos.net/privacy).
- 1.18 In addition, Buyer hereby expressly consents that Buyer Personal Data and Service Personal Data may be transferred to a Sub-Contractor, who is not a Supplier Associated Company, located outside the EU.
- 1.19 Where Supplier transfers Buyer Personal Data or Service Personal Data to a Sub-Contractor located outside the EU which does not fall within the scope of the BCR, where the Buyer has approved of such Sub-Contractor in accordance with the Call-Off Contract, Buyer hereby expressly grants Supplier a mandate to enter into any relevant agreements to ensure that the receiving entity implements an adequate level of protection to Buyer Personal Data and Service Personal Data.
- 1.20 Supplier shall ensure that Sub-Contractors (who are not Supplier Associated Companies bound by BCR) provide an adequate level of protection to Buyer Personal Data and Service Personal Data. For that purpose, Supplier shall:
- 1.20.1 procure that any duly authorized Sub-Contractor brought to process Personal Data outside the EU shall enter into and comply with the obligations set out in appropriate standard contractual clauses for the transfer of personal data as set out by the European Commission (or any competent authority) (in particular the European Commission's "Processor" Standard Contractual Clauses pursuant to decision 2010/593) with Buyer or with Supplier in accordance with the mandate granted above; or
- 1.20.2 implement alternative means to the Standard Contractual Clauses in order to ensure an adequate level of protection of Personal Data if acknowledged as appropriate by the competent European or local authorities.
- 1.21 Any assistance to be provided by the Supplier under section 5(d)(iii) of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract) to the Buyer where the Supplier is not bound under the Data Protection Legislation to provide an adequate level of protection to any Personal Data that is transferred shall be invoiced and payable by the Buyer at the Supplier's then applicable rates.
- 1.22 Any instructions provided by the Buyer under section 5(d)(iv) of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract) which are additional to the Instructions to be followed by the Supplier under the Call-Off Contract shall be implemented following the procedure at section 1.6 above.

#### **PROTECTIVE MEASURES**

- 1.23 Application of Protective Measures:
- 1.23.1 Supplier shall apply Protective Measures aimed at preventing accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access to Buyer Personal Data and Service Personal Data as set forth in the security document to be included in Annex 1 of Schedule 7 (*GDPR Information*) or as otherwise referenced or included within the Call-Off Contract.
- 1.23.2 Buyer expressly acknowledges that:
- (i) the Protective Measures defined and applied by Supplier are based on the instructions and information it has received from Buyer which are used to assess and evaluate, with Buyer the risks associated with the processing of Buyer Personal Data and Service Personal Data;
- (ii) it has reviewed the Protective Measures set out in the security document and deems them adequate taking into consideration the risks of the processing and the defined purposes of the processing.
- (iii) where the Buyer rejects the Supplier's Protective Measures or directs the Supplier to implement Protective Measures that, in either case, are a lower standard than that which the Supplier has recommended, the Supplier shall not be held liable or responsible for any Data Loss Events or Personal Data Breaches that occur as a result thereto and the Buyer shall indemnify, defend and hold the Supplier harmless from and against any and all claims, losses, liabilities, costs, expenses (including reasonable legal fees) and damages in connection thereto.
- 1.23.3 The Buyer understands that the Protective Measures are subject to technical progress and further development. In this respect, the Supplier shall be permitted to modify or to use alternative suitable measures save that the Supplier will not materially decrease the overall security of the Services during the term of the Call-Off Contract without the prior written consent of the Buyer.
- 1.24 Modification of Protective Measures further to modification of Buyer Instructions:
- 1.24.1 The Buyer expressly acknowledges and accepts that, in the event that it modifies its processing Instructions, the Protective Measures initially defined and implemented may no longer be adequate to the risks of the processing and the defined purposes of the processing.
- 1.24.2 In such a case, the Buyer acknowledges and agrees that such Protective Measures may need to be adapted and that such adaptations may have an impact on the delivery of the Services and the terms of the Call-Off Contract, including, the amount of the Charges and the applicable commercial terms.
- 1.24.3 The parties shall use the Variation procedure under the Call-Off Contract for the purpose of effecting the changes referred to in 1.24.1 and 1.24.2 above.
- 1.25 Significant security threats and vulnerabilities
- 1.25.1 The Buyer shall inform the Supplier in respect of any particular threats or vulnerabilities that it becomes aware of.



- 1.25.2 The Buyer acknowledges and agrees that significant security threats and vulnerabilities may, from time to time occur and be identified by the Supplier.
- 1.25.3 Where such threats and vulnerabilities result from or are connected to the Buyer's technical or operational decisions (e.g. initial security measures decided, systems implemented, etc.), Supplier shall, without undue delay, notify the Buyer of said threat or vulnerability when it becomes aware of such threat or vulnerabilities. Atos shall, where possible, recommend a course of action or remediation to suppress, mitigate or limit the impact of the threat or vulnerability and the parties shall agree any such changes under the Variation procedure under the Call-Off Contract.
- 1.25.4 Once notified, the Buyer shall instruct the Supplier of its decided course of action without undue delay. In the absence of adequate Buyer instructions, Supplier shall not be required to take any action and shall in no event be held responsible or liable for any security event which may occur and result in a Data Loss Event. Notwithstanding the above, in the event that Buyer's failure to provide adequate instructions causes a threat to Supplier's or any of Supplier's customers' systems or data, Supplier shall be entitled to take any action it deems necessary to protect its or its customers' systems or data. In such a case, Supplier shall notify Buyer of its actions and shall be entitled to invoice such activities at Supplier's then applicable rates.

#### **BREACH OF PERSONAL DATA**

- 1.26 In the event of a Data Loss Event arising during the performance of the Services by the Supplier, Supplier shall, notify the Buyer about the Data Loss Event in accordance with section 6(f) of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract), providing the following:
  - 1.26.1 where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of data records concerned;
  - 1.26.2 the name and contact details of the relevant contact point where more information can be obtained;
  - 1.26.3 where possible, describe the likely consequences of the Data Loss Event;
  - 1.26.4 a description of the measures taken or proposed to be taken by the Buyer to address the Data Loss Event, including, where appropriate, to mitigate its possible adverse effects.
- 1.27 The Buyer, as Data Controller, expressly acknowledges that it is in charge of ensuring compliance with applicable Data Protection Legislation requirements and that it shall bear sole responsibility of completing such obligations (including, notably any formalities such as notifications).
- 1.28 To the extent a Data Loss Event is not the result of a default by the Supplier, the cost of the Supplier's assistance and any measures and/or actions taken by it (including any that may be requested under Section 8(d) of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract) shall be invoiced and payable by the Buyer at the Supplier's then applicable rates.

#### **AUDIT**

- 1.29 Any audit required by the Buyer under Section 10 of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract) shall be:
  - 1.29.1 subject to the Buyer giving the Supplier at least three (3) weeks prior written notice;
  - 1.29.2 limited to no more than once in any twelve (12) month period and not exceed a period of twelve (12) hours;
  - 1.29.3 only be carried out by the Buyer or by an independent duly appointed third party established on the market for its auditing functions and bound by a strict written obligation of confidentiality in Supplier's favour. The Supplier shall be entitled to reject any proposed third party auditor who is a competitor of Supplier or any Associated Company;
  - 1.29.4 shall not hinder or otherwise disrupt in any fashion the Supplier's operations or business activities;
  - 1.29.5 shall only relate to that part of the relevant IT infrastructure which Processes the Buyer Personal Data and Service Personal Data and only be carried out in order to ensure the compliance with its data processing obligations set out in this Call-Off Contract.

The Supplier's assistance in relation to such activity shall be invoiced and payable by the Buyer at the Supplier's then applicable rates.

- 1.30 The Buyer agrees that any amendment made by the Buyer or the CCS, whether such amendment is made under Section 15 of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract) or otherwise, may require other changes to the Call-Off Contract, including to the scope of the Services, the Protective Measures implemented, the Charges or the commercial terms. The Buyer agrees to work with the Supplier via the Variation procedure to implement such other changes required. The Buyer agrees that the Supplier shall be entitled to amend its Charges and commercial terms as a result of any Buyer or CCS amendment.

#### **SECTION 2 - WHERE SUPPLIER IS THE CONTROLLER AND THE BUYER IS THE PROCESSOR**

- 1. Where the Buyer and the Supplier have agreed in the section in the Order Form titled "*Personal Data and Data Subjects*" that Annex 1 of Schedule 7 of the Call-Off Contract applies and the Parties have expressly agreed that the Supplier is the Controller and the Buyer is the Processor for Personal Data (whether in whole or in part) under the Call-Off Contract and, unless otherwise agreed in a Variation to the Call-Off Contract, the following will apply in addition to the other applicable data protection provisions in the Call-Off Contract.
- 2. The Buyer shall process Personal Data on behalf of the Supplier only in accordance with the instructions received from the Supplier as documented in Annex 1 of Schedule 7 (*GDPR Information*) or as otherwise provided to the Buyer by the Supplier unless the Buyer is required to do otherwise by Law. If it is so required the Buyer shall promptly notify the Supplier before Processing the Personal Data unless prohibited by Law.
- 3. The Buyer shall: (i) strictly comply with the Supplier's instructions; (ii) implement Protective Measures aimed at preventing accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access to Personal Data; and (iii) provide all assistance required by the Supplier in its compliance with Data Protection Legislation and Law, all at the Buyer's sole cost.

## **PART C – WHERE THE PARTIES ARE JOINT-CONTROLLERS OF PERSONAL DATA**

1. Where the Buyer and the Supplier have agreed in the section in the Order Form titled “*Personal Data and Data Subjects*” that Annex 2 of Schedule 7 of the Call-Off Contract applies and the Parties have expressly agreed that the Buyer and the Supplier are Joint-Controllers of the Personal Data processed for the purpose of or in relation to the provision of the Services under the Call-Off Contract and, unless otherwise agreed in a Variation to the Call-Off Contract, the following will apply in addition to the other applicable data protection provisions in the Call-Off Contract.
2. In relation to section 1.2 of Annex 2 of Schedule 7 of the Call-Off Contract, the Parties agree to decide how the roles and responsibilities of a Controller are to be shared and who will be responsible for each item set out in such section 1.2. The Parties shall also agree how the responsibilities are to be shared or who is responsible for (whether in whole or in part):
  - 2.1 defining the purpose of Processing Personal Data;
  - 2.2 the legality of the transfer of Personal Data to the other Party;
  - 2.3 the legality of the data Processing;
  - 2.4 the accuracy, quality, legality and reliability of Personal Data, and of the means by which it acquires Personal Data for processing in relation to the Services;
  - 2.5 the assessment of the risks resulting from the Processing of Personal Data; and
  - 2.6 defining the means of Processing.

The Parties will agree and set out clearly their respective responsibilities as Joint-Controllers and the scope related thereto either in the Order Form or by varying the terms set out in Annex 2 of Schedule 7 of the Call-Off Contract. The Parties shall also complete the table in Annex 1 of Schedule 7 (*GDPR Information*) of the Call-Off Contract in this regard and also include details of sub-contracting and Protective Measures implemented.
3. Any assistance to be provided by the Supplier under sections 2.1(c), 2.2 and 5.1(a) of Annex 2 of Schedule 7 of the Call-Off Contract to the Buyer shall be invoiced and payable by the Buyer at the Supplier’s then applicable rates.
4. In relation to sections 2.1(f) and 2.1 (h) of Annex 2 of Schedule 7 of the Call-Off Contract, the Supplier shall apply Protective Measures aimed at preventing accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access to Personal Data as set forth in the security document to be included in Annex 1 of Schedule 7 (*GDPR Information*) or as otherwise referenced or included within the Call-Off Contract. The Buyer expressly acknowledges that it has reviewed the Protective Measures set out in the security document and deems them adequate taking into consideration the risks of the processing and the defined purposes of the Processing.
5. The Parties shall agree instructions for the processing of Personal Data in Annex 1 of Schedule 7 of the Call-Off Contract (the “**Instructions**”). The Parties agree that any modification to the Instructions shall be dealt with in accordance with the Variation procedure set out in Part B Clauses 32.1 and 32.3 of the Call-Off Contract. The Party requesting the modification shall put forward a Variation request. Such Variation request shall be provided in writing to the other Party and the other Party shall have at least thirty (30) days in which to evaluate the proposed modifications with the party requesting them. In the event the implementation of modified Instructions is requested, it is expressly agreed between the Parties that:
  - 5.1 such modifications may have a direct impact on the delivery of the Services which may require a review and modification of the terms of the Call-Off Contract, including, the scope of the Services, the amount of the Charges and the applicable commercial terms;
  - 5.2 they shall negotiate in good faith the necessary modifications to the terms of the Call-Off Contract as necessary, including, the term of implementation of requested modifications and any additional Charges related thereto;
  - 5.3 the parties shall use the Variation procedure under the Call-Off Contract for the purpose of effecting the changes referred to in 5.1 and 5.2 above.
6. Modification of technical and organizational security measures further to modification of Instructions:
  - 6.1 The Parties expressly acknowledge and accept that, in the event that there is a modification of the processing Instructions, the Protective Measures initially defined and implemented may no longer be adequate to the risks of the processing and the defined purposes of the processing.
  - 6.2 In such a case, the Parties acknowledges and agree that such Protective Measures may need to be adapted and that such adaptations may have an impact on the delivery of the Services and the terms of the Call-Off Contract, including, the amount of the Charges and the applicable commercial terms.
  - 6.3 The parties shall use the Variation procedure under the Call-Off Contract for the purpose of effecting the changes referred to in 6.1 and 6.2 above.
7. The Buyer understands that the Protective Measures are subject to technical progress and further development. In this respect, the Supplier shall be permitted to use modify or to use alternative, suitable measures save that the Supplier will not materially decrease the overall security of the Services during the term of the Call-Off Contract without the prior written consent of the Buyer
8. In relation to Sections 2.1(j) and 11 of Annex 2 of Schedule 7 of the Call-Off Contract, any request by the Buyer for the Supplier to delete data held by the Buyer shall be invoiced and payable by the Buyer at the Supplier’s then applicable rates.
9. Not Used.
10. To the extent a Personal Data Breach is not the result of a default by the Supplier, the cost of the Supplier’s assistance and any measures and/or actions taken by it (including any that may be requested under Sections 3.1 and 3.2 of Schedule 7 of the Call-Off Contract) shall be invoiced and payable by the Buyer at the Supplier’s then applicable rates.

11. Any audit required by the Buyer under section 4 of Annex 2 of Schedule 7 of the Call-Off Contract shall be:
- 11.1 subject to the Buyer giving the Supplier at least three (3) weeks prior written notice;
  - 11.2 limited to no more than once in any twelve (12) month period and not exceed a period of twelve (12) hours;
  - 11.3 only be carried out by the Buyer or by an independent duly appointed third party established on the market for its auditing functions and bound by a strict written obligation of confidentiality in Supplier's favour. The Supplier shall be entitled to reject any proposed third party auditor who is a competitor of Supplier or any Associated Company;
  - 11.4 shall not hinder or otherwise disrupt in any fashion the Supplier's operations or business activities;
  - 11.5 shall only relate to that part of the relevant IT infrastructure which Processes the Personal Data and only be carried out in order to ensure the compliance with its data processing obligations set out in this Call-Off Contract; and
  - 11.6 in the event of any audit of any Supplier Staff and/or other Supplier third party premises (including any Supplier Processor Personnel), subject to such Supplier Staff's or other Supplier third party's (including any Supplier Processor Personnel's) terms and conditions, including the payment by the Buyer of any Supplier Staff or other Supplier third party (including any Supplier Processor Personnel) fees, costs, expenses or other charges.

The Supplier's assistance in relation to such activity shall be invoiced and payable by the Buyer at the Supplier's then applicable rates.

12. The Buyer shall permit:
- 12.1 the Supplier, or a third-party auditor acting under the Supplier's direction, to conduct, at the Supplier's cost, data privacy and security audits, assessments and inspections concerning the Buyer's data security and privacy procedures relating to Personal Data, its compliance with Annex 2 of Schedule 7 of the Call-Off Contract, this Part C, the Data Protection Legislation and other applicable Law; and/or
  - 11.2 the Supplier, or a third-party auditor acting under the Supplier's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Buyer so far as relevant to the Call-Off Contract, and procedures, including premises under the control of any third party appointed by the Buyer to assist in the receipt and/or access and/or use of the Services or in relation to the Call-Off Contract.
13. The Supplier may, in its sole discretion, require the Buyer to provide evidence of the Buyer's compliance with section 11.1 above in lieu of conducting such an audit, assessment or inspection.
14. The Buyer agrees that any amendment made to the Call-Off Contract, whether such amendment is made under section 6 of Annex 2 of Schedule 7 of the Call-Off Contract or otherwise, may require other changes to the Call-Off Contract, including to the scope of the Services, the Protective Measures implemented, the Charges or the commercial terms. The Buyer agrees to work with the Supplier via the Variation procedure to implement such other changes required. The Buyer agrees that the Supplier shall be entitled to amend its Charges and commercial terms as a result of any amendment.
15. In relation to 7.1(a) and 7.1(b) of Annex 2 of Schedule 7 of the Call-Off, the Buyer agrees that any audit access shall be provided on the basis of Section 4 of Annex 2 of Schedule 7 of the Call-Off Contract as augmented and clarified by Section 10 of this Part C of Annex 1 of Part A (Main) of the Supplier Terms. The Buyer in addition agrees that, for the purposes of the last sentence of Section 7.1(a) of Annex 2 of Schedule 7 of the Call-Off Contract, the Supplier's reasonable cost shall be capped at £5,000, with any cost above this amount being deemed unreasonable by the parties and being payable by the Buyer to the Supplier at the Supplier's then applicable rates.
16. The Buyer agrees that nothing in section 7 of Annex 2 of the Call-Off Contract shall prevent either Party from joining the other Party as a co-defendant in any such claim before a Court.
16. In relation to section 7.4 of Annex 2 of Schedule 7 of the Call-Off Contract, the Parties will also have regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Supplier.

#### **PART D - WHERE THE BUYER AND THE SUPPLIER ARE INDEPENDENT CONTROLLERS OF PERSONAL DATA**

1. The Parties agree that where any Personal Data is to be recorded in Annex 1 of Schedule 7 (*GDPR Information*) of the Call-Off Contract in accordance with Section 21(c) of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract) such Personal Data shall be recorded in Annex 1 of Schedule 7 (*GDPR Information*) via a Variation to the Call-Off Contract together with any other changes required to the Call-Off Contract as a result thereto, including to the scope of the Services, the Protective Measures implemented, the Charges or the commercial terms.
2. To the extent a Personal Data Breach and/or Data Loss Event is not the result of a default by the Supplier, the cost of the Supplier's assistance and any measures and/or actions taken by it (including any that may be requested under Section 25 of Schedule 4 of the Framework Agreement (incorporation by Part B Clause 2.1 of the Call-Off Contract) shall be invoiced and payable by the Buyer on a times and materials basis at the Supplier's then applicable rates.
3. The Parties agree that:
- 3.1 notwithstanding Section 26 of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract) each Party may also use Personal Data provided by one Party to the other Party as may be required by Law; and
  - 3.2 notwithstanding Section 27 of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract), the Parties may retain or process Personal Data for any period required by Law.

## ANNEX 2

### GENERAL SLA TERMS

#### 1. INTRODUCTION

- 1.1 These General SLA Terms, in combination with the Service Definition and the Order Form, set out the support services and the Service Levels applicable to the Services.

#### 2. SEVERITY LEVELS

- 2.1 Unless otherwise set out in the Order Form, the Supplier will prioritise all Incidents impacting on the Services, at its sole discretion, according to the Severity Levels set out in the Service Definition.

#### 3. SERVICE LEVELS

- 3.1 Unless otherwise agreed by the Supplier in the Order Form, the Supplier shall use its reasonable endeavours to provide the Services in accordance with the relevant Service Levels set out in the Service Definition.
- 3.2 No Service Credits will apply to the Services unless specifically agreed to by the Supplier in the Order Form. If any are agreed in the Order Form, then the mechanism and measurement parameters will be agreed by the Parties. Notwithstanding this any Service Credits agreed will apply to a limited number of critical severity Incidents, be limited to a maximum financial limit proposed by the Supplier, apply to Incidents solely attributable to the Supplier's fault and will be the Supplier's sole financial liability for failing to meet the Service Levels for that critical severity Incident. Any payments made by the Supplier will be deducted from the overall figure set for the Supplier's limitation of liability.
- 3.3 In the event of a dispute arising between the Supplier and the Buyer over any matter relating to Service Credits, such dispute shall be dealt with in accordance with the dispute resolution procedure set out in Clauses 8.68 to 8.77 of the Framework Agreement (as incorporated by Part B Clause 2.1 of the Call-Off Contract).

