

# SHORT FORM CONTRACT FOR THE SUPPLY OF GOODS AND/OR SERVICES

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## II. Cover Letter (Not Used)

### III. Order Form

<b>1. Contract Reference</b>	SR2496978868	
<b>2. Buyer</b>	HMRC, (100 Parliament Street Westminster London SW1A 2BQ). In entering into this Contract, the Buyer is acting as part of the Crown and the Supplier shall be treated as contracting with the Crown as a whole.	
<b>3. Supplier</b>	JFrog Ltd, Company number 514130491 Address: 3 HaMachshev St., Netanya, Israel	
<b>4. The Contract</b>	This Contract between the Buyer and the Supplier is for the supply of Deliverables. The Supplier shall supply the Deliverables described below on the terms set out in this Order Form and the attached contract conditions (" <b>Conditions</b> ") and Annexes. Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in the Conditions.	
<b>5. Deliverables</b>	<b>Goods</b>	None
	<b>Services</b>	JFrog SaaS Platform as set out: <ul style="list-style-type: none"> <li>in Annex 2 – Specification</li> </ul>
<b>6. Specification</b>	The specification of the Deliverables is as set out: <ul style="list-style-type: none"> <li>in Annex 2 – Specification</li> </ul>	
<b>7. Start Date</b>	26/09/2025	
<b>8. Expiry Date</b>	25/09/2028	
<b>9. Extension Period</b>	Not applicable	
<b>10. Buyer Cause</b>	Any Material Breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier.	
<b>11. Optional Intellectual Property Rights ("IPR") Clauses</b>	Clause 10 shall be deleted and replaced with the clauses set out in Part B -of Annex 5 – Optional IPR Clauses	
<b>12. Charges</b>	The Charges for the Deliverables shall be as set out <ul style="list-style-type: none"> <li>in Annex 3 – Charges</li> </ul>	

<b>13. Payment</b>	<p>Payment of valid and undisputed invoices will be made within 30 days of receipt of the invoice or, if later, the date by which the payment falls due in accordance with the invoice, which must be submitted promptly by the Supplier.</p> <p>All invoices must be sent, quoting a valid Purchase Order Number (PO Number), provided that all invoices are received within 10 Working Days, and any other relevant details including the minimum required information set out in Section 68(9) of the Procurement Act 2023, via the SAP Ariba system.</p> <p>Within 10 Working Days of receipt of your countersigned copy of this Order Form, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, item number (if applicable) and the details (name, email, and telephone number) of your Buyer contact (i.e. Buyer Authorised Representative). Non-compliant invoices may be sent back to you, which may lead to a delay in payment.</p> <p>Payments will be made via the SAP Ariba System.</p> <p>If you have a query regarding an outstanding payment please contact our Accounts Payable team by email to: [REDACTED] between 09:00-17:00 Monday to Friday.</p>
<b>14. Data Protection Liability Cap</b>	<p>In accordance with clause 12.6 of the Conditions, the Supplier's total aggregate liability under clause 14.5.4 of the Conditions is no more than the Data Protection Liability Cap, being [REDACTED]</p>
<b>15. Progress Meetings and Progress Reports</b>	<p>Per Buyer's Platinum Support SLA (See <a href="https://jfrog.com/platinum/sla/">https://jfrog.com/platinum/sla/</a> )</p>
<b>16. Buyer Authorised Representative(s)</b>	<p>For general liaison your contact will continue to be [REDACTED]</p>
<b>17. Supplier Authorised Representative(s)</b>	<p>For general liaison your contact will continue to be [REDACTED] or, in their absence, [REDACTED]</p>
<b>18. Address for notices</b>	<p>In accordance with clause 26.1, all notices under the Contract shall be in writing and will be served by e-mail unless it is not practicable to do so.</p> <div> <div> [REDACTED]  Attention: [REDACTED]  Address: [REDACTED] </div> <div> [REDACTED]  Attention: [REDACTED]  Address: [REDACTED] </div> </div>
<b>19. Key Staff</b>	<p><b>Removed</b></p>

<b>20. Procedures and Policies</b>	<p>For the purposes of the Contract the:</p> <p>The Buyer's staff vetting requirements are as set out in Schedule 16 (Security) Buyer-led Assurance</p>
<b>21. Optional Security Requirements</b>	<p>The following annex shall apply to this Contract:</p> <p>Schedule 16 (Security) Buyer-led Assurance</p>