#### 4. MAINTENANCE

- 4.1 In order for the Supplier to maintain the performance of the Services maintenance work must be undertaken by the Supplier from time to time ("Maintenance"). Such Maintenance may result in the temporary unavailability of individual functions or components of the Services, or of complete access to the Services, as Maintenance is undertaken. The Supplier shall give the Buyer: (i) reasonable advance notice of planned downtimes where possible; and (ii) as much notice as reasonably possible of any unplanned downtimes. The Supplier shall use its reasonable endeavours to ensure that any downtime is kept to a minimum and to off-peak times, notwithstanding this (and subject to the following sentence), the Buyer acknowledges and agrees that the Supplier shall not be liable for any downtime of the Services, whether planned or unplanned, whether during peak or off peak times and whatever the duration of such downtime. The Supplier shall only be liable for any unplanned downtime to the extent such unplanned downtime is solely as a result of an act or omission of the Supplier.

#### 5. BUYER RESPONSIBILITIES, ASSUMPTIONS AND DEPENDENCIES AND SERVICE CONDITIONS AND EXCLUSIONS

- 5.1 The Buyer shall be responsible and liable at its cost for the responsibilities set out in the Call-Off Contract including, without limitation:
- 5.1.1 providing a list of callers authorised to call the Supplier's helpdesk;
  - 5.1.2 ensuring that all authorised callers speak the language that is supported by the Supplier helpdesk. Unless otherwise agreed by the Supplier, this shall be English;
  - 5.1.3 providing a Buyer contact point that the Supplier shall report to in relation to Severity 1 reporting;
  - 5.1.4 providing the Supplier with all reasonable assistance necessary for the Supplier to carry out its responsibilities under the Call-Off Contract, including screen sharing;
  - 5.1.5 unless otherwise agreed by the Supplier, ensuring that all Incidents are logged in English;
  - 5.1.6 ensuring that accurate details of all its End Users and Devices are provided to the Supplier and that the Supplier is updated and provided with any changes thereto promptly;
  - 5.1.7 complying with any support processes (e.g. Incident escalation, standard service requests) defined by the Supplier;
  - 5.1.8 supporting the Supplier's capacity planning process and shall provide the Supplier with such advance notice as the Supplier shall reasonably require in order to absorb significant and/or unusual changes in the load caused by the Buyer's use of the Services so that the Supplier may meet its obligations under the Call-Off Contract, including, but not limited to, informing the Supplier of any significant and/or unusual changes in the number of Buyer End Users and any changes in the intended use by the Buyer and/or its End Users of the Services, e.g. such as adding video processing capabilities;
  - 5.1.9 ensuring that it and its End Users do not access and/or use the Service other than as expressly provided for in the Service documentation provided by Supplier in relation to such Service and the Supplier Terms;
  - 5.1.10 ensuring that it does not allow access and/or use of the Service by more than the authorized number and/or level of End Users or use of more than the authorized number of Devices as set out in the Call-Off Contract;
  - 5.1.11 ensuring that it or its End Users do not allow any third party to access and/or use the Service;
  - 5.1.12 notify the Supplier immediately of it becoming aware of an Incident through the agreed channels;
  - 5.1.13 provide all data, documentation and/or other information in relation to the Incident and answer all questions raised by the Supplier or Supplier Parties (as the case may be) within the timescales specified by the Supplier or the Supplier Party (as the case may be), or if no timescales are specified, in a timely manner;
  - 5.1.14 ensure that the relevant people (including the person who reported the Incident) are available and contactable by the Supplier or the Supplier Party (as the case may be), in relation to the Incident;
  - 5.1.15 ensure that the relevant people (including the person who reported the Incident) are appropriately experienced and qualified to fulfill any tasks required of them by the Supplier or the Supplier Party (as the case may be), in relation to the Incident and have the requisite delegated authority to make decisions where relevant relating to the Incident;
  - 5.1.16 co-operate and comply with the reasonable instructions of the Supplier or the Supplier Party (as the case may be) to enable the Supplier or the Supplier Party (as the case may be) to proceed uninterruptedly with the performance of the Services and the Resolution of Incidents;

- 5.1.17 provide the Supplier or the Supplier Party (as the case may be) with all reasonable assistance necessary for the Supplier to carry out its responsibilities under these General SLA Terms and the Call-Off Contract.
- 5.2 The following Services assumptions and dependencies are made:
  - 5.2.1 authorised callers have the correct skill set, authorisations etc. to report an Incident and to speak with the Supplier; and
  - 5.2.2 the Supplier shall be able to provide a recorded message to callers, at the Supplier's sole discretion, where the Supplier deems an Incident requires a recorded message to be provided (e.g. an Incident which affects many customers and/or end users), so that the Supplier may progress with resolution of such Incident.
- 5.3 Without prejudice to section 15 of Part A (Main) of the Supplier Terms or section 6 of these General SLA Terms, the Services shall not cover, and the Supplier shall not be responsible for any failure to achieve any Service Levels in relation to, any Incidents that arise (either directly or indirectly) as a result of:
  - 5.3.1 accident or neglect by the Buyer, any End User or any third party;
  - 5.3.2 any third party items or services with which the Service is used;
  - 5.3.3 installation, operation or use not in accordance with the Supplier's written instructions, the applicable documentation or the Acceptable Use Policy;
  - 5.3.4 access and/or use in an environment, in a manner or for a purpose for which the Service was not designed;
  - 5.3.5 modification, alteration or repair by anyone other than the Supplier or its authorized representatives; or
  - 5.3.6 installation, access and/or use beyond the licensed use;
  - 5.3.7 Buyer Elements; or
  - 5.3.8 any other causes beyond the Supplier's reasonable control.

For the purposes of section 15 of Part A (Main) of the Supplier Terms, and for the avoidance of doubt, all such Incidents shall be considered relief events and all work required to resolve such Incidents, if agreed by the Supplier that it will deliver such work, shall be charged to the Buyer on a times and materials basis at the Supplier's applicable rates at the time and delivered under a separate agreement between the Parties.

## 6. CLOCK STOP

- 6.1 For the purpose of considering compliance with the Service Levels and Service Level measures, time, including time during the following periods of time shall not count towards the Service Level and shall be considered time when the relevant Service was available:
  - 6.1.1 where the Supplier is awaiting a response or information from the Buyer, an End User or a third party (excluding Supplier Parties) in relation to the matter;
  - 6.1.2 where the Supplier is awaiting the Buyer, an End User or a third party (excluding Supplier Parties) to implement any recommended resolution or complete any required tasks in relation to the matter;
  - 6.1.3 where required for resolution of an Incident the time during which the person who reported the Incident or, in their absence, any person who might reasonably provide information in respect thereof cannot be contacted by the Supplier;
  - 6.1.4 where the Supplier cannot gain access to the relevant site or component(s);
  - 6.1.5 any period of planned or unplanned maintenance (save to the extent any unplanned maintenance is necessary solely as a result of an act or omission of the Supplier);
  - 6.1.6 where the Incident is due to Buyer, End User or third party default (including, but not limited to, Buyer error, e.g. poor configuration);
  - 6.1.7 where the Incident is as a result of the failure of anything beyond the reasonable control of the Supplier, including, but not limited to, systemic power outages, failure of public utility providers etc.;
  - 6.1.8 where section 15 of Part A (Main) of the Supplier Terms, section 5.3 of these General SLA Terms applies or there is an event of Force Majeure; and
  - 6.1.9 time outside of the relevant Supplier helpdesk and support availabilities.

### ANNEX 3 ACCEPTABLE USE POLICY

This **ACCEPTABLE USE POLICY** sets out a non-exhaustive list of prohibited access to and/or use of the Buyer Account, the Buyer Content and the Service Elements. By accessing and/or using the Buyer Account, the Buyer Content and/or the Service Elements, the Buyer agrees to comply with (and to procure that its End Users comply with) the terms of this Acceptable Use Policy.

The Buyer is responsible for breaches of this Acceptable Use Policy by it, its End Users and by any third party who accesses and/or uses the Buyer Account, the Buyer Content and/or the Service Elements (where such third party is acting on behalf of the Buyer and/or any End User or where such third party access and/or use is as a result of a Buyer and/or End User act, omission or default). Any breach of this Acceptable Use Policy is deemed to be a Material Breach.

If a violation of this Acceptable Use Policy occurs, the Supplier may suspend or terminate the Buyer's and/or any End User's access to and/or use of the Buyer Account, the Buyer Content and/or the Service Elements (or any part thereof) in accordance with the terms of the Call-Off Contract and the Buyer shall indemnify the Supplier and Supplier Parties in accordance with section 12.2 of Part A (Main) of the Supplier Terms.

Unless otherwise defined herein, all capitalised terms used within this Acceptable Use Policy shall have the same meaning as ascribed to such terms in the Call-Off Contract or the Supplier Terms (as the case may be) and this Acceptable Use Policy shall be deemed by the Supplier and the Buyer to be subject to and form part of the Call-Off Contract.

#### 1. ILLEGAL, HARMFUL OR OFFENSIVE USE OR CONTENT

The Buyer and its End Users shall not access and/or use or encourage, promote, facilitate or instruct others to access and/or use the Buyer Account, the Buyer Content or the Service Elements for any illegal, harmful or offensive use, or to transmit, store, display, distribute or otherwise make available Content (including any links to any Content) that is illegal, harmful, or offensive, or in each case which the Supplier in its reasonable opinion believes is so, including, but not limited to, the following:

##### 1.1 Activities

- 1.1.1 any illegal activities, including, offering, advertising, transmitting, disseminating, promoting or otherwise making available illegal sites, services, goods, schemes or promotions;
- 1.1.2 any activities that may be harmful to the Supplier's, any Supplier Party's or to any third party's systems, operations or reputation, including: (i) distributing any virus or worm or other harmful code; (ii) hacking or perpetrating any security breach; (iii) unauthorized access to any device, computer, network or system; (iv) violating the privacy rights, publicity rights and/or Intellectual Property Rights of the Supplier, any Supplier Party or any third party (v) "mirroring" or "framing" of any part of the Service Elements or creating internet links to the Service Elements which include log-in information, user names, passwords, and/or secure cookies; (vi) introducing Content with the purpose of deliberately overloading the Supplier's, any Supplier Party's or any third party's system; (vii) using the Service Elements (or any part thereof) in the operation of a service bureau or time sharing service; (viii) using Internet relay chat ("IRC"), including hosting of an IRC server, running IRC bots, use of a Supplier server as an IRC client or proxy, and use of IRC scripts or programs that interfere with service to other users on any server or network;
- 1.1.3 any activities that are abusive, deceptive, pornographic, obscene, defamatory, slanderous, offensive, threatening or otherwise inappropriate;

##### Content

- 1.1.4 any Content that constitutes, depicts, fosters, promotes or relates in any manner to child pornography, bestiality, or non-consensual sex acts;
- 1.1.5 any Content that is excessively violent or that incites or threatens violence or is harassing;
- 1.1.6 any Content that creates a risk to a person's or to public safety or health or compromises national security (including any information that would assist the construction of explosive, radioactive or other devices that could form a weapon) or interferes with an investigation by law enforcement;
- 1.1.7 any Content that violates the privacy rights, publicity rights and/or Intellectual Property Rights of the Supplier, any Supplier Party or any third party;
- 1.1.8 any Content that may damage, interfere with, intercept or expropriate any system, program or data, including viruses or Trojan horses
- 1.1.9 any Content that is obscene, abusive, malicious, fraudulent or otherwise objectionable or may result in retaliation, including against the Supplier, its lessors, Supplier Party, the Service Elements or any third party by offended persons; or
- 1.1.10 any Content that is otherwise illegal or solicits or promotes conduct that is illegal under any law.

#### 2 SECURITY VIOLATIONS

- 2.1 The Buyer and its End Users shall not access and/or use, or encourage, promote, facilitate or instruct others to access and/or use the Service Elements, the Buyer Content or the Buyer Account in a manner that would compromise or harm the security or integrity of any information technology service or system (including any network, computer, device, communication system or software application), including by means of:
  - 2.1.1 unless otherwise agreed, any API other than that made available by the Supplier;
  - 2.1.2 unauthorised access and/or use, including attempting to probe, scan, or test the vulnerability of any information technology service or system or to breach any security or authentication measures used by any information technology service or system;
  - 2.1.3 the monitoring of data or traffic without permission; or
  - 2.1.4 fraud or other forms of misrepresentation.

#### 3 NETWORK ABUSE

- 3.1 The Buyer and its End Users shall not make network connections or encourage, promote, facilitate or instruct others to make network connections to any users, hosts or networks without the prior written permission of such user, host or network, including where such connection is used for or is intended to be used for:

- 3.1.1 monitoring or crawling any information technology service or system which impairs or disrupts it from being monitored or crawled;
- 3.1.2 issuing excessive and unnecessary communications requests to a target which impede it responding to genuine traffic or cause it to respond slowly such as to become ineffective;
- 3.1.3 interfering with the proper functioning of an information technology service or system in any way, including by any attempt to overload the service or system;
- 3.1.4 operating network services like mail relays, recursive domain name servers or open proxies; or
- 3.1.5 using manual or electronic means to evade incurring fees or, without limitation, any use access, device or storage limitations.

#### **4 MESSAGE ABUSE**

- 4.1 The Buyer and its End Users shall not and shall not encourage, promote, facilitate, instruct or allow others to:
  - 4.1.1 distribute, publish, send or issue (whether directly or indirectly) any unsolicited mass email, or other messages, solicitations, advertising, or promotions (e.g. "spam") for any purpose, whether legal or illegal;
  - 4.1.2 take any action that leads to a Spamhaus listing for any Supplier, Supplier Party or third party IP address or in relation to the Buyer's own IP addresses. If any action results in a Spamhaus listing, the Buyer shall cooperate with the Supplier, at its own expense, in clearing the IP address(es) from the Spamhaus RBL (and such assistance does not limit any other rights or remedies of the Supplier);
  - 4.1.3 alter, obscure or otherwise tamper with mail headers or assume a sender's identity without the sender's prior written permission;
  - 4.1.4 use an internet account or computer without the owner's authorization, including, but not limited to internet scanning (tricking other people into releasing their passwords), password robbery, security hole scanning, and port scanning; or
  - 4.1.5 collect replies to messages sent from the Supplier, any Supplier Party or any third party in breach of this Acceptable Use Policy or the policies and/or procedures of the Supplier, a Supplier Party or third party (as the case may be).

#### **5 COMPLETE DEVELOPMENT ENVIRONMENT**

- 5.1 Where a complete development environment is offered as part of a Service, it is offered exclusively as an installation, configuration, development and staging platform for testing and development purposes only. It is strictly forbidden to use a complete development environment in a live, production or service delivery environment.

#### **6 OTHER**

- 6.1 The Buyer and its End Users shall not access and/or use the Service Elements, the Buyer Account or the Buyer Content for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes, nor shall the Buyer or any End User provide information to third parties that could assist in such monitoring or benchmarking.
- 6.2 The Buyer and its End Users shall not use any shared system provided by the Supplier or a Supplier Party in a way that unnecessarily interferes with the normal operation of the shared system, or that consumes a disproportionate share of the resources of the shared system as may be set out in the relevant Services Description or the Order Form. Where this is not set out in the relevant Services Description or the Order Form, what constitutes an interference with the normal operation of a shared system or what constitutes consumption of a disproportionate share of the resources of the shared system shall be determined in accordance with market practice.
- 6.3 The Buyer agrees that the Supplier may quarantine or delete any Buyer Content (or any part thereof) stored on a shared system if the Buyer Content (or any part thereof) is infected with Malicious Software, a virus, or is otherwise corrupted, and has the potential to infect or corrupt the shared system or other Content that is stored on the shared system.

#### **7 ENFORCEMENT**

- 7.1 The Supplier reserves the right (but is not obliged), to investigate any breach of this Acceptable Use Policy or any inappropriate access and/or use of the Service Elements, the Buyer Content and/or the Buyer Account at any time, and as a consequence of which the Supplier may:
  - 7.1.1 block or disable the Buyer's or any End User's access and/or use of the Service Elements, the Buyer Account and/or the Buyer Content; or
  - 7.1.2 modify any Content used by the Buyer or any End User that is in breach of this Acceptable Use Policy or the Call-Off Contract;
  - 7.1.3 suspend or terminate the provision of the Service Elements or the Buyer Account in accordance with the terms of the Call-Off Contract;
  - 7.1.4 investigate and/or report any illegal, harmful or offensive Content, activity, access and/or use to the appropriate authorities or third parties; or
  - 7.1.5 co-operate with the appropriate authorities and/or third parties in relation to any investigation and provide them with such information as they may require for the purposes of their investigations without notifying the Buyer or any End User.

#### **8 REPORTING**

If the Buyer and/or any End User become aware of any actual or likely breach of this Acceptable Use Policy the Buyer shall, and the Buyer shall procure that any End User shall, notify the Supplier immediately and provide the Supplier with all information relating to any such actual or likely breach and assist the Supplier, as reasonably requested, to stop or remedy such breach.

To report any breach of this Acceptable Use Policy, please contact: [gcloud@atos.net](mailto:gcloud@atos.net)

#### **9. DISCLAIMER**

The Supplier is under no duty, and does not by this Acceptable Use Policy undertake a duty, to monitor or police the Buyer's and/or any End User's activities or Content. The Supplier has no obligation to any third party who has not entered into an agreement with the Supplier for the Service Elements other than as required by law.

## ANNEX 4

### THIRD PARTY AGREEMENTS

#### 1. THIRD PARTY AGREEMENTS - GENERAL

- 1.1 The services, content and equipment used to provide the services detailed in Schedule 1 of the Call-Off Contract include Third Party Services, Third Party Content and/or a Third Party Environment ("Third Party Elements") provided by [insert details] ("insert details") (a "Cloud Services Provider"). As such:
- 1.1.1 the Third Party Elements included in Schedule 1 of the Call-Off Contract are supplied subject to the terms and conditions of the Cloud Services Provider Third Party Agreement as detailed in Appendix A hereto or as otherwise provided to the Buyer but as if the Supplier (or the Cloud Services Provider where the Third Party Agreement for the Third Party Elements requires a direct contractual relationship between the Cloud Services Provider and the Buyer) and the Buyer were the parties to them. THE THIRD PARTY ELEMENTS WILL CONFER UPON THE BUYER ONLY SUCH GUARANTEE, WARRANTIES, INDEMNITIES AND REMEDIES AS IS PROVIDED BY THE CLOUD SERVICES PROVIDER AS SET OUT IN THE THIRD PARTY AGREEMENT FOR THE THIRD PARTY ELEMENTS. THE REQUIREMENTS REGARDING THE SERVICES SET OUT IN THE CALL-OFF CONTRACT (OTHER THAN AS DETAILED IN THE THIRD PARTY AGREEMENT FOR THIRD PARTY ELEMENTS) SHALL NOT APPLY TO THE THIRD PARTY ELEMENTS UNLESS OTHERWISE SPECIFIED IN APPENDIX A OR AGREED TO IN WRITING BY THE PARTIES.
- 1.1.2 The Buyer shall sign (and shall procure that End Users sign) any required agreement or document detailing any or all of the Third Party Agreement(s) for the provision of the Third Party Elements with the Supplier or the Cloud Services Provider as detailed in Appendix A or as otherwise required by the Supplier or the relevant Cloud Services Provider.
- 1.1.3 The Buyer agrees that the [following provisions of the Call-Off Contract: [list provisions]/the provisions of the Call-Off Contract] shall not apply to the Cloud Services Provider or be required to be included by the Supplier in the Supplier's agreements with the Cloud Services Provider in relation to the Third Party Elements.
- 1.1.4 The Buyer agrees that notwithstanding any other provision of the Call-Off Contract, the Cloud Service Provider's [data processing addendum/data protection terms located at/contained in: [insert details]], as may be updated from time to time, shall apply when the GDPR applies to the Buyer's access and/or use of the Cloud Service Provider's Third Party Elements to process Buyer Personal Data and Service Personal Data. As a result any provisions in the Call-Off Contract which must be included in sub-processing agreements by the Supplier shall not apply to the Cloud Services Provider or the Supplier's agreements with the Cloud Services Provider in relation to the processing of Buyer Personal Data and Services Personal Data or in relation to the Third Party Elements. The Parties agree that this satisfies the requirements in section 12 of Schedule 4 of the Framework Agreement (incorporated by Part B Clause 2.1 of the Call-Off Contract).
- 1.1.5 The Buyer shall provide sufficient notice to, and obtain sufficient consent and authorization from, End Users and any other party providing Personal Data to the Cloud Service Provider (whether directly or via the Supplier) to permit the Processing of the data by the Cloud Services Provider, and its affiliates, subsidiaries, and service providers as contemplated by this Call-Off Contract and this Annex 4.
- 1.1.6 The supply of Third Party Elements is subject to the Buyer complying with the obligations and requirements for users of those Third Party Elements as detailed in the relevant Third Party Agreement for the Third Party Elements. Insofar as the Buyer has any obligations in respect of this Annex 4 or any Third Party Agreement it shall procure that its Associated Companies, End Users and any third parties acting on its or their behalf comply with the obligations of the Buyer.
- 1.1.7 The Buyer agrees that it shall be the Buyer's responsibility to ensure that it checks any links referenced in this Call-Off Contract and in the Third Party Agreement for the Third Party Elements for any amendments or updates thereto.
- 1.1.8 The Supplier shall be entitled to modify any part of this Annex 4 (including any appendices attached hereto) at any time to reflect any modifications made by the Cloud Services Provider to its terms of supply or to reflect any terms specific to any region in which any Third Party Elements are being procured and/or provided. The Supplier shall provide the Buyer with notice of any modifications in accordance with Part B Clause 20 of the Call-Off Contract, and each such modification shall be deemed to be effective on the effective date set out in the applicable notice. The Cloud Services Provider shall be entitled to modify its terms of supply in accordance with its terms. Any modifications made by the Cloud Services Provider to its terms of supply which are stated to be the Buyer's responsibility to monitor shall not be notified by the Supplier and shall be deemed to take effect on the date such Cloud Services Provider states as the effective date for such modifications.

#### Appendix A

[insert Third Party Agreement terms]



## PART B – IT SERVICES

### IT SERVICES SUPPLIER TERMS

#### 1. INTRODUCTION

- 1.1 Where the Services ordered by the Buyer include or are solely IT Services, then the sections set out in this Part B (IT Services) shall also apply in addition to Parts A (Main) and G (Definitions) of the Supplier Terms to that part of the Services which are comprised of the provision of such IT Services.

#### 2. SCOPE OF THE SERVICES AND IT SERVICES DELIVERABLES

- 2.1 The Order Form will detail the Services ordered by the Buyer which are IT Services and any IT Services Deliverables to be provided thereto. The Supplier will deliver the ordered Services which are IT Services in accordance with the relevant Service Definition.

- 2.2 Any support and maintenance services to be provided under an Order Form shall be set out in the Order Form in question.

#### 3. TIMESCALE

- 3.1 Where the Parties have agreed to an implementation plan and/or an exit plan and off-boarding plan in the Order Form, the Supplier shall use its reasonable endeavours to meet the implementation plan and/or exit plan and off-boarding plan and milestone dates (if any) agreed with the Buyer in the Order Form. The implementation plan and/or exit plan and off-boarding plan and milestone dates are subject to any assumptions and dependencies the Supplier has raised with the Buyer and to the Buyer's compliance with the Buyer responsibilities.

#### 4. ACCEPTANCE

##### *IT Services Deliverables that are software*

- 4.1 When the Supplier has completed any separate IT Services Deliverables, and the Buyer and the Supplier have each agreed in the Order Form that the IT Services Deliverables shall be subject to acceptance testing, the Buyer, with the Supplier's cooperation and assistance, may conduct Acceptance Tests to verify whether the IT Services Deliverables meet the Acceptance Test Criteria and therefore substantially conform to the applicable Specifications. Any such acceptance testing shall be carried out within five (5) days after the Supplier has supplied the relevant IT Services Deliverable, or such other period as the parties may each agree, (the "**Acceptance Period**"), to test the IT Services Deliverable. If the Buyer notifies the Supplier of any Non-Conformity in an IT Services Deliverable in writing within the Acceptance Period, the Supplier shall use its reasonable endeavours to correct such Non-Conformity at its own expense and shall notify the Buyer when the corrections are complete. The Buyer then shall have the right to test the corrected IT Services Deliverable within five (5) days of receipt ("**Further Acceptance Period**"). If the Buyer notifies the Supplier of a second occurrence of the same Non-Conformity within the Further Acceptance Period the Supplier shall work diligently to remedy the Non-Conformity and when such Non-Conformity is corrected the Buyer and the Supplier shall re-test the relevant part of the IT Service Deliverable in accordance with the procedure set out above. The Buyer and the Supplier may agree that certain Non-Conformities will be corrected after Acceptance of an IT Service Deliverable during the post-implementation period. The Supplier's maximum liability to the Buyer for failing to use reasonable endeavours to correct such Non-Conformity shall be to refund the fees and expenses paid by the Buyer to the Supplier for the IT Services Deliverable or portion of the IT Services Deliverable that is non-conforming.
- 4.2 Notwithstanding section 4.1 above, the Buyer shall not withhold or delay acceptance where any defect is a Minor Defect.
- 4.3 In the event that a Non-Conformity arises out of: (i) any act or omission by the Buyer; (ii) the inaccuracy, incompleteness, incompatibility or otherwise of any information or data supplied by the Buyer; (iii) any breach by the Buyer of the Buyer's other obligations under the Call-Off Contract; (iv) the failure of any software or any equipment to perform in accordance with their relevant product description; (v) any assumption or dependency being incorrect; (vi) the Buyer Elements; or (vii) the performance of the Buyer's systems, then the Supplier shall not be responsible or liable for any such Non-Conformity and the Buyer shall accept the IT Services Deliverable (or relevant part thereof) and promptly pay to the Supplier the Charges that would otherwise have been due had such Non-Conformity not arisen. At the Buyer's request and cost the Supplier shall prepare a proposal to correct any such Non-Conformity which may include a work around or a change to the Specification and the Charges.
- 4.4 Notwithstanding anything else in the Call-Off Contract, an IT Services Deliverable shall be deemed to have been accepted on the earliest of:
- 4.4.1 at the end of the Acceptance Period, where the Buyer does not notify the Supplier of any Non-Conformity within the Acceptance Period;
  - 4.4.2 where section 4.3 applies, completion of the Acceptance Tests, notwithstanding unsuccessfully;
  - 4.4.3 the Buyer being in material default of its obligations in relation to the Acceptance Tests;
  - 4.4.4 the Buyer instructing or otherwise requiring the Supplier to use the IT Services Deliverable other than for testing purposes; or
  - 4.4.5 the Buyer using the IT Services Deliverable or any part thereof, or instructs or otherwise requires the Supplier to use the IT Services Deliverable or any part thereof, for any purpose other than for testing purposes.

##### *All other Deliverables*

- 4.5 The Buyer shall be deemed to have accepted all other IT Services Deliverables on delivery.

#### General

- 4.6 Without prejudice to section 15 of Part A (Main), in the event that delivery or installation of the IT Services Deliverables (or any part thereof) cannot be affected or Acceptance Tests cannot be conducted by reason of some material act, omission or default of the Buyer, an End User or any third party acting on behalf of the Buyer or an End User, that portion of the Charges as specified in the Order Form that are due upon delivery or installation or acceptance of the IT Services Deliverables (or relevant part thereof) shall be due and payable on the date that the Supplier notifies the Buyer that it is able to effect delivery or installation or on the date the Supplier notifies the Buyer of the IT Services Deliverables' (or relevant part thereof) readiness for acceptance testing, as the case may be.

- 4.7 To the extent that any IT Services Deliverables (or any part thereof) are or have been accepted by the Buyer at any stage of the Supplier's performance, such IT Services Deliverables (or the relevant part thereof, as the case may be) shall be deemed accepted by the Buyer and the Supplier shall be entitled to rely on such approval for purposes of all subsequent stages of its performance under the Call-Off Contract.
- 4.8 The Supplier makes no representation and gives no warranty that any system or software delivered as part of or as an IT Services Deliverable by it will be error-free or operate in an uninterrupted manner, that it shall recognise the Euro as currency, or that defects in such system or software can be corrected. Unless otherwise agreed, the Buyer shall load and use such system and software at its own risk.
- 5. RISK OF LOSS**
- 5.1 All IT Services Deliverables shall become the Buyer's responsibility to protect from loss, damage or destruction on delivery to the Buyer and the Buyer assumes such responsibility and the related risk. IT Services Deliverables shall be considered delivered either when the Buyer takes physical possession of them directly from the Supplier, when they are stored at the Buyer's premises, when they are mailed to the Buyer by registered post, or when they are physically transferred to a common carrier for shipment to the Buyer whichever is the earlier. Further, the Buyer agrees that: (i) the Supplier shall not be liable for any such loss, damage or destruction relating to the IT Services Deliverables; and (ii) replacement or other reworking of any IT Services Deliverables which are lost, damaged or destroyed after delivery to the Buyer shall be at the Buyer's sole cost.
- 6. INTELLECTUAL PROPERTY RIGHTS**
- 6.1 In relation to any IT Services Deliverables the following shall apply in addition to Part B Clause 11 of the Call-Off Contract and Section 11 of Part A (Main) of the Supplier Terms:
- 6.1.1 Subject to Part B Clause 11.2 to 11.4 of the Call-Off Contract and sections 11.2 to 11.5 and section 11.7 of Part A (Main) of the Supplier Terms, the Supplier shall grant the Buyer a worldwide, revocable, non-exclusive, non-sub-licensable, non-transferrable licence to use the IT Services Deliverables for the Buyer's internal business activities only. To the extent that any Supplier Content is incorporated into the IT Services Deliverables, the Supplier shall grant the Buyer a worldwide, revocable, non-exclusive, non-sub-licensable, non-transferrable licence to use such Supplier Content solely as part of the IT Services Deliverables. The Customer shall not disclose, provide access to, sub-licence, disassemble, decompile, reverse engineer, modify or transfer any Supplier Content to an Associated Company or third party without the Supplier's prior written consent.
- 7. KEY PERSONNEL**
- 7.1 Where individuals to be involved in delivering the Services are named in the Order Form, the Supplier shall use reasonable endeavours to ensure that they are so involved. The Supplier may substitute those identified for others of equal or similar skills at its sole discretion. The Supplier reserves the right to maintain reasonable access to its employees working on any engagement as the Supplier may require for its internal business purposes.
- 8. GENERAL**
- 8.1 The Supplier may supply written advice or confirm oral advice in writing or deliver a final written report or make an oral presentation on completion of the Services or any part thereof. Prior to completion of the Services or any part thereof the Supplier may supply oral, draft or interim advice or reports or presentations but in such circumstances the Supplier's written advice or the Supplier's final written report shall take precedence. No reliance shall be placed by the Buyer on any draft or interim advice or report or any draft or interim presentation. Where the Buyer wishes to rely on oral advice or on an oral presentation, the Buyer shall inform the Supplier and the Supplier shall supply documentary confirmation of the advice concerned.
- 8.2 Without prejudice to section 3 of Part A (Main), the Supplier shall not be under any obligation in any circumstances to Update any advice, report or any product of the Services, oral or written, for events occurring after the advice, report or product concerned has been issued in final form.
- 8.3 Any product of the Services released to the Buyer in any form or medium shall be supplied by the Supplier on the basis that it is for the Buyer's benefit and information only and that it shall not be copied, referred to or disclosed (save for its own internal purposes or as permitted under the Call-Off Contract) in whole or in part, without the Supplier's prior written consent. Where the Buyer discloses in whole or in part any product of the Services (for its own internal purposes, as permitted under the Call-Off Contract or otherwise) to the fullest extent permitted by law the Supplier accepts no responsibility or liability towards the recipients of such disclosure in connection with the Services or otherwise. Any advice, opinion, statement of expectation, forecast or recommendation supplied by the Supplier as part of the Services shall not amount to any form of guarantee that the Supplier has determined or predicted future events or circumstances.
- 9. MODIFICATIONS**
- 9.1 For that part of the Services that consist of the provision of the IT Services:
- 9.1.1 The definition of "Service Elements" in Part G of the Supplier Terms shall include the IT Services Deliverables and Part A (Main) of the Supplier Terms shall be construed accordingly.

## PART C – SECONDMENT

### SECONDMENT SERVICES SUPPLIER TERMS

#### 1. INTRODUCTION

- 1.1 Where the Services ordered by the Buyer include or are solely resourcing services on a secondment basis, then the sections set out in this Part C (Secondment) shall also apply in addition to Parts A (Main) and G (Definitions) of the Supplier Terms to that part of the Services which are comprised of the provision of such resources on a secondment basis.

#### 2. SCOPE OF THE SERVICES

- 2.1 The Buyer and the Supplier shall agree the number of individuals (the “**Secondee(s)**”) to be provided by the Supplier on a temporary basis to assist the Buyer with its project as agreed in the Order Form (the “**Project**”). The provision of the Secondee(s) shall constitute the “**Services**” for that part of the Services which comprise of the provision of resourcing services on a secondment basis only.
- 2.2 The description of required capability, time period of his/her appointment and the level grade of the Secondee(s) will be agreed between the Parties. The Secondee(s) to be provided will be set in the Order Form as:

The Supplier shall be responsible for providing Secondee(s) who have the capability to undertake the following tasks:

Role	Description of required capability	Name of Secondee(s)
Role 1	[Describe the tasks envisaged by the Buyer that the Secondee(s) will be required to perform]	[Insert Name of Supplier Secondee(s)]
Role 2	[Describe the tasks envisaged by the Buyer that the Secondee(s) will be required to perform]	[Insert Name of Supplier Secondee(s)]

and such ancillary tasks as the Buyer may reasonably and properly require or direct them to perform (the “**Role**”).

- 2.3 The Secondee(s) shall be based at the Buyer’s premises agreed in the Order Form for the purpose of performing the Role but the parties may agree that the Secondee(s) shall work at other premises from time to time at the Buyer’s cost.
- 2.4 Without prejudice to the foregoing, the Supplier shall agree with the Buyer prior to permitting the Secondee(s) to take any holiday and shall pay due regard to the requirements of the Project prior to giving permission to the Secondee(s) to take any holiday, whilst ensuring that they take such holiday as they are entitled to.
- 2.5 In performance of the Role the Secondee(s) method of work shall be their own and no Supplier methodologies will be available for their use.
- 2.6 In the performance of the Role, the Buyer acknowledges the Secondee(s) method of work to be their own.
- 2.7 The Supplier shall set out who shall be the Supplier’s Service Delivery Manager who will be the Buyer’s contact for matters arising in relation to the Services which comprise the provision of resourcing services on a secondment basis. Unless otherwise agreed in writing by the Parties the Supplier’s Service Delivery Manager will not be managing the day-to-day activities of the Secondee(s).

#### 3. TIMESCALE

- 3.1 The Supplier shall use its reasonable endeavours to provide the Secondee(s) in accordance with the timetables agreed in the Order Form.
- 3.2 The rate applicable for the Secondee(s) will be as set out in the Order Form or in the Charges description for the Service (as the case may be). Any overtime or weekend work required will be agreed between the Parties.
- 3.3 Should any of the Secondee(s) be unavailable the Supplier shall provide suitable alternates in accordance with section 5.2 of this Part C (Secondment) of the Supplier Terms.

#### 4. ADDITIONAL BUYER RESPONSIBILITIES

- 4.1 In addition to the other responsibilities of the Buyer under the Call-Off Contract, the Buyer is responsible at its cost for:
- 4.1.1 before the Secondee(s) commence their Role for the Buyer, Supplier will have proposed the Secondee(s) as suitable candidates for the Role and the Buyer will have investigated the Secondee(s) suitability and competence;
  - 4.1.2 the Buyer is responsible for making all decisions with respect to its Project and will retain overall control of the Project and is responsible for the delivery of the Project to its target quality levels and completion dates. The Buyer appreciates that the Supplier has no responsibility for the day-to-day management of the Secondee(s) as they undertake their Roles. So, the Secondee(s) are provided by the Supplier to the Buyer on the basis and understanding that the Buyer or its designated representative shall be responsible for the day-to-day management, supervision and task setting of the Secondee(s) in accordance with reasonable management practice whilst they are performing the Role;
  - 4.1.3 the work performed by the Secondee(s) and any product thereof shall not have any approval, deemed or otherwise, from the Supplier. Any advice given by the Secondee(s) to the Buyer will at all times be given by the Secondee(s) solely in an individual capacity;
  - 4.1.4 no Supplier trade-marks will be used by the Secondee(s) without the Supplier’s prior written consent;
  - 4.1.5 the Buyer will ensure that work performed by or required of the Secondee(s), including attendance at meetings internally or with third parties, will not cause the Secondee(s) to bind the Buyer or become a shadow director or de facto director of the Buyer or of any of its Associated Companies; and

- 4.1.6 the Buyer will be responsible and liable for all work carried out by the Seconddee(s) and for the consequences of any errors or omissions in the Seconddee(s) work and for any decisions relating to work performed by the Seconddee(s) or to the Buyer's business or affairs that may arise during or as a result of the performance of the Services.

## 5. SPECIAL ARRANGEMENTS

- 5.1 The following shall apply in respect to Acceptance:

- 5.1.1 At the commencement of the Services and each month (or such other period as agreed by the Parties in the Order Form) thereafter, the Buyer will agree in writing with each of the Seconddee(s), the tasks the Buyer wishes them to undertake for the Buyer.
- 5.1.2 During the term of the provision of the Seconddee(s), the Seconddee(s) shall submit to the Buyer a written status report ('**Status Report**') at dates to be agreed between the Seconddee(s) and the Buyer. The format of each Status Report shall be agreed between the Seconddee(s) and the Buyer but is likely to describe the Seconddee(s) activities since the preceding report, including the tasks performed, progress made, and a general description, if applicable, of the progress expected to be made in the following period.
- 5.1.3 The Buyer shall meet with the Supplier's Service Delivery Manager to discuss the content of the Status Reports and deal with any issues arising at least once a month (or such other period as agreed by the Parties in the Order Form).
- 5.1.4 No later than one (1) week (or such other period as agreed by the Parties in the Order Form) after receiving the Status Report, the Buyer shall confirm in writing to the Supplier that the Seconddee(s) have fulfilled their obligations under the Call-Off Contract for the relevant period. If the Supplier does not receive such confirmation by the end of the week (or such other period as agreed by the Parties in the Order Form) the Status Report will have been deemed as accepted by the Buyer.
- 5.1.5 The Buyer will not withhold an Acceptance unless the Seconddee(s) have in the Buyer's reasonable opinion failed to undertake the tasks reasonably assigned to them by the Buyer. In the event that written Acceptance is withheld in such circumstances the Buyer's sole remedy and the Supplier's sole liability shall be for the Buyer to have the option to either: (i) require the Supplier to remove the Seconddee(s) (the "**Defaulting Person**") immediately; or (ii) require the Supplier to remove the Defaulting Person immediately and if it able to do so provide CV(s) of suitable alternative replacement(s) for the Buyer's consideration; or (iii) require the Supplier to continue to provide the Defaulting Person. Should the Buyer require the Supplier to continue to provide the Defaulting Person in accordance with (iii) above the Buyer accepts that the Defaulting Person may not have the skills and capability to undertake all tasks envisaged by the Buyer and that the Buyer is prepared to accept this risk and to pay the specified rate for such Defaulting Person.
- 5.1.6 Unless the Buyer has notified the Supplier in advance of the submission of the Status Report that in the Buyer's reasonable opinion the Seconddee(s) have failed to undertake the tasks reasonably assigned to them then, notwithstanding that written acceptance has not been issued, the Buyer shall remain liable to pay for the Seconddee(s) up to the end of the period to which the Status Report relates.

## 6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 Part B Clauses 11 of the Call-Off Contract and Section 11 of Part A (Main) of the Supplier Terms shall apply with respect to Services that constitute the provision of resourcing services on a secondment basis except to the extent modified as follows:
- 6.1.1 Except for any and all title and Intellectual Property Rights in all Supplier IPR and Supplier Party IPR (including all IPR in the Service Elements) which are and shall remain vested in the Supplier, its licensors or the relevant Supplier Party (as the case may be), ownership in the Intellectual Property Rights of anything created by the Seconddee(s) in performing the Role shall vest in the Buyer on its creation. In order to give effect to a transfer or assignment of such Intellectual Property Rights, the Buyer may reasonably require that the Seconddee(s) shall, execute any reasonable documentation supplied by the Buyer at the Buyer's cost.

## 7. KEY PERSONNEL

- 7.1 Where individuals to be involved in delivering the Services are named in the Order Form, the Supplier shall use reasonable endeavours to ensure that they are so involved. The Supplier may substitute those identified for others of equal or similar skills at its sole discretion. The Supplier reserves the right to maintain reasonable access to its employees working on any engagement as the Supplier may require for its internal business purposes.

## PART D – SAAS TERMS

### 1 DEFINITIONS & INTERPRETATION

1.1 In this Part D the following words shall have the following meanings:

**“Additional Charges”** means charges for any Chargeable Work and/or in respect of any excess usage of Subscription Services, which shall be calculated in each case in accordance with Supplier’s standard time and materials or excess usage charges (as the case may be) applicable from time to time.

**“Authorised User”** in respect of a Subscription Service means a Client who is authorised to use that Subscription Service.