22. Special Terms	

	<p>The following documents are incorporated into the Contract. If there is any conflict, the following order of precedence applies:</p> <ul style="list-style-type: none"> <li>(a) This Order Form</li> <li>(b) Any Special Terms (see row 22 (Special Terms) in this Order Form)</li> <li>(c) Conditions (as amended by Annex 5 – Optional IPR Clauses)</li> <li>(d) The following Annexes and schedules in equal order of precedence: <ul style="list-style-type: none"> <li>i. Annex 1 – Processing Personal Data</li> <li>ii. Annex 2 – Specification</li> <li>iii. Annex 3 – Charges</li> <li>iv. Schedule 16 (Security) Buyer Led Security</li> <li>v. Schedule 1 (Performance Levels)</li> <li>vi. Schedule 2 (AUTHORITY'S MANDATORY TERMS)</li> <li>vii. Schedule 3 (JFrog Subscription Agreement – Hybrid “<b>JSA</b>”) – applies only for specified definitions and sections referenced in this Order. Undefined terms shall have their meaning in Schedule 3 (JFrog Subscription Agreement – Hybrid and references to certain terms in this Contract and the JFrog Order Form shall apply with the necessary modifications.</li> <li>viii. Schedule 4 List of Supplier's sub processors.</li> <li>ix. Schedule 5 JFrog AWS Marketplace Order Form</li> </ul> </li> </ul>

Signed for and on behalf of the Supplier	Signed for and on behalf of the Buyer acting on behalf of the Crown
Name: <span style="background-color: black; color: black;">[REDACTED]</span>	Name: <span style="background-color: black; color: black;">[REDACTED]</span>
Date: <span style="background-color: black; color: black;">[REDACTED]</span>	Date: <span style="background-color: black; color: black;">[REDACTED]</span>
Signature: <span style="background-color: black; color: black;">[REDACTED]</span>	Signature: <span style="background-color: black; color: black;">[REDACTED]</span>

## IV. Short form Terms ("Conditions")

### 1. Definitions used in the Contract

#### 1.1 In this Contract, unless the context otherwise requires, the following words shall have the following meanings:

<b>1</b>	<b>"Affiliates"</b>	1 in relation to a body corporate, any other entity which directly or indirectly Controls (in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and " <b>Controlled</b> " shall be construed accordingly), is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>2</b>	<b>"Audit"</b>	1 the Buyer's right to: (a) verify the accuracy of the Charges and any other amounts payable by the Buyer under the Contract (including proposed or actual variations to them in accordance with the Contract); (b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Deliverables; (c) verify the Supplier's and each Subcontractor's compliance with the applicable Law; (d) identify or investigate actual or suspected breach of clauses 4 to 33 (inclusive), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations; (e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Subcontractors or their ability to provide the Deliverables; (f) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General; (g) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract; (h) carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts; (i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;
<b>3</b> <b>"</b>	<b>"Beneficiary</b>	1 a Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>4</b> <b>"Buyer Cause"</b>		1 has the meaning given to it in the Order Form;

<b>5</b>	<b>"Buyer"</b>	1 the person named as Buyer in the Order Form. Where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole;
<b>6</b>	<b>"Charges"</b>	1 the charges for the Deliverables as specified in the Order Form;
<b>7</b>	<b>"Claim"</b>	1 any claim which it appears that the Party is, or may become, entitled to indemnification under this Contract;
<b>8</b>	<b>"Conditions"</b>	1 these short form terms and conditions of contract;
<b>9</b>	<b>"Confidential Information"</b>	1 all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (a) is known by the receiving Party to be confidential; (b) is marked as or stated to be confidential; or (c) ought reasonably to be considered by the receiving Party to be confidential;
<b>10</b>	<b>"Conflict of Interest"</b>	1 a direct or indirect conflict between the financial, professional or personal interests of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer;
<b>11</b>	<b>"Contract"</b>	1 the contract between the Buyer and the Supplier which is created by the Supplier's counter signing the Order Form and includes the cover letter (if used), Order Form, these Conditions and the Annexes and Schedules;
<b>12</b>	<b>"Contract Year"</b>	(a) a period of 12 months commencing on the Start Date; and (b) thereafter a period of 12 months commencing on each anniversary of the Start Date, 2 with the final Contract Year ending on the expiry or termination of the Term;
<b>13</b>	<b>"Controller"</b>	1 has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>14</b>	<b>"Crown Body"</b>	1 the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>15</b>	<b>"Data Loss Event"</b>	1 An event that results , in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual loss and/or destruction of Personal Data in breach of this Contract, following any confirmed Personal Data Breach; For unauthorised access to Personal Data which results in suspected or potential loss of Personal Data, Processor shall conduct an initial assessment and notify Controller only if Processor has demonstrated that such loss has occurred.