**“Available”** means that the relevant Subscription Service is available for access at the Service Boundary. A Subscription Service shall not be treated as unavailable as a result of any inability to access it resulting from defects or errors in the Buyer Network Equipment or any other matter outside of the Service Boundary.

**“Chargeable Work”** means any of the work described in Clause 6.2 of this Part D and any work that the parties agree that Supplier shall perform that does not form part of the then current Services.

**“Client”** means, depending on the type of functionality which the Server Software provides, an individual user, agent, item of equipment, device, identity or communication channel and the like.

**“Client Software”** means that part of the Subscription Software (if any) that is designed to be installed on individual end user devices (such as, without limitation, a mobile phone, laptop, PC or tablet) to enable remote access to and use of the functionality provided by that part of the Subscription Software that is installed on one or more of Supplier’s servers.

**“Buyer Contract Manager”** means the Buyer’s management point of contact for Supplier as notified by the Buyer to Supplier from time to time.

**“Buyer Network Equipment”** means any of the Buyer’s (or its third party suppliers’) IT and telecommunications infrastructure, including personal computers, mobile devices, data network equipment, telecommunications networks and all associated equipment that is either: (i) used to access the Subscription Software or with which the Subscription Software is to inter-operate; and/or (ii) used by Supplier to provide the Services, as the case may be.

**“Buyer Support Representatives”** means such of the Buyer’s representatives as are authorised in writing from time to time by Supplier to report Incidents to Supplier.

**“Downtime”** means any time during Service Hours when the relevant Subscription Service is not Available.

**“Incident”** means an operational event which is not part of the standard operation of Subscription Software and/or Service(s) as the case may be but excluding any such event that results from or constitutes a Service Exclusion or is caused by the failure of a Service Dependency.

**“Maximum Capacity”** in respect of any item of Subscription Software, means the maximum capacity for that Subscription Software as set out in the Service Definition applicable to that Subscription Software and/or as notified in writing by Supplier to the Buyer from time to time.

**“Network Operator(s)”** means a public or private telecommunications operator providing a network or services that is regulated by a licence granted under the Telecommunications Act 1984.

**“Obsolete Equipment”** means any of the Supported Equipment which is or becomes any one or more of the following: non repairable, uneconomic to repair, no longer fit for purpose, decommissioned, disposed of, subject to a recall by the original supplier, or is agreed with the Buyer to be obsolete.

**“On-Site MAC”** means a move, add, delete or change.

**“Open Source Software”** means software (whether contained within the Subscription Software or otherwise) where the source code is available to the general public for use and modification, generally free of charge and, in each case, where customers are granted a right to use such open source software via an open source licence.

**“Pre-Purchased MACs”** means the number of Remote MACs and/or On-Site MACs which are purchased by the Buyer as set out in the Call-Off Contract.

**“Remote MAC”** means a remote move, add, delete or change.

**“Scheduled Downtime”** means any period of Downtime that is scheduled in advance by Supplier for the purposes of carrying out maintenance to or upgrading of or other work in respect of the Subscription Services or any equipment or systems on or with which it operates.

**“Server Software”** means any part of the Subscription Software that does not comprise Client Software and includes each element of the Subscription Software that is designed to be hosted on Supplier’s servers and is not intended to be installed on individual end user devices (such as without limitation a mobile phone, laptop, PC or tablet).

**“Service Boundary”** in respect of each Subscription Service shall have the meaning ascribed to it in the relevant Service Definition but if not otherwise defined shall mean the point at which Supplier’s (or its sub-contractor’s) hosted solution initially connects to the Internet or any telecommunications network.

**“Service Commencement Date”** in respect of each Service means the date that Supplier first makes that Service available to the Buyer.

**“Service Dependencies”** in respect of each Service means the matters, things and/or activities on which that Service is dependent for its successful operation or performance, as identified under that title in the Service Definitions or elsewhere in the Call-Off Contract.

**“Service Exclusion”** shall mean any exclusion from the Services that is specified in the Service Definitions or elsewhere in the Call-Off Contract. It shall also include any defect or error or loss of service caused by anything outside of the Service Boundary for the Service concerned.

**“Service Hours”** in respect of a Service means the contracted service hours during which that Service is to be made available as set out in the Service Definitions.

**“Service Implementation”** means the implementation of the service identified as such (if any) in the Service Definitions.

**“Site(s)”** means the Buyer site(s) identified in the Call-Off Contract as varied from time to time by written agreement with Supplier, such agreement not to be unreasonably withheld or delayed.

**“Subscription Services”** means the subscription services provided or made available by Supplier to the Buyer under the Call-Off Contract, as more particularly described in the relevant Service Definitions

**“Subscription Service Usage Restrictions”** in respect of each Subscription Services means the restrictions on usage of the Subscription Services (and associated Subscription Software) specified in the relevant Service Definition.

**“Subscription Software”** means the software described as such in the Call-Off Contract as varied from time to time in accordance with the Call-Off Contract.

**“Supported Equipment”** means the Buyer’s equipment (if any) identified under that title in the Call-Off Contract in respect of which Supplier agrees to provide Support Services.

**“Support Services”** means the services (if any) described as such in the Call-Off Contract as described in more detail in the relevant Service Definition.

**“Supplier’s Call Desk”** means Supplier’s help desk, the contact details of which are provided by Supplier to the Buyer from time to time.

**“Supplier Equipment”** means the equipment (if any) which Supplier installs on any Site for Supplier’s use for provision of the Services.

**“Supplier Software”** means the software element of Supplier Equipment.

**“Upgrade/upgrade”** means a major release of software, denoted by change to its initial version number.

**“User”** means any user of the Subscription Services or Web Tools who obtains access to such Subscription Services or Web Tools, whether or not they are authorised to do so. It includes any person that communicates with the Buyer through the use of the Subscription Services.

**“User Subscriptions”** means the user subscriptions purchased by the Buyer pursuant to the Call-Off Contract which entitle Authorised Users to access and use the relevant Subscription Service (including relevant Subscription Software) in accordance with the Call-Off Contract.

**“Web Tools”** means the web tools made available for use by Supplier with the Services from time to time and any changes to them notified to the Buyer in writing by Supplier from time to time.

## **2 SUPPLY OF SERVICES**

- 2.1 Subject to the Service Dependencies and any Service Exclusions, Supplier shall provide the Service Implementation following signature of the Call-Off Contract and shall provide or make available the other Services from their respective Service Commencement Dates during any Service Hours. Subject to Clauses 2.2 and 2.3 of this Part D and to the other exceptions and exclusions set out elsewhere in the Call-Off Contract, Supplier shall use reasonable endeavours to provide the Services in accordance with the Service Levels applicable to them. Supplier shall use reasonable endeavours to make the Services available from the target start dates for them agreed in writing by the parties but such dates are estimates only and Supplier shall not be liable for any failure to meet them.
- 2.2 It shall be a Service Dependency for all Services which are dependent upon the Buyer Network Equipment that the Buyer Network Equipment is sufficient to facilitate supply, access to and use of the Services in accordance with the Call-Off Contract and that it is in full working order.
- 2.3 Scheduled Downtime shall be excluded from any Availability calculations for the purposes of assessing performance against any Service Levels. However, Supplier shall use reasonable endeavours to keep any Scheduled Downtime to a minimum and to undertake maintenance outside of Service Hours wherever reasonably practical.
- 2.4 Time shall not be of the essence in respect of performance by Supplier of its obligations.
- 2.5 Telephone calls to and from Supplier’s Call Desk may be recorded.
- 2.6 Where Supplier provides support and maintenance services for any Supported Equipment, Supplier may supply recycled/remanufactured parts, which shall be equivalent to new in performance, for the purposes of performance of the Services.

## **3 BUYER’S OBLIGATIONS**

- 3.1 The Buyer acknowledges that the Services have been selected by the Buyer relying solely on its own judgement as to their fitness and suitability for its purposes.
- 3.2 The Buyer shall:
- 3.2.1 ensure that any Incidents are promptly reported in adequate detail to Supplier. The Buyer shall ensure that Incidents are reported to Supplier and that all communications with Supplier’s Call Desk are made only by the Buyer Support Representatives and not by any other individual;
  - 3.2.2 ensure that the Buyer Contract Manager is available to Supplier as reasonably required by Supplier to facilitate provision and/or availability (as the case may be) of the Services;
  - 3.2.3 ensure that it has and maintains in force all licences, consents, and permissions necessary for the performance of its obligations under the Call-Off Contract;
  - 3.2.5 ensure that Supplier has full, safe, convenient and adequate (physical and remote) access to any Supplier Equipment, Supported Equipment and Buyer Network Equipment for the purposes of performing the Services. The Buyer shall ensure that the Supplier Equipment and Supported Equipment is not removed from the Site(s) without the prior written consent of Supplier (which shall not be unreasonably withheld or delayed), save in respect of any temporary removal required as a result of any damage to the Site or other similar situation;
  - 3.2.6 ensure that it and those for whom it is responsible (including Buyer’s customers, and its and their respective suppliers and third party contractors) do not hinder or interrupt Supplier’s work or interfere with any Supplier Equipment;
  - 3.2.7 ensure that the Supplier Equipment is not used or altered by any person other than Supplier and shall take all reasonable precautions to prevent damage to or loss of Supplier Equipment and notify Supplier immediately in writing upon becoming aware of any such occurrence;
  - 3.2.8 promptly supply Supplier with such information as Supplier reasonably requires, and ensure that it is accurate, complete and not misleading and shall ensure that subsequent significant changes to it are notified promptly to Supplier;
  - 3.2.9 where applicable to the Services, shall ensure that the Network Operator(s)’ connection point is undamaged and accessible to Supplier and repair any damage which prevents the connection of the Buyer Network Equipment;
  - 3.2.10 at no cost to Supplier, ensure that Supplier and/or its SubContractors are authorised to use any Buyer Network Equipment (and any software comprised in it) and any Supported Equipment as necessary for the purposes of the Call-Off Contract;
  - 3.2.11 ensure that all equipment, databases, access keys and other items upon which Supplier is reliant in order to provide the Services in accordance with the Call-Off Contract, and which it is not the responsibility of Supplier to provide under the Call-Off Contract, are provided in a timely manner and maintained in the condition necessary to facilitate provision of the Services by Supplier in accordance with the Call-Off Contract;
  - 3.2.12 ensure that Supplier is promptly advised in writing of any repair or upgrade to the Supported Equipment which is carried out other than by Supplier;
  - 3.2.13 ensure that all of the Service Dependencies are fulfilled in a timely manner;
  - 3.2.14 notify Supplier in writing of any planned changes to the Buyer Network Equipment which may affect the Services;
  - 3.2.15 provide safe and adequate working and storage space and such other facilities as Supplier may reasonably require; and

- 3.2.16 allow Supplier to measure the Buyer's usage of the Subscription Services remotely. If this is for any reason not possible or Supplier requests the Buyer to provide usage reports for any reason, the Buyer shall, on or before the 10th calendar day of each month, report to Supplier all usage of the Subscription Services for the preceding month in the manner and in the format reasonably required by Supplier. The Buyer shall ensure that the information contained in these reports is complete, accurate and not misleading.
- 3.3 The Buyer shall take responsibility for ensuring that the Buyer Network Equipment and the Equipment to which the Electricity at Work Regulations 1989 apply, is tested in accordance with these Regulations and any amendment thereto.
- 3.4 All obligations that End Users must comply with or, that the Buyer must procure that End Users comply with, as set out in Part A (Main) of the Supplier Terms shall also apply to Users and the Buyer shall ensure that Users comply with such obligations.
- 4 REMOTE MACS AND ON-SITE MACS**
- 4.1 Remote MAC and On-Site MAC Services are available for purchase and Supplier shall provide a quotation for such Services upon request.
- 4.2 Notwithstanding Clause 4.1, the Buyer may pre-purchase a quantity of such Services (the Pre-Purchased MACs identified in Schedule 1 of the Call-Off Contract).
- 4.3 Any Pre-Purchased MACs, Remote MACs and On-Site MAC Services purchased by the Buyer may only be used by the Buyer for the Buyer's own internal business purposes and not sold to any third party without the prior written consent of Supplier.
- 4.4 Upon the anniversaries of the Call-Off Contract Supplier shall assess the Buyer's usage of the Pre-Purchased MACs in the previous year. If the Buyer has not used all of them they shall be carried over into the next year. No credit shall be due in respect of any unused Pre-Purchased MACs existing at the time of termination of the Call-Off Contract. If the Buyer has received MAC Services in excess of the Pre-Purchased amount, Supplier shall invoice the Buyer at Supplier's standard rates for the difference.
- 5 OBSOLETE EQUIPMENT**
- 5.1 Supplier shall be entitled during the term of the Call-Off Contract to terminate the supply of Services (in whole or in part in Supplier's discretion) in respect of Obsolete Equipment at any time on at least six (6) months' notice to the Buyer. In such circumstances any unexpired portion of the Charges for that Service shall be refunded.
- 5.2 Supplier shall be entitled to change the Subscription Services and their related Service Definitions in accordance with the terms of Call-Off Contract to reflect any change that Supplier makes generally to its standard subscription service offering from time to time.
- 6 CHARGEABLE WORK**
- 6.1 The Buyer shall pay the Additional Charges for all Chargeable Work.
- 6.2 Chargeable Work shall include all work in connection with, or as a result of:
- 6.2.1 meeting a change in the requirements or practices of the Network Operator(s) or other relevant authority;
  - 6.2.2 loss of Buyer-generated data, save where due to Supplier's negligence;
  - 6.2.3 errors or omissions in information supplied by the Buyer upon which Supplier has relied;
  - 6.2.4 Incidents existing prior to the Service Commencement Date;
  - 6.2.5 updating or installation of virus protection software, save where it constitutes a Service;
  - 6.2.6 work which is identified as or is caused by or required as a result of a Service Exclusion, any failure of any Service Dependency and/or any virus or other electronic contaminant introduced by or any denial of service or other system attack instigated by any person other than Supplier and Supplier's contractors;
  - 6.2.7 any work to investigate any issue with any Subscription Services or the Supported Equipment that is reported by the Buyer where it is determined by Supplier that there is no defect or error in the Subscription Services or Supported Equipment;
  - 6.2.7 any breach of the Buyer's obligations under the Call-Off Contract or any other agreement the Buyer has with Supplier;
  - 6.2.8 any defects or errors in the Buyer Network Equipment save where these are themselves caused by Supplier's negligence or any matter that is external to the Services themselves; and/or
  - 6.2.9 Services taking longer or attracting additional costs as a result of any of the above causes or the carrying out of excluded Services.
- 6.3 The Buyer shall pay Additional Charges if, at any time whilst using the Services, the Buyer exceeds the maximum amount of storage space specified by Supplier in the Call-Off Contract (if any). Such Additional Charges will be calculated in accordance with Supplier's then current standard excess data storage fees.
- 7 RISK, TITLE AND DELIVERY**
- 7.1 All equipment (including Supplier Equipment), such as tools and plant, taken onto the Buyer's premises by Supplier or its contractors for the purposes of the Call-Off Contract, shall, whilst on the Buyer's (or Buyer's third party contractors') sites, be at the Buyer's risk, except insofar as any loss or damage to such equipment is due to the negligence of Supplier or those for whom it is responsible.
- 7.2 The Buyer acknowledges that it acquires no legal or beneficial ownership in Supplier Equipment or the Subscription Software whatsoever.
- 7.3 Where Supplier delivers replacement parts for hardware forming part of the Supported Equipment then risk and title to that hardware will transfer to the Buyer on delivery. Title to any parts replaced by Supplier will transfer to Supplier when Supplier removes them from the Buyer's site.
- 8 WARRANTY EXCLUSIONS**
- 8.1 The Subscription Software cannot be tested in every possible permutation and accordingly Supplier does not warrant that the Subscription Services (or the Subscription Software used to provide it) will be free of all defects or that their use will be wholly uninterrupted.
- 8.2 The Supplier shall not be liable to the Buyer to correct any defect or failure that derives from:

- 8.4.1 any modification or customisation of the Client Software by or on behalf of the Buyer other than by Supplier and/or Supplier's subcontractors or with Supplier's express fully informed prior written approval;
  - 8.4.2 failure by the Buyer, its agents and/or other contractors to properly maintain the Client Software (except where and to the extent that this results from any failure by Supplier or Supplier's subcontractors to perform any maintenance that it is obliged to provide as part of the Services);
  - 8.4.3 use of the Subscription Services in contravention of Supplier's instructions or use other than for its designed purpose or in excess of their Maximum Capacity;
  - 8.4.4 defects or errors in the Buyer Network Equipment (save where these were themselves caused by Supplier's negligence) or any matter that is external to the Services themselves;
  - 8.4.5 any virus or other electronic contaminant introduced by or any denial of service or other system attack instigated by any person other than Supplier and Supplier's contractors;
  - 8.4.5 failure of any Service Dependency; or
  - 8.4.6 any Service Exclusion, any breach of the Buyer's obligations under the Call-Off Contract or any matter for which Supplier is excused from liability under any other provision of the Call-Off Contract.
- 8.3 Notwithstanding the other terms of this Clause 8, but except to the extent that Supplier may not exclude or limit its liability in law, Supplier provides no warranty, condition or representation in respect of any Open Source Software programs contained in the Subscription Software and such Open Source Software shall be provided by Supplier "as is". The Open Source Software licences will define the warranty, if any, from the authors or licensors of the Open Source Software. Without prejudice to the generality of the foregoing, Supplier specifically disclaims any warranties, conditions, representations or any other commitments in respect of defects caused by altering any Open Source Software program. Supplier shall not be liable for any claim or allegation that the Open Source Software infringes the intellectual property rights of a third party.

## 9 LIABILITY AND ITS EXCLUSION AND LIMITATION

- 9.1 Subject to Clause 4.2 of the Framework Agreement, as incorporated by Clause 2.1 of Part B of the Call-Off Contract, in no event shall Supplier be liable for the following types of losses:
- 9.1.1 any and all direct or indirect:
    - (a) loss of contracts; or
    - (b) loss of use of the Supported Equipment;
    - (c) financing expenses; or
    - (d) losses arising from interruption in the use or availability of data; or
    - (e) losses arising from stoppage to other work; or
  - 9.1.2 any loss or damage that could have been avoided had the Buyer kept full and up-to-date back-up and security copies of any software and data held or used by or on behalf of the Buyer.
- 9.2 Subject to Clause 4.2 of the Framework Agreement, as incorporated by Clause 2.1 of Part B of the Call-Off Contract, Supplier shall not be liable for the fraudulent use of Supplier Equipment or Subscription Software by the Buyer and/or third parties. For the avoidance of doubt, the Buyer shall be obliged to pay Charges for all use of the Subscription Software whether or not such use results from unauthorised access or use by third parties.
- 9.3 Subject to Clause 4.2 of the Framework Agreement, as incorporated by Clause 2.1 of Part B of the Call-Off Contract, Supplier shall not be liable for any loss, costs, expenses and/or damages arising due to or in connection with a Network Operator(s) denying or withdrawing any connection facilities.
- 9.4 Each provision of this Clause 9 shall survive independently.
- 9.5 This Clause 9 shall apply before and after any termination of the Call-Off Contract.

## 10 SOFTWARE LICENCES

- 10.1 Certain Subscription Services may include limits on the numbers or identities of Clients or other Subscription Service Usage Restrictions. Where these apply in respect of a particular Subscription Service, the Buyer shall comply with (and ensure that all persons accessing the Subscription Services through the Buyer shall comply with) such limits and Subscription Service Usage Restrictions.
- 10.2 The Buyer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription Software and/or the Services and, in the event of any such unauthorised access or use, the Buyer shall promptly notify Supplier.
- 10.3 Any technological measures in the Subscription Software that are designed to prevent unlicensed or illegal use of the Subscription Software may not be removed and the Buyer agrees to the use by Supplier and/or its licensors of such measures.
- 10.4 Supplier and/or its licensors shall be entitled to automatically check the version level of the Subscription Software and/or their components that are being used by the Buyer.
- 10.5 If the Buyer requires information necessary to achieve the interoperability of the Client Software with other programs, it should contact Supplier. Any such information which is provided by Supplier shall only be used by the Buyer to achieve such interoperability, and for no other purpose, and "interoperability" has the meaning within Section 50B of the Copyright Designs and Patents Act 1988.
- 10.6 Notwithstanding any other provision in the Call-Off Contract to the contrary, any Subscription Software which is subject to click-wrap or click-on license terms and conditions, is subject to Open Source Software licences, or any other end user licence terms shall be subject to those terms.
- 10.7 Where Subscription Software is subject to click-on or click wrap licence terms, the Buyer hereby authorises Supplier to accept such terms on its behalf and accepts responsibility in respect thereof.



- 10.8 Certain Subscription Software will require the Buyer to input access codes and/or licence keys in order to obtain full access to it. If and to the extent that Supplier provides activation codes or license codes under the Call-Off Contract, the Buyer shall keep these confidential and shall not disclose these codes to third parties. In addition where any Subscription Software requires a password to access it then the Buyer shall: (i) ensure that any passwords it is required to create are created with reasonable care and skill in line with current good IT security practice, and (ii) keep all such passwords confidential and not disclose them to third parties.
- 10.9 The Buyer shall be entitled to make such backup copies of each instance of the Client Software as are reasonably required for its own licensed use of the Client Software.
- 10.10 Client Software will be supplied in object code only. The source code will not be provided, save where and to the extent that any Open Source Software license mandates otherwise in respect of it. For the avoidance of doubt, no software code relating to Server Software will be made available to the Buyer under the Call-Off Contract.
- 10.11 Supplier reserves all rights not expressly granted under the Call-Off Contract.
- 11 USE OF THE SERVICES AND THE WEB TOOLS**
- 11.1 The Buyer shall use the Services and the Web Tools solely for the Buyer's own internal business purposes and not for any other purpose (and in particular the Buyer shall not resell the Services in any manner). The Buyer warrants that it shall not and it shall procure that all Users shall not:
- 11.1.1 access, store, distribute or transmit any material during the course of the use of the Services or the Web Tools that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; or
  - (b) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - (c) depicts sexually explicit images; or
  - (d) promotes unlawful violence; or
  - (e) causes or may cause damage or injury to any person or property,
- 11.1.3 hack into the Services and/or the Web Tools or any linked systems;
- 11.1.4 interfere with or seek to corrupt or alter any software accessible through the Services and/or the Web Tools;
- 11.1.5 introduce or cause to be introduced any computer virus or other electronic contaminant into the Services and/or Web Tools or any linked system site;
- 11.1.6 disrupt or interfere with any part of the Services and/or the Web Tools or any linked systems;
- 11.4.7 use the Services and/or Web Tools in any way which does or could cause nuisance or annoyance to any other person; or
- 11.1.8 disclose any password or account details which are provided to it under or in connection with the Call-Off Contract (or which it is required to create to use the Service or Web Tools) to any other person or company.
- 11.2 The Buyer shall, and shall procure that all Users shall, comply with Supplier's standard acceptable use policy in relation to the Services and the Web Tools as notified by Supplier to the Buyer from time to time.
- 11.3 Supplier reserves the right, without liability or prejudice to its other rights to the Buyer, to suspend and/or disable the Buyer's access to the Subscription Services or any particular materials in the event Supplier reasonably considers that there has been a breach of the provisions of Clause 11.1 and/or to remove any material that Supplier considers may breach the provisions of Clause 11.1 without prior notice to the Buyer. The Buyer shall, and shall procure that the Authorised Users shall, comply with Supplier's reasonable requests in relation to the Buyer's access and use of the Services and/the Web Tools.
- 11.4 Upon termination of the Call-Off Contract the Buyer shall return or destroy at the option of Supplier all Confidential Information related to the Services and the Web Tools save to the extent that it is obligated by law to retain any such information.
- 11.5 The Buyer shall defend, indemnify and hold harmless Supplier against all 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 Subscription Software and/or Services except where and to the extent caused or contributed to by the negligence or deliberate misconduct of Supplier.
- 11.6 Supplier shall not be responsible for (howsoever arising):
- 11.6.1 modifications made to the Services and/or the Web Tools by persons other than Supplier or Supplier's contractors;
  - 11.6.2 damage by computer virus or other electronic contaminant to the Services and/or the Web Tools;
  - 11.6.3 hacking into the Services and/or the Web Tools by any third party;
  - 11.6.4 temporary bandwidth congestion causing problems of access to the Services and/or the Web Tools;
  - 11.6.5 interruption of internet connection; or
  - 11.6.6 unlawful monitoring of telecoms traffic by the Buyer.
- 12 AUDIT**
- 12.1 Supplier shall have the right to audit the Buyer's records and facilities to verify compliance with the Call-Off Contract at any time during the term of the Call-Off Contract and for a period of one (1) year thereafter on giving the Buyer written notice.
- 12.2 To verify compliance, Supplier may engage an independent third party, which will be subject to confidentiality obligations. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with the Buyer's operations. As an alternative, Supplier may require the Buyer to complete Supplier's self-audit questionnaire, but reserves the right to use a verification process as set out above.
- 12.3 If Supplier undertakes auditing and/or verification and does not find material unlicensed use of the Subscription Software (license shortage of 5% or more over the period audited), Supplier will not undertake another audit and/or verification of the same entity for at least three (3) months. Supplier and its auditors will use the information obtained in auditing and/or verification only to enforce Supplier's rights in connection with the Call-Off Contract and to determine whether the Buyer is in compliance with the terms of the Call-Off Contract.

- 12.4 Each party shall bear its own costs incurred in connection with any audit unless the audit reveals a licence shortage of 5% or more over the period audited when the costs of the audit shall be paid for by the Buyer without prejudice to Supplier's other rights and remedies.

### **13 DATA PROTECTION & USE**

- 13.1 The Buyer warrants that it is permitted to provide Supplier with Personal Data and that it has in all respects complied with its obligations under the Data Protection Legislation. The Buyer further warrants that the Personal Data is a back-up copy and acknowledges that as Supplier may use the Personal Data in a test environment that there is an inherent risk it could be lost or corrupted. The Buyer authorises Supplier to store such data and, where practicable for the performance of its obligations hereunder, to remove it from its premises and store it on the laptops of its employees who are involved in carrying out its obligations.
- 13.2 Supplier may compile statistical and other information related to the performance, operation and use of the Services in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes. Supplier may make this information publicly available but will only do so in a manner that does not identify the Buyer or any individual User. Supplier retains all Intellectual Property Rights in any such statistical and other performance information.

### **14 SOFTWARE RELEASES & WEB TOOLS**

- 14.1 In execution of the Services or delivery of the Subscription Software, Supplier may supply and install a later release of the Subscription Software that may incorporate corrections. It may also include new features and functionality which, unless agreed otherwise in the Call-Off Contract or elsewhere in writing, shall be chargeable at Supplier's standard charges.
- 14.2 Supplier may make Web Tools available to the Buyer from time to time for use with the Services. These Web Tools do not form part of the Services themselves and Supplier makes them available on an 'as is' and 'as available' basis. Supplier reserves the right to change, withdraw or terminate access to the Web Tools at any time in Supplier's sole discretion.

## PART E – PRODUCT AND PROFESSIONAL SERVICES TERMS

### 1. DEFINITIONS & INTERPRETATION

**"Acceptance"** means, where the Supplier is carrying out the implementation, that the Buyer accepts that the Product has passed the Acceptance Tests and is in accordance with the Service Definition and, where the Supplier is not carrying out the implementation, delivery of the Product.

**"Acceptance Certificate"** means the Supplier's standard acceptance certificate.

**"Acceptance Tests"** means the Supplier's standard tests which are applicable to the Product where the Supplier is carrying out the implementation.

**"Contract Value"** means the sum agreed in writing together with any additions or deductions to it in accordance with the Call-Off Contract.

**"Buyer Network"** means any of the Buyer's IT infrastructure, inclusive of but not limited to, personal computers, data network equipment, telecommunications network and all associated equipment with which the Product is to inter-operate.

**"Date for Acceptance"** means the date agreed in writing for Acceptance to take place and any amendments thereto under the Call-Off Contract.

**"End User Buyer"** means the party with whom the Buyer contracts for resale of the Products and/or Professional Services.

**"End User Licence Agreement(s) / EULA(s)"** means a licence agreement(s) directly between a third party licensor of the Software and the Buyer or an End User Buyer, as appropriate, which accompanies some or all of the Software.

**"Hardware"** means the hardware specified in the Call-Off Contract.

**"Licenced Software Users"** means, where applicable, the number of users licensed hereunder to use the Software agreed in writing.

**"Network Operator"** means a public or private telecommunications operator providing a network or services regulated by statutory licence.

**"Open Source Software"** means software contained within the Product where the source code is available to the general public for use and modification, generally free of charge and, in each case, where customers are granted a right to use such open source software via an open source licence.

**"Phases"** means the discrete phase(s) for supply and/or implementation of the Product referred to in clause 27 of this Part E and agreed in writing.

**"Product"** means the Software and/or the Hardware.

**"Professional Services"** means any professional services ordered in the Call-Off Contract.

**"Professional Services Charges"** means the Charges for Professional Services.

**"Professional Services Charges Payment Milestones"** means the milestones for payment of the Professional Services Charges agreed in writing.

**"Site(s)"** means the site(s) for delivery and, where applicable, implementation of the Product agreed in writing.

**"Software"** means the object code version of the software agreed in writing, but not where SAAS Services are being provided (in which case the terms of Part D (SAAS) of the Supplier Terms will apply in addition to the other relevant terms of the Call-Off Contract).

**"Special Software Licence Terms"** means any differing or additional licence terms agreed in writing.

**"Specification"** means the document identifying the features and functionality of the Product agreed in writing.

**"Working Day"** means Monday to Friday inclusive, exclusive of bank holidays.

**"Working Hours"** means 09.00 to 17.00 inclusive on Working Days.

### 2. THE SUPPLIER'S OBLIGATIONS

2.1 The Supplier shall supply the Product in accordance with the Call-Off Contract and implement it where implementation is included in the Call-Off Contract.

2.2 The Supplier shall provide the Professional Services.

### 3. BUYER'S OBLIGATIONS AND RESPONSIBILITIES

3.1 The Buyer is responsible for undertaking and bearing the cost of the following (unless otherwise agreed in writing by a duly authorised officer of the Supplier):

- (a) **Buyer Provided Information and Equipment**  
The Buyer shall provide or ensure that its other suppliers and/or consultants provide all necessary services, information, including technical information regarding the Site, programming information, databases, interfaces, gateways and cables, to enable the Supplier to put the work and any Professional Services in hand promptly and in any event in accordance with any agreed timescales or project plan and so as to enable the Supplier to carry out its obligations under the Call-Off Contract, including the provision of the Product in accordance with the Specification. Any changes to information provided by the Buyer and relied upon by the Supplier shall constitute a variation and the Supplier may claim the costs thereby incurred.
- (b) **Preparation of the Site**  
Before delivery is due to take place the Buyer shall prepare the Site in accordance with any specifications stipulated by the Supplier and any reasonable extra costs incurred as a result of failure to do so, including storage costs, will be paid to the Supplier by the Buyer. The Buyer shall ensure that the implementation area is sufficient in floor space and height.
- (c) **Buyer Network**  
The Buyer shall ensure that where prior to the date of the Call-Off Contract it engaged the Supplier under a professional services agreement to assess the sufficiency of the Buyer Network to enable the Product to function in accordance with the Specification, that the recommendations within any resulting report are and shall remain implemented.
- (d) **Provision of Facilities**  
The Buyer will provide at its own expense building and civil work, electric power, heating, lighting and ventilation, and where electrical supplies are required these shall be electrically clean and stable and will be provided and installed and maintained by the Buyer in accordance with BS7671 (IEE Wiring Regulations) at its own expense unless otherwise agreed in writing.
- (e) **Access**  
The Buyer shall provide the Supplier and the Supplier's contractors with access to the Site at all reasonable times, or as reasonably requested by the Supplier.
- (f) **Approvals/Licences**  
The Buyer must obtain and pay for all necessary licences, consents and approvals for the implementation and/or use of the Product and/or its connection to relevant networks and comply with any conditions attached to such licences, consents and approvals.
- (g) **Third Party Software**  
The Buyer shall, at no cost to the Supplier, ensure that the Supplier is authorised under a valid software licence to use any software (which is not provided by the Supplier hereunder) necessary for the purposes of the Call-Off Contract.
- (h) **Other Attachments**  
Any other attachments, or additions to the Product that are made by the Buyer without the prior written approval of the Supplier shall be at the Buyer's risk and the Buyer shall be responsible for ensuring that they are suitable for use with the Product and comply with any Network Operator's regulations and do not diminish performance or reliability of the Product.
- (i) **Cabling**  
The Buyer shall ensure that all cabling (insofar as it is not provided by the Supplier hereunder) is or is brought up to the requirements of BS6701 Telecommunications Equipment and Telecommunications Cabling – Specification for Installation, Operation and Maintenance for voice solutions or BS EN50173 Information Technology - Generic Cabling Systems – General Requirements and Office Areas (for data solutions) at its own expense and shall pay the cost of any acceptance tests carried out by the Supplier in respect of it.

3.2 All obligations that End Users must comply with or, that the Buyer must procure that End Users comply with, as set out in Part A (Main) of the Supplier Terms shall also apply to End User Buyers and Licensed Software Users and the Buyer shall ensure that End User Buyers and Licensed Software Users comply with such obligations.

#### **4. THE SPECIFICATION**

- 4.1 The features and functionality of the Product are as detailed in the Specification and the Buyer assumes responsibility for ensuring that the Product is sufficient and suitable for its purposes and, save where the Buyer has engaged the Supplier under a professional services agreement to assess the sufficiency of the Buyer Network to enable the Product to function in accordance with the Specification, that the Buyer Network is sufficient to support the Product.
- 4.2 The Buyer shall not rely upon any warranty (other than those stated in the Call-Off Contract) or technical statements concerning the Product which is to be supplied under the Call-Off Contract except where such statements have been confirmed in writing and signed by a duly authorised officer of the Supplier and expressly incorporated herein.
- 4.3 Catalogue and data sheets are intended to display the general features of the Product and the information contained in such publications do not constitute a representation or warranty and shall not form part of the Call-Off Contract.
- 4.4 The Supplier reserves the right to change the configuration and parameters of the Product to be supplied insofar as such changes do not materially affect the operational performance of the Product.
- 4.5 Hardware may contain recycled/remanufactured parts which shall be equivalent to new in performance.

#### **5. NOT USED**

#### **6. DELIVERY**

- 6.1 Delivery of the Product to the Site will be recorded by a Supplier's delivery note and the Buyer or its nominated agent shall acknowledge receipt by countersigning a copy of the delivery note. If the Buyer, or its nominated agent, is not available at the time of delivery, the Supplier's site personnel may sign to acknowledge receipt of deliveries and they do so as the Buyer's agent.
- 6.2 Delivery of the Software, which is dispatched electronically, shall be upon dispatch by the Supplier to the Buyer and the Software which is downloaded, upon commencement of the download.
- 6.3 The Supplier shall repair or (at the Supplier's option) replace free of charge any part of the Product which is lost or damaged in transit, provided that the Supplier is promptly given written notification of such loss or damage.

#### **7. IMPLEMENTATION**

Where implementation is included, the Charges are based on the work being carried out during the Supplier's Working Hours and proceeding without hindrance to completion and may be increased if the Buyer requests the work to be carried out at any other time or if the work is interrupted for reasons outside the Supplier's control.

#### **8. EXTENSION OF TIME**

- 8.1 In the event the Supplier is delayed in carrying out its obligations under the Call-Off Contract for reasons beyond its reasonable control, including delay caused by the Buyer, its other suppliers and/or consultants, the End User Buyer, and/or industrial disputes, the Date for Acceptance shall be extended accordingly.
- 8.2 The Supplier shall be entitled to recover the reasonable additional costs incurred as a result of such delay.

#### **9. RISK AND TITLE**

- 9.1 Risk in the Product and any part thereof shall pass to the Buyer upon delivery as defined in clause 6 of this Part E and the Buyer shall ensure that it has in place sufficient insurance cover for its replacement.
- 9.2 Risk in all other equipment, such as tools and plant taken on to the Buyer's Site by the Supplier for the purpose of the Call-Off Contract, shall pass to the Buyer when brought onto the Site by the Supplier (or its agents or sub-contractors) until such equipment is removed from the Site except insofar as any damage to such equipment is due to any act of negligence on the part of the Supplier or those for whom it is responsible.
- 9.3 Title to the Hardware shall pass to the Buyer upon receipt by the Supplier of full payment for the Hardware. Title to the Software and the media on which it is embodied and copyright and other intellectual and industrial property rights in the Software and in all data and information embodied in the Hardware shall at all times remain vested in the Supplier and/or its licensors.

#### **10. ACCEPTANCE TESTING & ACCEPTANCE**

- 10.1 The Supplier shall use its reasonable endeavours to meet the Date for Acceptance, but time for performance shall not be of the essence.
- 10.2 Where the Supplier is carrying out the implementation, testing of the Product shall be in accordance with the Acceptance Tests.
- 10.3 If the Product fails to pass the Acceptance Tests they will be repeated without undue delay.
- 10.4 The Product shall not fail the Acceptance Tests due to minor failures that do not materially affect its operational use. The Supplier shall rectify such failures within a reasonable time.
- 10.5 If Acceptance is delayed beyond two (2) weeks by the Buyer or those for whom it is responsible, or due to the inability of the Buyer Network to enable the Product to function in accordance with the Specification (save where due to breach of its obligations by the Supplier) and notwithstanding that the Date for Acceptance may have been extended under clause 8.1 of this Part E, the Supplier shall immediately be entitled to payment as if Acceptance had occurred, and the period of the warranty of the Product shall be deemed to have commenced from the day after such date.
- 10.6 Upon successful completion of the Acceptance Tests in accordance with the Call-Off Contract the Buyer shall sign the Acceptance Certificate.
- 10.7 If prior to signature of the Acceptance Certificate, the Buyer uses the Product in whole or in part for parallel running or live running for the whole or any part of its business, or if the Buyer fails to sign the Acceptance Certificate in accordance with the Call-Off Contract, Acceptance shall be deemed to have occurred on the date when such use or failure to sign occurs.

#### **11. HARDWARE AND SOFTWARE WARRANTY**

- 11.1 Subject to clause 13 of this Part E, the Supplier warrants to the Buyer that the Hardware will be free from material defects in materials and workmanship for twelve (12) months from Acceptance. Defects will be remedied by repair or, at the Supplier's option, supply of replacement Hardware.

- 11.2 Subject to clause 13 of this Part E, the Supplier warrants to the Buyer that the Software will materially incorporate the features and perform the functions detailed in the Specification for three (3) months from Acceptance. Faults in the Software which are divergences from the Specification which can be reproduced and which impair the Buyer's use of the Software will be corrected by modification or replacement of the Software and where such replacement includes additional functionality it shall be chargeable at the Supplier's standard prices.
- 12. PROFESSIONAL SERVICES WARRANTY**
- The Supplier warrants to the Buyer that it has carried out and will carry out the Professional Services with reasonable skill and care expected of a professional experienced in the type of project defined in the Call-Off Contract.
- 13. WARRANTY - EXCLUSIONS & CONDITIONS**
- 13.1 The warranties set out in the Call-Off Contract exclude and shall be in lieu of all other warranties express, implied, statutory or otherwise, whether in respect of the Product or otherwise, save where and to the extent that they may not be excluded by law.
- 13.2 The Buyer acknowledges that the Software cannot be tested in every possible permutation and accordingly the Supplier does not warrant that the Software will be free of all defects or that its use will be wholly uninterrupted.
- 13.3 The above warranties of the Product shall not apply in the event that any defect derives from:
- 13.3.1 any changes to the configurations of the Buyer Network which may affect the quality, performance or functionality of the Product; and/or
  - 13.3.2 any modification or customisation of the Software and/or the Hardware by or on behalf of the Buyer other than by the Supplier and/or its sub-contractors or with its express fully informed prior written approval; and/or
  - 13.3.3 use of the Software and/or the Hardware in contravention of the manufacturer's instructions or use other than for its designed purpose or in inappropriate environmental conditions; and/or
  - 13.3.4 the Open Source Software in the Product. (Should a defect derive from such Open Source Software, then the warranty applicable to the Open Source Software, if any, shall be that which is within the End User Licence Agreement for such Open Source Software); and/or
  - 13.3.5 failure by the Buyer, its agents and/or other contractors to properly maintain the Product.
- 13.4 Notwithstanding any other term or condition of the Call-Off Contract, the provision by the Supplier of the remedies specified in clause 11 of this Part E shall be the Buyer's sole and entire remedy in respect of the said non-conformity or defects.
- 14. INTELLECTUAL PROPERTY RIGHTS - OWNERSHIP**
- All intellectual property rights, including the right to patent, copyright, trade marks, mask works and design rights in the Product and documents provided to the Buyer in the performance of the Call-Off Contract and/or arising and created under and in connection with the Call-Off Contract shall remain vested in and/or automatically and immediately upon creation vest in the Supplier and/or its licensors as the case may be.
- 15. NOT USED**
- 16. SOFTWARE LICENCE**
- 16.1 In consideration of payment of monies for the Software licence, the Supplier grants the Buyer a non-exclusive, non-transferable licence to use the Software and any Upgrade to it supplied under the Call-Off Contract at the Site solely with and for the operation of the Hardware for the Buyer's internal business and, where applicable, by the number of Licenced Software Users, for the period of the licence. In the case of data media containing several software products, the Buyer is only entitled to use the Software licenced hereunder. Usage rights to replaced versions will expire when Upgrade versions have been supplied and installed. Existing copies must be either verifiably destroyed or returned to the Supplier.
- 16.2 Save as expressly provided by the Call-Off Contract, the Buyer may not:
- 16.2.1 copy or permit the Software to be copied, except for one back-up security copy which must contain the Supplier's proprietary notices; or
  - 16.2.2 unless expressly agreed otherwise in writing, use the Software on behalf of any third party, operate a software bureau or similar service using the Software; or
  - 16.2.3 remove copyright or confidentiality notices contained in the Software or its related documentation; or
  - 16.2.4 amend, enhance, modify, merge, adapt or translate the Software; or
  - 16.2.5 disassemble, decompile or reverse engineer the Software.
- 16.3 Any technological measures in the Software that are designed to prevent unlicensed or illegal use of the Software may not be removed and the Buyer agrees to the use by the Supplier and/or its licensors of such measures.
- 16.4 The Supplier and/or its licensors may automatically check the version level of the Software and/or its components that are being used by the Buyer.
- 16.5 If the Buyer requires information necessary to achieve the interoperability of the Software with other programs it should contact the Supplier. Any such information which is provided by the Supplier shall only be used by the Buyer to achieve such interoperability and for no other purpose and "interoperability" has the meaning within Section 50B of the Copyright Designs and Patents Act 1988.
- 16.6 Notwithstanding any other provision herein, any Software and any Upgrade to it which is delivered with click-wrap or click-on licence terms and conditions, whether as expressly set out or referred to in the Call-Off Contract or which has been agreed in writing with the Supplier, or is subject to an End User Licence Agreement, shall be subject to those terms/that agreement.
- 16.7 Where as part of the implementation the Supplier installs Software which is subject to click-on or click-wrap licence terms, the Buyer hereby authorises the Supplier to accept such terms on its behalf and accepts responsibility in respect thereof.
- 16.8 The Software or parts thereof, agreed in writing, shall also be subject to the Special Software Licence Terms.
- 17. CHARGES, PROFESSIONAL SERVICES CHARGES, PAYMENT AND INVOICING**
- 17.1 The Charges are inclusive of: delivery of the Product and wiring and/or implementation of the Product where these form part of the Call-Off Contract.
- 17.2 All sums due under the Call-Off Contract are exclusive of VAT which shall be payable by the Buyer.
- 17.3 Payment of the Charges shall be due and payable as follows:

where the Supplier is implementing the Product:

- 17.3.1 30% of the Charges upon signature of the Call-Off Contract; and
- 17.3.2 60% of the Charges upon commencement of delivery of the Product; and
- 17.3.3 10% of the Charges upon Acceptance;

where the Supplier is not implementing the Product:

- 17.3.4 30% of the Charges upon signature of the Call-Off Contract; and
- 17.3.5 70% of the Charges upon delivery of the Product.

17.4 In the event that the Buyer is unable to take delivery of the Product upon the agreed delivery date, the Supplier reserves the right to deliver the Product into the Supplier's stores and the Buyer shall be immediately liable to pay to the Supplier the portion of the Charges of the Product (or the portion of it so delivered) as though delivery had been made.

17.5 Payment of the Professional Services Charges shall be due in accordance with the Professional Services Charges Payment Milestones unless included in the Charges.

18. **NOT USED**

19. **NOT USED**

20. **NOT USED**

21. **VIRUSES**

The Supplier shall use its reasonable endeavours, inclusive of use of reasonably commercially available current technologies, to prevent the introduction by it of any virus to the Buyer Network, other equipment supplied by the Buyer for the purposes of the Call-Off Contract or the Product.

22. **HEALTH AND SAFETY**

22.1 The parties shall comply with all applicable health and safety legislation and codes of practice.

22.2 The Supplier shall comply with all reasonable safety requirements notified to it in writing by the Buyer prior to the date of the Call-Off Contract and thereafter subject to agreement in respect of any cost implications.

23. **NOT USED**

24. **NOT USED**

25. **LEASING / FINANCE ARRANGEMENTS**

Where the Buyer has entered into a third party leasing or financing agreement in respect of the Product, this will not affect or invalidate the provisions of the Call-Off Contract, save that title in the Product (excluding the Software) shall pass to the third party finance provider when the Supplier has received full payment of all sums due to it under the Call-Off Contract and the Buyer's obligations to make payments of the Contract Value under clause 17 of this Part E (save to any extent agreed otherwise in writing) shall be deemed to be superseded by its obligations to make payments under the third party leasing or finance agreement.

27. **PHASES**

Clauses 9, 10, 11, 12, 13, 16, 17, 20 and 24 of this Part E shall apply separately and individually to each of the Phases.

28. **NOT USED**

29. **WEEE REGULATIONS**

In respect of any waste electrical and electronic equipment ("WEEE") or electrical and electronic equipment ("EEE"), as defined in Article 3 of Directive 2002/96/EC and any amendment or re-enactment thereof, which is to be replaced by the Product, and when the Product is to be replaced or becomes WEEE, the Buyer shall, at its own expense, carry out all of the duties in relation to the treatment, disposal, recovery, re-use and/or recycling, and the financing of the treatment, disposal, recovery, re-use and/or recycling as set out in the Directive and applicable national legislation that implements it, as would otherwise fall on the Producer (as defined within the Directive).

## PART F – CIRCUIT

### 1. Definitions and Interpretation

1.1 This Part F consists of the terms of Service for Circuit together with the Acceptable Use Policy set out in Annex 1 of this Part F (Circuit).

1.2 In this Part F, the following terms shall have the following meanings. All other capitalised terms are as defined in the Call-Off Contract:

"Acceptable Use Policy" or "AUP" means a framework of rules and regulations that aim to ensure that everyone who uses Circuit enjoys a productive, disruption-free and safe use of Circuit. It describes what Supplier deems to be acceptable use of Circuit, what not, and what will happen if there is a violation of the AUP. The AUP is set out in Annex 1 of this Part F (Circuit).

"Applicable Export Control Laws" means any national and international foreign trade and customs requirements or any embargos or other sanctions such as anti-terrorism-laws, denied persons lists or similar stipulated by the Federal Republic of Germany, the European Union, the United States of America and other applicable national export laws, e.g. from the country/jurisdiction where Buyer or a Circuit User have its place of business. Applicable Export Control Laws are a subset of applicable Laws.

"Buyer Contact" is a person within Buyer's business or organisation who is assigned to be Supplier's primary contact and who has the authority to act on behalf of Buyer's business or organisation in respect of all day-to-day activities relating to Circuit. This person must be named during the registration process, will also be the first Circuit User created in Buyer's Circuit Tenancy, and will therefore also (initially) hold the role of the Circuit Tenancy Administrator.

"Circuit" means, collectively, all "Circuit", "Supplier Circuit" or "Circuit by Supplier" branded products and services provided by Supplier to Buyer in connection with Circuit, as further described in the Call-Off Contract.

"Circuit App" means an application for mobile devices which can be used to access Circuit.

"Circuit Core Services" means the application "Circuit" as defined in the Call-Off Contract. The ancillary facilities of Circuit, such as the Circuit Portal's section attending to the management of (new) subscriptions, the Support Forum, or optional plugins or features that must be activated and/or downloaded separately, are excluded.

"Circuit Portal" means the website where the Buyer logs in to Circuit and where subscriptions to Circuit are entered into.

"Circuit Self Service" means a set of self-service support facilities for Circuit, such as the FAQs and the Support Forum.

"Circuit Support Plan" refers to the part of the Call-Off Contract with Buyer that covers customer and user support services.

"Circuit Support Portal" means a web based form of support from which the different forms of support provided by Supplier can be accessed. The exact scope of the support is determined by the applicable service package.

"Circuit Tenancy" means the logically separated segment or domain on the Circuit platform that is dedicated to Buyer and Buyer's Circuit Users.

"Circuit Tenancy User" means a Circuit User who is registered by Buyer as a user in a specific tenancy of Circuit.

"Circuit Tenancy Administrator" refers to a Circuit Tenancy User or Buyer's Circuit Tenancy, or a third party, who has been granted access to the Buyer's administration console for Circuit. The Circuit Tenancy Administrator may create Circuit Tenancy Users and other Circuit Users, and may grant other Circuit Tenancy Users access to the administration console too, thereby making them also a Circuit Tenancy Administrator. The first Circuit Tenancy Administrator is automatically created upon sign-up to Circuit together with the Buyer Contact. Supplier recommends that the Buyer uses special care when selecting and storing the password for the account of the Circuit Tenancy Administrator.

"Circuit User" means, collectively, the different kind of user accounts linked to a particular customer. Buyer is responsible for all activities of Buyer's Circuit Users and of their compliance with the Call-Off Contract and in particular their compliance with the AUP.

"Conversation" refers to a number of conversation items (messages, files, realtime meetings via phone call, video, screenshare, etc.) shared between and viewable by all participants. Conversations can be "private" – in that users need to be explicitly added to the Conversation see the content or they can be "open" – in that any Circuit User can choose to join. Conversations are moderated by the Conversation participants, with anyone in the Conversation having the capability to remove other people if necessary.

"Cross Tenancy Guest User" is a Circuit User who is Circuit Tenancy User of another Circuit Tenancy (different to yours), who is added to a Conversation in Buyer's Circuit Tenancy. Once the Circuit User from the other Circuit Tenancy has accepted the invitation, it will have full access to the content of the specified Conversation, but it cannot access any other Conversation hosted in Buyer's Circuit Tenancy. A Cross Tenancy Guest User does not count against the number of Circuit User accounts Buyer subscribed to.

"Defect" means a reproducible failure of Circuit to comply with the specification of Circuit as described in the Call-Off Contract.

"Documentation" means the technical and/or functional descriptions that are provided or made available to the Buyer along with Circuit. The Documentation will in general be provided online. The Documentation includes, among other things, the description of performance characteristics, features or hardware and software requirements. If and to the extent required by the respective rights holder, the Documentation also comprises of the Open Source Licence texts or the special license conditions of a Freeware vendor or other commercial third party vendor of software.

"End User Licence Agreement" or "EULA" means Supplier's set of licence terms and conditions for the use of software by end users, a copy of which is available on request from Supplier. While Circuit is, in principle, a cloud-based application, some of its components need to be downloaded and installed, such as apps for smartphones and tablets. These components are covered by the EULA. In addition, Open Source Licences and Third Party EULAs may apply.

"Fees" means the fees and prices for Circuit, as agreed between the Parties and contained within the Call-Off Contract.

"Freeware" means a computer program which may be used without payment or other compensation (for example, by advertising). Freeware may be subject to special licence conditions of the vendor, which, for example, may limit the right to distribute or redistribute the Freeware. Freeware may have functional limitations which a commercial version does not have. In general, the vendor of a Freeware does not grant access to the source code of the Freeware.

"Guest User" means Circuit User accounts for users outside Buyer's business or organisation, to whom Buyer want to provide temporary access to Circuit, under Buyer's full and sole responsibility and cost.

"Open Source Licence" or "OSS Licence" means license terms to a computer program that give the user, beyond the right to use without license fee or royalty, rights of use which are usually reserved usually for the owner of the copyright to the computer program, for example the right to analyse the computer program as desired, to edit it, to merge it with other computer programs or to derive their own computer programs thereof and to distribute the results thereof (for the purposes of this provision, collectively referred to as "Work"). In turn, such license terms require that at least one of the following conditions is met: (a) the source code or design information regarding the Work must be made available; (b) the right to create derivative works regarding the Work must be granted; (c) a royalty-free license to any third party to use the intellectual property rights of the party embodied in the Work or (d) to identify the owner of the copyright to the unmodified Open Source Software. Open Source Licences are, by example and without limitation, any version of the GNU General Public Licence (GPL) or the GNU Lesser General Public Licence (LGPL) or the Affero General Public Licence (AGPL) or similar open-source licenses, "free" licenses, and the general licenses to these as "public domain".

"Open Source Software" or "OSS" means a computer program which is, in principle, available at no costs. which is licensed under an Open Source Licence and that is available either (a) in source code form only, or (b) in (executable) object code form and the source code is delivered together with the executable code.

"Producing Circuit" or "Produced" means to run the Circuit software in a datacentre, to enable means to access this software for Circuit Users, and to make all other products and services available which are collectively called Circuit. Circuit is Produced by the Supplier.

"Providing Circuit" or "Provided" means to hold a Call-Off Contract with Buyer which grants Buyer access to Circuit. Circuit is Provided to Buyer by a legal entity by Supplier.

"Publish" means any uploading, publishing, displaying, linking to or otherwise making available any User Content in Circuit.

"Regulator" means any public authority which has or from time to time may have supervisory or regulatory authority over Supplier and/or Circuit in accordance with applicable Laws over any aspect of the performance or fulfilment of any rights, entitlements or obligations related to Circuit.

"Resolution" - Measures taken to resolve an incident. Can also be a workaround.

"Session Guest User" is a temporary Circuit User who is invited to a meeting (e.g. telco, videoconference, screenshare, etc.) hosted inside a Conversation of Buyer's Circuit Tenancy. The Session Guest User only sees what is shared in the meeting. After the end of the meeting they will continue to have access to the content of the meeting for one (1) month. A Session Guest User does not count against the number of Circuit User accounts Buyer subscribed to. The Session Guest User might not be a Circuit Tenancy User of a Circuit Tenancy.

"Subscription" means the recurring procurement of Circuit by Buyer on the terms and conditions defined in the Call-Off Contract and in the Subscription Plan. Circuit is exclusively marketed by Subscriptions.

"Subscription Plan" means a sellable Subscription product for Circuit in which the specific features of the Subscription are defined, such as the term. The available service packages, arrangements for subscription change and renewal, billing cycles and fees.

"Support Data" means Usage Data that is collected when a Circuit User submits a support request, including information about the Circuit User's hardware and software environment when the fault occurred, and other related details, such as contact or authentication information, chat session personalisation, data resulting from diagnostics, system and registry data about software installations, hardware configurations, and error-tracking files or screenshots.

"Support Forum" is a section of the Circuit Support Portal which allows Circuit Users from all Customers and Circuit Tenancies to discuss their questions regarding Circuit, and to post and receive troubleshooting information. Use of the Support Forum is governed by the Support Forum Rules.

"Support Forum Rules" means the rules governing use of the Support Forum, a copy of which are available on Circuit or on request from Supplier.

"Third Party End User Licence Agreement" or "Third Party EULA" means a set of license terms and conditions from the vendor of a commercial third party component or a Freeware, whose acceptance is made a prerequisite by such vendor for granting the right to use the respective third party component or Freeware. A copy of the relevant Third Party EULA is available on request.

"Usage Data" means statistical data, analytics, trends and usage information derived from each Circuit User's use of Circuit. Usage Data includes, by example and without limitation, aggregated quantitative information about the number of Circuit Users, used bandwidth, storage space of CPU capacity.

"User Account" means an account created by Buyer within the Circuit administration console, usually for a Circuit User. Unless Buyer gives Supplier other directions, the User Data related to that User Account will be kept for the term of Buyer's Subscription.

"User Data" or "User Content" includes, but is not limited to, all data, including all text, sound, software, image files, documents, photos, presentation slides, audio and/or video recordings, comments, questions, call entries and logs, transcripts, or other content, information or files that a Circuit User submits to Circuit, receives through Circuit, generates through using Circuit, stores inside Circuit, or otherwise creates by the use of Circuit. In other words, it means all data about and from Buyer or one of Buyer's Circuit Users that was not there before Buyer signed up for Circuit. It can also include, collectively, Circuit User Contact Data, Usage Data, and Support Data. User Data will often also contain Personal Data.

"User Help Desk" or UHD is a special helpdesk service that provides dedicated support for Circuit

## **2. Eligibility to sign up for Circuit**

- 2.1 Circuit is offered only to businesses and organisations i.e. all natural or legal persons or a partnerships with legal personality who or which act in exercise of his, her or its trade, business or profession. Circuit is not offered to other persons, in particular to consumers. In any case, a person less than 18 years old or who is considered a minor in its state or country of residence, cannot register for Circuit or be signed up by Buyer as a Circuit User.
- 2.2 If Supplier reasonably believes that Buyer or a specific Circuit User do not meet the above stated requirements, Supplier may, without liability and at its sole discretion, block, suspend or delete that User Account(s) and their User Data and/or any portion, aspect or feature of Circuit or as the case may require, Supplier may elect to terminate the entire Call-Off Contract for Material Breach with immediate effect.
- 2.3 The Circuit Tenancy may also be suspended in its entirety or in parts without liability and without giving prior notice, if (a) it is reasonably determined that the Buyer or User has grossly violated the provisions of the Call-Off Contract or (b) Supplier is ordered to do so by a court or authority in any country.
- 2.4 Upon such suspension, access to all of the Buyer's Circuit Users and User Data may be deactivated or barred, without any refund or compensation being granted to Buyer.
- 2.5 Buyer agrees that any its personnel or contractors that are granted access to Buyer's Circuit Tenancy are bound by the terms of the Call-Off Contract and the documents referenced herein.



### **3. Welcome to Circuit!**

- 3.1 Supplier provides Circuit as a service that is constantly improved and further developed
- 3.2 The Supplier may offer Buyer a comprehensive solution which consists of Circuit and additional technical solution and service elements. Such solutions may include hardware which can be used in conjunction with Circuit, solutions behind Circuit interfaces and connectors, carrier services or managed services. These Part F Circuit Terms only cover the functionality and services described in the Call-Off Contract.
- 3.3 Circuit provides real-time communication services. Circuit is not meant to be a replacement for your primary telephone or internet service. Buyer should not rely on Circuit as its sole means of telecommunication.
- 3.4 Buyer also acknowledges that Circuit is not intended to support or carry emergency calls such as calls to hospitals, police, fire departments or other kind of services that connect a User to emergency services answering point. It is Buyer's responsibility to provide for fixed (landline) telephone services or wireless (mobile) telephone services that offer access to such emergency services. Circuit does not support the special features required by emergency services, such as providing information about the location of the caller to the emergency service. Please note that this also applies if, technically, Buyer could actually connect from Circuit to an emergency service. In this case, Buyer will need to provide details of its physical location to enable the emergency services to respond.

### **4. Signing up for Circuit**

- 4.1 To sign up for Circuit, Buyer must complete a registration process and provide Supplier with current, complete and accurate information, as prompted by the registration form. Buyer must also accept the terms of the Call-Off Contract.
- 4.2 The information Buyer provides must be current, true and complete and Buyer must communicate any change to Supplier without delay. Any delays or late payment caused by Buyer's failure to update the billing information shall be Buyer's responsibility, as well as any costs caused thereby.
- 4.3 The registration for Circuit will result in a binding proposal from Buyer's business or organisation to Supplier to enter into the Call-Off Contract. Supplier will inform Buyer if Buyer's proposal is accepted via direct email. Supplier is free to accept or deny any such proposal at Supplier's sole discretion. If it is accepted, the Call-Off Contract becomes effective, and if it is rejected, there is no Call-Off Contract and neither Buyer nor Supplier have any liability against the other party.
- 4.4 Once Supplier has accepted Buyer's proposal, Buyer and the other Circuit Users Buyer creates through the Circuit administration console will be given a username and password via email, which, upon initial access, must be changed to a password known only to such Circuit User. Buyer must ensure that Buyer's password(s) do not become known to unauthorised third parties. In the event that Buyer reasonably suspects that Buyer's password(s) have been compromised, Buyer must notify Supplier without delay. Buyer is liable for all damages due to Buyer's fault to maintain the confidentiality of the passwords.

The first Circuit User that is created for Buyer's business or organisation during the signup process will hold the role of the Circuit Tenancy Administrator. That first Circuit User will also hold the role of Buyer Contact. The password for that account should be handled with special care.

### **5. Feedback about Circuit**

- 5.1 Supplier will own any information and data that Buyer or Circuit Users provide about the tests they have done, the test results, and other material such as screenshots, recordings, concepts, etc. (collectively, "Feedback"). Buyer hereby assigns and grants Supplier all rights, title and interest in the Feedback and all Intellectual Property Rights herein, including the right to use, share, and commercialise the Feedback in any way and for any purpose. Buyer will not give any Feedback that is subject to a license that requires Supplier to grant any rights (e.g. Freeware and Open Source License) or make any payments to third parties because the Feedback was incorporated into Circuit or the Documentation or any other of Supplier's products, software, or services or other items. These rights shall survive the Call-Off Contract with Supplier.

### **6. Right to Use and Handling of Data**

- 6.1 By signing up for Circuit and submitting User Data to Circuit, Buyer agrees for the term of the Call-Off Contract, that such User Data are used, modified, processed, reproduced and distributed by Circuit, solely for the purpose of providing Circuit to Buyer and the Circuit Users that Buyer appoints. This includes the public performance or public display of the User Data, where such facilities are provided within or through Circuit and if effected by Buyer.
- 6.2 Buyer and Buyer's organisation must have all the rights, licenses, and permissions required from third parties to use the User Data and to reproduce, publish, and display Circuit User Data within and outside of Circuit. Buyer acknowledges that Supplier can treat all Circuit User Data submitted by Buyer or one of Buyer's Circuit Users to Circuit as if it is owned by Buyer. Supplier is only acting as a passive conduit for Buyer's Circuit User Data. Supplier does not claim any ownership rights in Buyer's Circuit User Data. Supplier will not review, share, distribute, or reference Buyer's Circuit User Data except as provided herein or in the Acceptable Use Policy for Circuit, or as this may be required by applicable Laws.
- 6.3 If Buyer objects to any third party Circuit User Data, Supplier will attempt to resolve that as per the procedure described in the Acceptable Use Policy. In the event Supplier finds such third party Circuit User Data to be permissible under the AUP, Buyer's sole remedy is to cease using Circuit. However, this does not constitute a right to prematurely terminate the Call-Off Contract.
- 6.4 If Buyer believes that Supplier or any of Supplier's affiliates or any of Buyer's or a third party Circuit User (including Guest Users) violated a copyright, please first notify Supplier of the potential copyright infringement or other intellectual property rights issue before taking legal action. The violation-resolution procedure described in the Acceptable Use Policy shall be applied accordingly.
- 6.5 Buyer understands that publishing Circuit User Data on Circuit is not a substitute for registering it with a copyright office or any other intellectual property rights organisation.

### **7. Buyer responsibilities for User Data**

- 7.1 When using Circuit, Buyer must at all times comply with all applicable Laws, including, but not limited to: (a) with respect to Personal Data, all applicable privacy laws and regulations and (b) laws or regulations relating to the recording of communications, including, when required, advising all participants in a recorded Circuit audio or video conversation or meeting that it is being recorded and that User Data and Personal Data may be transferred outside the European Economic Area and the US. It is Buyer's responsibility to ensure that Buyer has the right to use Circuit where Buyer is located, as well as where Buyer's meeting invitees are located.
- 7.2 Buyer is entirely responsible for any and all activities that occur under Buyer's Circuit Accounts and with Buyer's User Data. With Buyer's subscription to Circuit, Buyer acknowledges and consents, and Buyer will make all of Buyer's Circuit Users including Guest Users acknowledge and consent, that all Circuit User Data is in Buyer's sole responsibility.
- 7.3 User Data may be accessible by the Circuit Tenancy Administrator. If a Circuit User is deleted, the User Data of that Circuit User may still be accessed by other Circuit Users who shared a Conversation with that Circuit User

- 7.4 Buyer will indemnify, defend and hold harmless Supplier from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys' fees) arising from a violation of sections 6, 7 and 8 of this Part F that is attributable to Buyer.

## **8. Data privacy**

- 8.1 Supplier has no control over, and is not responsible for, the protection of any User Data that Buyer has shared with others, so always use caution when giving out any User Data that may contain Personal Data or other sensitive information. Buyer agrees to meet all statutory required preconditions for Buyer's intended use of Circuit and the User Data for which Buyer is responsible, e.g. by obtaining consent from employees so that in this regard Circuit can be provided to Buyer without Buyer without infringing any applicable Laws. Buyer is in particular responsible for observing Buyer's workers council rights of co-determination, where applicable. Buyer and Buyer's organisation shall indemnify Supplier from all claims and damages resulting from Buyer's failure to do so.

## **9. Security**

- 9.1 Buyer is entirely responsible for maintaining the confidentiality of all of Buyer's access credentials to Buyer's Circuit accounts, such as passwords and in particular with respect to the Circuit Tenancy Administrator. None of Buyer's Circuit User's may use any other Circuit Account at any time without the permission of the affected Circuit User.
- 9.2 Buyer must know the identity of any Circuit User Buyer signs up or invites, including Guest Users. Buyer may not permit parties that are unknown to Buyer, or who have not identified themselves to Buyer, to use Circuit. Failure to do so may result in Supplier blocking access to single Circuit Accounts or, in serious cases (as determined by the Supplier, acting reasonably), which shall be deemed to be Material Breach, of Buyer's entire access to Circuit up to and including the termination of the Call-Off Contract.
- 9.3 Buyer agrees to notify Supplier immediately of any unauthorised use of Buyer's Circuit Accounts or any other breach of security that Buyer knows of or reasonably suspects. Supplier will not be liable for any loss that Buyer may incur as a result of someone else using Buyer's passwords or circuit Accounts, either with or without Buyer's knowledge, unless it was Supplier's fault that the passwords were disclosed. Buyer acknowledges and agrees that in such event Buyer could in turn be held liable to Supplier for any damages and liabilities incurred by Supplier or third parties due to that unauthorised use of Buyer's Circuit Accounts or passwords.

## **10. Downloadable Software**

- 10.1 In order to use some features of Circuit, or to use Circuit on some devices, Buyer may have to download and install software, e.g. an app for a smartphone or tablet, or a plugin. Such software is licensed to Buyer under the terms of the Call-Off Contract and, in addition, the terms of the Supplier's End User Licence Agreement (EULA) apply. In some cases, the software may contain third-party software components, e.g. commercial components, Freeware or Open Source Software, which may be subject to additional Third Party EULAs or Open Source Licences, respectively. Such separate licensing terms shall prevail over Supplier's EULA. A copy of the EULA and the separate licensing terms, if any, may be obtained from Supplier prior to entering the Call-Off Contract.
- 10.2 Any installation of the software is subject to Buyer's acceptance of those license terms.
- 10.3 The software shall only be delivered and licensed in object code form i.e. executable, machine-readable form. There is no claim to delivery of the source code. Insofar as the terms of Open Source Licences provide for the provision of source code, Supplier may make the source code available (a) by including it in the software delivery or (b) upon Buyer's request, send separate media in return for reimbursement of expenses, or (c) through Supplier's website. Option (b) shall always be available, and covers the relevant Open Source Software used in the current version downloadable software for Circuit and all preceding versions, going back to at least three (3) years.
- 10.4 Buyer may copy such downloadable software for backup or archival purposes, or as part of using Circuit, but for no other purpose. Buyer may not remove or alter any copyright or proprietary notice. Buyer may not reverse engineer, decompile or disassemble the software save where explicitly permitted by law or by applicable Open Source Licences. Distribution within Buyer's business or organisation by other means than Circuit (e.g. internal software distribution system) is permitted only to the extent that downloadable software is distributed solely to and for the use of Buyer's Circuit Users.

## **11. Product Defects**

- 11.1 Supplier does not warrant that Buyer's use of Circuit will always be uninterrupted or error free. The quality and manner of the provision of Circuit is described in more detail in the Call-Off Contract.
- 11.2 If there is a Defect in Circuit, Supplier will remedy such Defect, provided that Buyer notifies Supplier of such Defect at least in text form without undue delay and in any case not later than five (5) Business Days from Buyer's knowledge of the Defect.
- 11.3 Buyer will render reasonable assistance free of charge, in particular by a prompt implementation of any work-around solution or the sending of logs. In case Buyer claims defects, which as per these Circuit Terms are not consider a defect (e.g. because Supplier is not responsible for the claimed defect or there is actually no defect) and Buyer should have been able to recognise that with reasonable diligence when examining the claimed defect, Supplier reserves the right to impose to a reasonable extent the costs incurred by Supplier to Buyer.
- 11.4 Supplier will decide, at its sole discretion, whether a workaround will be provided or a correction release of Circuit will be made available.
- 11.5 With respect to Defects, Buyer's sole remedy is set out in the Call-Off Contract, for eligible subscription plans. If the Defect is not remedied and materially impairs Buyer's use of Circuit in accordance with the Call-Off Contract on an ongoing basis, Buyer may terminate its Circuit licence without regard to the minimum term requirement. In this case, prepaid Fees (if any) for any Circuit licences shall be refunded to Buyer on a *pro rata* basis i.e. from the time Buyer's termination becomes effective.
- 11.6 The provisions of this section 11 are exhaustive with respect to claims based on Defects. Circuit is otherwise provided "as is" and as available. Save as explicitly described in the Call-Off Contract, Supplier makes no warranties, either express, statutory or implied, including without limitation any implied warranties for merchantability fitness for a particular purpose or non-infringement of intellectual property rights. All other rights and remedies shall be excluded. Any delay in the performance of Supplier's obligations due to non-fulfilment of Buyer's obligations under the Call-Off Contract shall be at Buyer's own cost and liability. Notwithstanding the above, Supplier's statutory liability for intent, bodily damage, fraudulent behaviour, misrepresentation or under applicable product liability law shall not be affected hereby. This also applies to any other liability which cannot, by applicable Law, be excluded by means of terms and conditions.

## **12. Loss of User Data**

- 12.1 Supplier's liability for loss or corruption of User Data, shall be limited to the time and cost for restoring the data from the regular, general backups of the Circuit platform that Supplier makes as part of Supplier's normal operations. It is otherwise Buyer's obligation to ensure that important User Data is not stored on Circuit alone, and to provide for backups or copies of such User Data on a regular basis. Buyer will not use Circuit as Buyer's sole means of storing such important data.
- 12.2 Unless specified otherwise in Buyer's applicable service package, Buyer's claim under the Call-Off Contract shall become time barred six (6) weeks after the incident occurred. Claims with respect to Defects shall become time barred twelve (12) months from their respective accrual.

## **13. Termination and Suspension**

- 13.1 Supplier may, without liability to Buyer, suspend each and any Circuit User who does not comply with the terms of the Call-Off Contract, the Acceptable Use Policy or the Support Forum Rules for Circuit, provided the dispute resolution procedure was not successful. Supplier may also suspend or terminate all or parts of Buyer's Circuit Tenancy without notice and without giving prior notice, if (a) Supplier reasonably determines that Buyer have grossly violated the Call-Off Contract or (b) Supplier is ordered to do so by a court or authority in any country.
- Supplier may, upon such suspension or termination, deactivate or delete and bar access to all of Buyer's Circuit Users and User Data, without refund or compensation.
- 13.2 Upon receipt of the termination notice, Supplier will provide a facility from which Buyer can download User Content prior to the expiry of the Call-Off Contract, unless Supplier is prohibited to do so by applicable Laws. In general the download facility will be made available for up to thirty (30) days from expiry of the Call-Off Contract. Upon expiry of that period, all User Accounts will be completely removed together with all User Data that such Circuit Users may have (still) stored in Circuit.
- Upon the termination becoming effective, Buyer will erase or otherwise destroy all copies of the downloadable software, including apps or plugins that Buyer may have obtained through Buyer's subscription to Circuit. With the exception of the download facility, Buyer will also cease to use any part of Circuit even if it should still be available to Buyer.
- Upon termination of the Call-Off Contract for cause attributable to Buyer, Supplier may make access to the download facility dependant on the payment of all outstanding fees, and prepayment of the fees for the relevant time during which the download facility is to be provided.
- 13.3 Notwithstanding any minimum term commitment, Supplier may terminate the Call-Off Contract at any time with effect to the end of a calendar month, giving at least one (1) year advance notice, if Supplier declares Circuit to be end-of-life i.e. will cease to offer Circuit.
- 14. Changes to Circuit**
- 14.1 Supplier may, at any time and at its sole discretion, further develop and expand Circuit and may replace or update or extend certain functionalities of Circuit by functionally equivalent functions. Supplier may select and/or modify at its sole discretion the equipment, hardware, software including utilities and tools, telecommunications equipment and terminals, IT systems and other items including the associated documentation (e.g. operating instructions, application guides and specifications) and the configuration used to provide Circuit to Buyer, provided that this does not materially impair the provision of Circuit to Buyer. Where feasible, Supplier will announce possible changes in Circuit that affect the system requirements, adequately in advance.
- 14.2 Supplier may at any time add or remove functionality or implement other changes that require changes on Buyer's side, such as a change of Buyer's browser, microphone settings or the exporting of data. In this case, Supplier will provide Buyer with thirty (30) days' notice by sending an email to the Buyer Contact, and, at Supplier's discretion, also in other suitable forms. If Buyer does nothing and continues to use Circuit after the change becomes effective, Buyer is deemed to have accepted the changed terms. If Buyer does not want to accept the changes, Buyer may terminate Buyer's subscription to Circuit with effect as of the date the change becomes effective. In this case, Buyer must send Supplier a notice, through the Buyer Contact.
- If Supplier has to implement a change because there is a requirement under applicable Laws which cannot be reasonably and in a legally compliant manner be avoided or circumvented, Supplier will still inform Buyer of the changes, but Buyer does not have a right to terminate.
- 15. Fees**
- The Fees and payment terms for Circuit are described in the Call-Off Contract.
- 16. Compliance with Export Control and Customs Regulations**
- 16.1 All Products, including but not limited to items/commodities ("Items") (goods/hardware, software and technologies and/or Services) may be subject to export laws and regulations and/or to national, foreign and international regulations. The Parties acknowledge that violations to such laws and regulations are prohibited and that compliance with applicable rules and regulations must be ensured at all times.
- 16.2 Supplier will perform all necessary and appropriate procedures for requesting any export authorisations required for deliveries to you, provided Supplier will be the legal Exporter of Record for the deliveries. Buyer will provide assistance, required documentation and certificates requested by Supplier to obtain required authorisations or to review, ensure and document compliance with applicable laws and regulations.
- 16.3 Should required authorisations not be granted, granted with delay, granted with a reduced scope, be revoked or not renewed, Supplier shall not be liable to the Buyer. Such events shall be considered as a Force Majeure event.
- 16.4 Buyer shall obtain in due time all required import licenses required for the Items imported from Supplier. Supplier will, on reasonable request, provide reasonable assistance and documentation in support of the import licensing process.
- 16.5 Buyer is aware that Items supplied under export licenses are provided for a specific end use and end user and may be subject to specific provisions and conditions. Buyer will respect the contents of the applicable governmental licenses and authorisations and the certificates signed in the licensing process. Buyer will not sell, transfer or make otherwise available items delivered under export licenses to any end user, end use or destination deviating from the contents of the export license unless such action was authorised by the competent authority issuing the original export authorisation.
- 16.6 Buyer will only transfer, export or re-export Items received from Supplier to reliable partners. They will ensure that Items are not made available in any way to parties, destinations and end users under embargo, excluded from business or otherwise under relevant sanctions by Germany, the European Union, the USA or the United Nations.
- 16.7 Buyer will not re-export any controlled technical information / technology under this Call-Off Contract.
- 16.8 If Items are exported directly to a country outside the EU under Buyer's responsibility, Buyer guarantees direct export out of the EU or the country of dispatch without undue delay no later than thirty (30) days after handover of the items to Buyer or its designated freight forwarder and during the validity period of the export authorisation applicable to the individual export. Buyer will only designate reliable freight forwarders (example: AEO certified) who participate in AES (Automated Export System – an automated European Union Customs process). Buyer guarantees correct closure of the respective customs procedure on leaving the European Union or the country of dispatch. In case of non-compliance, Buyer shall be liable for any additional costs – freight and other – and charges imposed on Supplier by the national tax administration.
- 16.9 Shipments may not be re-routed to other destinations than those given in the shipment documentation. Such documentation may not be removed or replaced before the shipment has reached its originally declared destination.
- 16.10 In case of re-export of any Item by Buyer and unless Supplier is the legally defined Exporter of Record, Buyer shall be responsible for the overall export process. Buyer shall bear all costs related to export control for such re-export.

16.11 Buyer shall indemnify and hold harmless Supplier from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance with export control regulations by Buyer, and Buyer shall compensate Supplier for all losses and expenses resulting thereof.

**17. Other**

17.1 All obligations that End Users must comply with or, that the Buyer must procure that End Users comply with, as set out in Part A (Main) of the Supplier Terms shall also apply to Circuit Users (and its subcategories Guest Users, Session Guest Users, Limited Role Guest Users, Cross Tenancy Guest Users and Circuit Tenancy Administrators) and the Buyer shall ensure that Circuit Users (and its subcategories Guest Users, Session Guest Users, Limited Role Guest Users, Cross Tenancy Guest Users and Circuit Tenancy Administrators) comply with such obligations.

## ACCEPTABLE USE POLICY FOR CIRCUIT

**1. Introduction**

The Supplier wants you (which, in addition to "your", shall be construed as the Buyer), your organization and the Circuit Users your organization subscribed to (hereinafter collectively referred to as "you") and everyone else who uses Circuit to enjoy a productive, disruption-free and safe use of Circuit. This Acceptable Use Policy (AUP) is designed to prevent abuse of Circuit. All use of Circuit is subject to this AUP.

By accepting the Call-Off Contract you have accepted this AUP. If you do not, or no longer, want to accept this AUP, do not continue to use Circuit. Ceasing to use Circuit does not, however, imply that the Call-Off Contract between you and the Supplier is terminated. If you want to terminate, a separate notice is required, as described in the Part F (Circuit) of the Supplier Terms. You may have your own acceptable use policy or similar framework of rules and regulations governing the use of your IT-systems ("Customer IT Policies"). You are free to subject your Circuit Users to such Customer IT Policies and enforce such Customer IT Policies internally, but we cannot address individual Customer IT Policies within Circuit. You agree and accept that the benchmark for the Supplier's provision of Circuit to you shall solely be governed and determined by this AUP.

**2. Definitions**

Capitalised terms used herein have the meaning stated in the Call-Off Contract, unless they are explicitly defined otherwise.

**3. User Content you may see on the Circuit**

Circuit is used all over the world and by people from many different backgrounds, cultures and jurisdictions. You understand and acknowledge that when using Circuit or the Circuit Support Forum you may be exposed to User Content that you may consider being inaccurate, offensive, indecent, or objectionable. Subject to any mandatory statutory liability of Supplier with respect to User Content, Supplier is not liable for any damages you allege to incur as a result of such User Content.

**4. Liability for User Content**

You are responsible for all User Content that you upload, publish, display, link to or otherwise make available ("Publish") on Circuit in connection with your User Account(s). You are also responsible for any interaction you make with other Circuit Users.

The Supplier takes no responsibility and assumes no liability for any User Content that you or any other Circuit Users post, or which other third parties send to Circuit. Without limitation to the Supplier's general obligation to provide Circuit in a manner that is compliant with applicable Laws, in particular data protection laws, you understand and agree that any loss or damage of any kind that occurs as a result of the use of any User Content that you willingly send, upload, download, stream, post, transmit, display, publish or otherwise make available or access through your use of Circuit is solely your responsibility.

You acknowledge that the Supplier has no control, and is not responsible for, the privacy of any User Content that you or someone else among your Circuit Users have willingly shared with others. You will always use proper caution when giving out any Personal Data or sensitive information to others.

**5. User Content that is not acceptable**

You agree not to upload, post, email, store, transmit, or otherwise make available through Circuit any User Content that:

- is obviously unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, invasive of another's privacy, hateful or, with reasons, deemed by the Supplier to be racially, ethnically, or otherwise objectionable;
- is unsolicited or unauthorised advertising, promotional materials, so-called junk mail or spam mail, so-called chain-letters or pyramid schemes, affiliate links, or any other form of solicitation, save for your internal purposes;
- contains viruses, worms, Trojan horses, malware, infected or corrupted files, hoaxes, or other items of a destructive or deceptive nature;
- violates third-party rights of any kind, including without limitation any Intellectual Property Rights;
- contains any information or content that you do not have a right to make available under any applicable Law;
- violates an individual's publicity or privacy rights or
- harms or interferes with any device, software, network or service that is part of Circuit and its underlying infrastructure.

When determining if User Content is not acceptable, the Supplier will take into account if the relevant User Content is available only to you or your fellow Circuit Users from your company or Organisation, or if it is made widely available (e.g. through the Circuit Support Forum).

**6. Uses and practices that are not acceptable**

The Supplier reserves the right to take any unlawful, prohibited, abnormal or unusual activity into account in making its determination. In particular, you agree not to, and agree not to allow or instigate third parties or your Guest Users, to use Circuit:

- for any unlawful, invasive, infringing, defamatory, or fraudulent purpose;
- for inbound or outbound telemarketing or call centre operations;
- to collect or harvest any personally identifiable information, including account names, from Circuit and in particular from the Circuit Directory and the Circuit Support Forum, save where you have the explicit permission of the affected Circuit Users;

- with any automated system, including without limitation, “robots,” “spiders,” “scrapers,” “bots,” “offline readers,” etc., that access Circuit in a manner that sends more requests, pings or other messages to the systems providing Circuit than a human can reasonably produce in the same period of time by using a conventional on-line web browser;
- to interfere with the use of Circuit by other Circuit Users, or the equipment used to provide Circuit. In particular, you agree not to, and to not allow or instigate third parties or your Guest Users, attempt in any way to make an effort to temporarily or indefinitely interrupt or suspend the services of a machine or network resource providing Circuit and render it unavailable e.g. any DoS (Denial of Service)-type or DDoS (Distributed Denial of Service)-type attack;
- to alter, disable, interfere with or circumvent any security or access control aspect of Circuit;
- to test or reverse-engineer Circuit in order to find limitations, vulnerabilities or evade filtering capabilities, save where explicitly permitted by applicable Law.
- You may not resell Circuit User accounts.
- You may not share Circuit User accounts between users from different organisations by mechanisms other than those designated for that within Circuit, e.g. the function that is used to invite and handle Guest Users.
- To the extent Circuit allows you to make outbound calls through other channels than your own telephone system, you may not call numbers (whether singly, sequentially or automatically) to generate income for yourself or others as a result of placing the call, other than for your individual business communications.
- You may not use unusual calling patterns inconsistent with normal, individual subscription use, for example, regular calls of short duration or calls to multiple numbers in a short period of time.

The Supplier reserves the right to take similar practices into account in order to determine if a particular behaviour is not an acceptable use of Circuit.

## 7. Subpoenas, warrants, and/or orders

The Supplier will comply with and respond to valid (as the Supplier will determine in its sole discretion) subpoenas, warrants, and/or orders issued by a court or an authority received in relation to User Content. If permitted by applicable Law, the Supplier will first forward such subpoenas, warrants, and/or orders to you so that you may respond.

However, the Supplier reserves the right to respond to any such subpoena, warrant and/or order without informing you if the Supplier is not permitted to do so by such subpoena, warrant, and/or order, and/or if by not responding at once the Supplier might breach applicable Laws.

## 8. Reporting Violations of the Acceptable Use Policy

With the exception of the Circuit Support Forum, the Supplier will not generally monitor User Content.

Reports of alleged violations of the AUP should be sent to the Supplier User's Help Desk. Reports should include as much information as possible, in particular your name and contact information, and the IP address or Circuit Conversation or website allegedly in violation, and a description of the alleged violation. Unless otherwise required by applicable Laws, the Supplier assumes no general duty to respond to alleged violations. The Supplier will review all verified reports and will take such actions as it deems appropriate in our sole discretion.

To the extent applicable to Circuit Users under applicable Laws:

If you believe that the Supplier or any of its affiliates or any Circuit User (including the Circuit Users of other Customers) violated a copyright, please notify the Supplier following the procedure below. This procedure is intended to comply with the copyright laws, and help the Supplier to locate and investigate any potential copyright infringement.

Copyright Infringement Claim notice should be sent to the following, by mail:

Copyright Agent:

Atos IT Services UK Limited  
c/o Legal Department

Second Floor, Mid City Place

71 High Holborn

London WC1V 6EA

The Copyright Infringement Claim notice should include the following information.

- Identify the copyrighted work(s) you claim is infringed.
- Identify the material you claim is infringing the copyright(s), and provide enough information for the Supplier to reasonably locate that material.
- Include a physical or electronic signature of the copyright owner or a person authorised to act on the copyright owner's behalf (the “Claimant”).
- Include the Claimant's name, address, email address, and telephone number(s).
- Include a statement that the Claimant has a good faith belief that use of the disputed material is not authorised by the copyright owner or his agent.
- Include a statement, under penalty of perjury, that the information in the notification of copyright infringement is accurate and that the Claimant is authorised to act on behalf of the copyright owner.

Procedure upon receipt of Notice of Infringement:

When the Supplier receives an Infringement Notice with all the required information and is able to locate the allegedly infringing material, the Supplier will remove or disable access to the subject material. The Supplier also will take reasonable steps to promptly notify the Circuit account-holder or other person who posted or submitted the material that it has removed or disabled access to the material.

Counter Notification Procedure:

The Supplier will inform the Circuit account-holder or other poster/submitter of the material that they may send it a Counter Notification if they believe the claim of infringement is not correct. A Counter Notification must be sent to the Designated Agent at the address/email identified above. A Counter Notification must contain the following information:

- A physical or electronic signature of the Circuit account-holder or other poster/submitter of the material;
- Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
- A statement under penalty of perjury that the Circuit account-holder or other poster/submitter of the material has a good faith belief that the material was removed or disabled due to mistake or misidentification of the material removed or disabled;
- The name, address, email address and telephone number of the Circuit account-holder or other poster/submitter of the material;
- A statement that the Circuit account-holder or other poster/submitter of the material consents to the jurisdiction of the Federal District Court for the judicial district in which the account-holder's or poster/submitter's address is located, or if the account-holder or poster/submitter is outside of the United States, for any judicial district in which Circuit may be found, and that the account-holder or poster/submitter will accept service of process from the person who provided notification or an agent of such person.

#### Procedure upon receipt of Counter Notification.

When the Supplier receive a Counter Notification containing all the above information,

- The Supplier will promptly provide the Complainant with a copy of the Counter Notification;
- The Supplier will inform the Claimant that it will replace the removed material or restore access to it within ten (10) to fourteen (14) business days after receipt of the Counter Notification, and will do so, unless its Designated Copyright Agent has received notice from the Complainant stating that a lawsuit has been filed against the Circuit account-holder or poster/submitter, and the lawsuit seeks a court order to restrain the Circuit account-holder or poster/submitter from infringing the copyright in the material.

## **9. How the Supplier resolves violations of the AUP**

It is the goal of the Supplier to mitigate any interruptions of your use of Circuit while at the same time the Supplier wants to swiftly resolve potential violations of this AUP. The Supplier staff is dedicated to working with you in resolving potential violations, and are available via phone, ticket, forum, or email, as determined by the applicable Circuit Support Plan.

The Supplier reserves the right to block or remove any User Content if so required by applicable Law, e.g. when the Supplier receives a take-down order from a court. The Supplier shall also follow any blocking or removal requirements issued by you through the Buyer Contact. If a request for blocking or removal comes from a third party, the Supplier will, where legally feasible, first consult with you through the Buyer Contact. You accept and acknowledge that in some countries, applicable Law may require the Supplier to access your account, and inspect and possibly remove the User Content stored therein without first consulting with you.

The following description is provided for informational purposes only and should be seen as a framework of processes with respect to resolving potential violations. Timing for resolution differs according to the degree of the violation, the nature of the violation, involvement of law enforcement, involvement of third party litigation, or other related factors.

- Following receipt of a violation of the AUP, a ticket and message will be generated to provide the Customer Contact with information regarding the potential violation of the AUP. Usually, the Supplier will request further information or, in obvious cases, notify you of the potential violation and the required actions to resolve the issue.
- Once a violation of the AUP was established, information specific to the violation will be added to the ticket. This will also include any additional facts about the situation and will be resent to the Buyer Contact. Thereby, you will be notified of the action required to resolve the violation.
- In the event you disregard the notice, or fail to properly address it within the period granted by the Supplier to remedy the violation, or if the violation continues, the Supplier will disable the affected Circuit User account(s) and/or the related Conversations. Access to the dedicated services may then be achieved only through a secure private service network connection and for your individual resolution. As soon as the violation is addressed, access shall be restored and service will continue as normal.
- If you fail to address the violation AND also fail to resolve the violation, the Supplier may suspend all access to Circuit. This is a last resort and only results if you fail to participate in the resolution process. If, thereafter, the issue is not resolved by you without undue delay, the Supplier may permanently suspend Circuit for the remainder of the term of the Call-Off Contract, without liability and without any reduction of fees. All outstanding fees shall become due immediately; the Supplier shall have the right to reclaim all resources dedicated to your use of Circuit and may destroy your User Data.

## **10. Consequences of violations**

The Supplier may, at its option and without liability, permanently or temporarily suspend a Circuit User account or otherwise refuse to permit access to Circuit, if the Supplier determines that the Circuit User account is used contrary to this AUP or the Call-Off Contract. The Supplier will provide you, your organisation's Buyer Contact and the Circuit Tenancy Administrator with notice of improper usage before suspension or termination of the relevant Circuit User account, unless due to the nature of the usage it is essential to act as quickly as possible to prevent damage. In particular but without limitation, the Supplier may do so if it becomes aware of any of the following prohibited actions, which, together with other breaches of this AUP, shall be considered Material Breaches:

- an attempt to interfere with, or compromise the integrity or security of, or attempt to decipher any transmissions to or from, the servers and other underlying infrastructure running or providing Circuit;
- any action that imposes, or, as determined by us at our sole discretion, may impose, an unreasonable or disproportionately large load on the servers and other underlying infrastructure running or providing Circuit;

- an attempt to interfere with the proper working of Circuit or to bypass the security measures the Supplier may use to prevent or restrict access to Circuit, including, but not limited to, registering with an invalid email address.

## **11. Changes to this AUP**

You are encouraged to periodically review this AUP. The Supplier may, in accordance with Call-Off Contract, occasionally update this AUP to reflect customer feedback, changes in Circuit, and updates to applicable Laws. Prior to making such changes effective, the Supplier will notify you and your organisation in advance through the Buyer Contact and the Circuit Tenancy Administrator by posting a notice on the Circuit login page. The Supplier will provide a link under which you can review the updated statement. Depending on your or your organisation's settings, the Supplier may instead, or in addition, send a notification email, and/or post a message inside Circuit. These notification(s) will be made independent of, and do not intend to limit, any notification procedure agreed with your organisation in the Call-Off Contract.



## PART G - DEFINITIONS

1.1 In these Supplier Terms unless the context requires otherwise the following terms shall have the following meanings:

<b>"Acceptable Use Policy"</b>	means the policy set out in Annex 3 of Part A (Main), save in relation to: (i) Part D (SAAS) where the Acceptable Use Policy set out in Annex 3 of Part A (Main) shall apply unless otherwise agreed; and (ii) Part F (Circuit) where the <b>"Acceptable Use Policy"</b> set out in Annex 1 of Part F shall apply and shall have the meaning set out therein;
<b>"Acceptance Period"</b>	shall have the meaning ascribed to it in section 4 of Part B (IT Services) of the Supplier Terms;
<b>"Acceptance Tests"</b>	means the tests designed to check that the IT Services Deliverables comply in all material respects with the Specification, save in relation to Part E (Product and Professional Services) where <b>"Acceptance Tests"</b> shall have the meaning set out therein;
<b>"Acceptance Test Criteria"</b>	means the basis upon which the Acceptance Tests will be designed to check that the IT Services Deliverables comply in all material respects with the Specification;
<b>"Account"</b>	means the account created by the Supplier for use by the Buyer in connection with the Services;
<b>"Application Programming Interface" or "API"</b>	means a language and message format used by an application program to communicate with the operating system or some other control program such as a database management system (DBMS) or communications protocol;
<b>"Associated Company"</b>	means any entity Controlled by or under the same Control as or Controlling the relevant Party, where <b>"Control"</b> means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and <b>"Controls"</b> , <b>"Controlled"</b> and <b>"Controlling"</b> shall be interpreted accordingly;
<b>"BCR"</b>	shall have the meaning ascribed to it in section 1.15 of Section 1 Part B Annex 1 Part A (Main) of the Supplier Terms;
<b>"Brexit"</b>	means the demission of the United Kingdom from the European Union in accordance with the European Union (Withdrawal) Act 2018 and any other arrangement entered into between H.M. Government and the European Union;
<b>"Brexit Events"</b>	shall have the meaning ascribed to it in section 15.1 of Part A (Main) of the Supplier Terms;
<b>"Buyer Content"</b>	means the Content that the Buyer or any End User: <ul style="list-style-type: none"> <li>(i) runs on the Services;</li> <li>(ii) causes to interface with the Services (including any Content necessary for connectivity or compatibility with the Service Elements);</li> <li>(iii) uploads to the Services; or</li> <li>(iv) otherwise provides, transmits, processes, uses or stores, under or in connection with the Buyer Account, the Services or the Call-Off Contract.</li> </ul> For the avoidance of doubt, Buyer Content includes the Buyer Data, Service Data, Service Personal Data, Buyer Personal Data and Buyer Software.
<b>"Buyer Elements"</b>	means the Buyer Content and the Buyer Environment;
<b>"Buyer Environment"</b>	means: <ul style="list-style-type: none"> <li>(i) the hardware and other equipment, communications and other IT infrastructure at the Buyer premises; and</li> <li>(ii) the hardware and other equipment, communications and other IT infrastructure to which any Service Elements are required to connect and/or with which any Service Elements are required to operate,</li> </ul> excluding the Supplier Environment and the Third Party Environment;
<b>"Circuit"</b>	shall mean the Supplier's Circuit Collaboration Services;
<b>"Clock Stop"</b>	means the clock stop provisions set out in section 6 of Annex 2 of Part A (Main) the Supplier Terms;
<b>"Cloud Services Provider"</b>	shall have the meaning ascribed to it in Annex 4 of Part A (Main) of the Supplier Terms;
<b>"Content"</b>	means, without restriction, software in all forms, code, command line tools, software libraries, web service definition language, documentation, data (including any Personal Data), text, audio, video, images, know-how, technologies, methodologies, processes, tools, working papers, or any other content;
<b>"Controlled Data"</b>	means any technical data such as blueprints, source code, drawings, plans, specifications, manuals or instructions which are required for the development, production or use of export controlled products or software;
<b>"Defaulting Person"</b>	shall have the meaning ascribed to it in section 5.1.5 of Part C (Secondment) of the Supplier Terms;
<b>"Devices"</b>	means the devices specified by the Supplier as being able to be used with the specific Service;
<b>"End User"</b>	means the Buyer and its employees;
<b>"General SLA Terms"</b>	means the general service level agreement terms and conditions relating to the Services set out in Annex 2 of Part A (Main) of the Supplier Terms;
<b>"Incident"</b>	means any event which is not part of the standard operation of the Service as set out in the Service Definition and which causes, or may cause, an interruption to, or a reduction in the quality of that Service, save in relation to Part D (SAAS) where <b>"Incident"</b> shall have the meaning set out therein;

"Instructions"	shall have the meaning ascribed to it in section 1.1.3 of Part A Annex 1, section 1.3 of Part B Annex 1 and section 5 of Part C Annex 1 of Part A (Main) of the Supplier Terms (as the case may be);
"IT Services Deliverables"	means an item or items of work which are to be delivered by the Supplier to the Buyer as part of the IT Services which are expressly identified in the Order Form as IT services deliverables;
"Licence"	shall have the meaning ascribed to it in section 11.6 of Part A (Main) of the Supplier Terms;
"Location"	means any location where the Supplier or a Supplier Party have premises from which Services are provided;
"Maintenance"	shall have the meaning ascribed to it in section 4 of Annex 2 of Part A (Main) of the Supplier Terms;
"Minor Defect"	means any error or defect which does not interfere with the effective use of the IT Services Deliverable or which is cosmetic in nature including minor reporting and screen errors or minor deviations from the expected operation of the IT Services Deliverable;
"New Functionality"	means a new feature incorporated in an Upgrade or a New Version which is not available in the version licensed to the Buyer under the Supplier Terms;
"New Version"	means a set of systems software or applications software which the Supplier designates as a new version to the version licensed to the Buyer under the Supplier Terms and in which substantial new but successor functionalities or other substantial changes (e.g. architectural) are introduced;
"Non-Conformity"	shall mean a failure of part or all of an IT Services Deliverable to conform in any material respect with the Specification which substantially prevents the useful operation of the IT Services Deliverable or which, while not necessarily precluding the useful operation of the IT Services Deliverable, substantially reduces its effectiveness;
"Product and Professional Services"	means the Supplier's OpenScape Professional Services and its IDAM Management Workshop Services;
"Project"	shall have the meaning ascribed to it in section 2.1 of Part C (Secondment) of the Supplier Terms;
"Re-Activation Charge"	means the amount of all reasonable costs, charges and losses sustained or incurred by the Supplier or any Supplier Party as a result of the suspension and the reactivation of the Service Elements, the Buyer Account and/or the Buyer Elements or any part thereof;
"Relevant Staff"	means any personnel employed by the Supplier wholly or mainly in connection with the provision of the Services;
"Resolution" or "Resolve"	means that the normal operation of the Services has been restored and the Incident status has been set to resolved by the Supplier, save in relation to Part F (Circuit) where " <b>Resolution</b> " and " <b>Resolve</b> " shall have the meaning set out therein;
"Resolution Time"	means the time taken between the Supplier's confirmation of an incident being logged as an Incident and it being Resolved;
"Role"	shall have the meaning ascribed to it in section 2.2 of Part C (Secondment) of the Supplier Terms;
"SAAS"	means the Supplier's Hosted Voice and Collaboration Service, its Hosted Contact Centre Service or its Public Hosted Voice Collaboration Service;
"Secondee(s)"	shall have the meaning ascribed to it in section 2.1 of Part C (Secondment) of the Supplier Terms;
"Service Credit"	means a sum to be credited by the Supplier to the Buyer for a failure to achieve a Service Level, as calculated and agreed in the Order Form by the Parties;
"Service Elements"	means the Services, the Supplier Environment, Third Party Environment, the Supplier Content, the Third Party Content, and the Third Party Services;
"Service Level"	means a target performance standard set out in the Order Form, the Service Definition and/or the General SLA Terms (as the case may be) in accordance with which the Supplier shall provide the Service to which it relates;
"Severity Level"	means the severity level of the Incident, which has been allocated by the Supplier in accordance with criteria detailed in the Order Form or the Service Definition (as the case may be);
"Shared Environment"	means a services infrastructure that hosts and performs services in respect of multiple end customers;
"Schedule of Transferring Staff"	means the list of employees of the Buyer and/or third parties (set out as a schedule to the Call-Off Contract) whose employment is expected to transfer to the Supplier in accordance with the Employment Regulations;
"Specification"	shall mean the technical and functional specifications for the operation of the IT Services Deliverables produced by the Supplier in conjunction with information to be provided by the Buyer and the product descriptions (if any) made available by the relevant licensors and manufacturers as agreed in the Order Form, save in relation to Part E (Product and Professional Services) where " <b>Specification</b> " shall have the meaning set out therein;
"Status Report"	shall have the meaning ascribed to it in section 5.1.2 of Part C (Secondment) of the Supplier Terms;
"Submissions"	means all submissions, feedback and/or suggested improvements to the Service Elements that the Buyer or any End User provides to the Supplier, excluding any Feedback, as defined in Section 6 of Part F (Circuit) of the Supplier Terms;
"Supplier Content"	means the Content that the Supplier or any of the Supplier's Associated Companies owns and makes available in connection with or as part of the Service Elements;
"Supplier Environment"	means the hardware and other equipment, communications and other IT infrastructure of the Supplier or its Associated Companies made available by the Supplier in connection with, as part of or as a Service;

<b>"Supplier Parties"</b>	means the Supplier's Associated Companies, sub-contractors, suppliers, consultants, agents and licensors (including for the avoidance of doubt Supplier Staff and Supplier Subcontractors);
<b>"Tax(es)"</b>	means any tax, however denominated, charge, tariff, contribution, duty, levy, assessment, government charge or fee of any kind charged, imposed or levied, directly or through withholding, by any competent authority (including withholding tax, customs charges and duties and VAT);
<b>"Third Party Agreement"</b>	means any terms (including open source licensing terms) in accordance with which, or agreement under which, Third Party Content, Third Party Services and/or a Third Party Environment are made available in connection with or as part of or as a Service by the relevant third party or by the Supplier on such third party's behalf as set out in the Order Form, the Service Definition or as provided by the Supplier or such third party at the time of the Buyer ordering or accessing and/or using that Service or any time thereafter, as such may be updated by the Supplier or the relevant third party from time to time;
<b>"Third Party Content"</b>	means the Content (including open source code) owned and/or made available by any third party (or by the Supplier on such third party's behalf) in connection with, as part of or as a Service;
<b>"Third Party Elements"</b>	shall have the meaning ascribed to it in Annex 4 of Part A (Main) of the Supplier Terms;
<b>"Third Party Environment"</b>	means the hardware and other equipment, communications and other IT infrastructure of a third party (including any Supplier Party who is not an Associated Company of the Supplier) made available by a third party (or by the Supplier on such third party's behalf) in connection with, as part of or as a Service, excluding the Supplier Environment and the Buyer Environment;
<b>"Third Party Service"</b>	means a third party hosted and/or delivered service made available by the Supplier in connection with, as part of or as a Service;
<b>"Transferring Staff"</b>	shall have the meaning ascribed to it in section 18.2 of Part A (Main) of the Supplier Terms;
<b>"Update"</b>	means an update to a Service or an IT Service Deliverable that is not systems software or applications software; and
<b>"Upgrade"</b>	shall mean a set of systems software or applications software which the Supplier designates as an upgrade to the version licensed to the Buyer under the Call-Off Contract and which may contain minor changes, patches, modifications, enhancements and/or error corrections, save in relation to Part D (SAAS) where <b>"Upgrade"</b> shall have the meaning set out therein.