<b>16 "Data Protection Impact Assessment"</b>	1 an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
<b>17 "Data Protection Legislation"</b>	(a) the UK GDPR, (b) the DPA 2018; (c) all applicable Law about the processing of personal data and privacy and guidance issued by the Information Commissioner and other regulatory authority; and (d) (to the extent that it applies) the EU GDPR (and in the event of conflict, the UK GDPR shall apply);
<b>18 "Data Protection Liability Cap"</b>	1 has the meaning given to it in row 14 of the Order Form;
<b>19 "Data Protection Officer"</b>	1 has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>20 "Data Subject Access Request"</b>	1 a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>21 "Data Subject"</b>	1 has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>22 "Deliver"</b>	1 hand over of the Deliverables to the Buyer at the address and on the date specified in the Order Form, which shall include unloading and stacking and any other specific arrangements agreed in accordance with clause 4.2. "Delivered" and "Delivery" shall be construed accordingly;
<b>23 "Deliverables"</b>	1 the Goods, Services, and/or software to be supplied under the Contract as set out in the Order Form;
<b>24 "Developed System"</b>	1 as in Schedule 16 (Security) Buyer-led Assurance;
<b>25 "DPA 2018"</b>	1 the Data Protection Act 2018;
<b>26 "EU GDPR"</b>	1 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
<b>27 "Existing IPR"</b>	1 any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);
<b>28 "Expiry Date"</b>	1 the date for expiry of the Contract as set out in the Order Form;

<p><b>29</b>      <b>"FOIA"</b></p>	<p>1          the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;</p>
<p><b>30</b>      <b>"Force Majeure Event"</b></p>	<p>1          any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <p>(a)        acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Party seeking to claim relief in respect of a Force Majeure Event (the <b>"Affected Party"</b>) which prevent or materially delay the Affected Party from performing its obligations under the Contract;</p> <p>(b)        riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p> <p>(c)        acts of a Crown Body, local government or regulatory bodies;</p> <p>(d)        fire, flood or any disaster; or</p> <p>(e)        an industrial dispute affecting a third party for which a substitute third party is not reasonably available</p> <p>2          but excluding:</p> <p>(a)        any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;</p> <p>(b)        any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</p> <p>(c)        any failure of delay caused by a lack of funds,</p> <p>3          and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</p>
<p><b>31</b>      <b>"Good Industry Practice"</b></p>	<p>1          standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;</p>
<p><b>32</b>      <b>"Goods"</b></p>	<p>1          the goods to be supplied by the Supplier to the Buyer under the Contract;</p>
<p><b>33</b>      <b>"Government Data"</b></p>	<p>any:</p> <p>(a)        data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media;</p> <p>(b)        Personal Data for which the Buyer is a, or the, Data Controller; or</p> <p>(c)        any meta-data relating to categories of data referred to in (a) or (b) that:</p> <p>(i)        is supplied to the Supplier by or on behalf of the Buyer; and/or</p> <p>(ii)        that the Supplier is required to generate, Process, Handle, store or transmit under this Contract;</p>

<b>34 "Indemnifier"</b>	1 a Party from whom an indemnity is sought under this Contract;
<b>35 "Independent Controller"</b>	1 a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
<b>36 "Information Commissioner"</b>	1 the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
<b>37 "Insolvency Event"</b>	1 in respect of a person: (a) if that person is insolvent; (b) where that person is a company, LLP or a partnership, if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); (c) if an administrator or administrative receiver is appointed in respect of the whole or any part of the person's assets or business; (d) if the person makes any composition with its creditors; or (e) takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;
<b>38 "IP Completion Day"</b>	1 has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
<b>39 "IR35"</b>	1 Chapter 8 and Chapter 10 of Part 2 of Income Tax (Earnings and Pensions) Act 2003 and the Social Security Contributions (Intermediaries) Regulations 2000;
<b>40 "Joint Controller Agreement"</b>	1 the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Part B Joint Controller Agreement (Optional) of Annex 1 – Processing Personal Data;
<b>41 "Joint Controllers"</b>	1 where two or more Controllers jointly determine the purposes and means of processing;
<b>42 "Key Staff"</b>	1 any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing, following agreement to the same by the Supplier;
<b>43 "Law"</b>	1 any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>44 "Material Breach"</b>	1 a single serious breach or a number of breaches or repeated breaches (whether of the same or different obligations and regardless of whether such breaches are remedied)

<b>45 "National Insurance"</b>	1 contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
<b>46 "New IPR Items"</b>	1 a deliverable, document, product or other item within which New IPR subsists;
<b>47 "New IPR"</b>	1 all and intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR. For avoidance of doubt New IPR are the JFrog Materials and Outputs as defined in Schedule 3 (JFrog Subscription Agreement – Hybrid);
<b>48 "Open Licence"</b>	1 any material that is published for use, with rights to access and modify, by any person for free, under a generally recognised open licence including Open Government Licence as set out at <a href="http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/">http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/</a> as updated from time to time and the Open Standards Principles documented at <a href="https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles">https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles</a> as updated from time to time;
<b>49 "Order Form"</b>	1 the order form signed by the Buyer and the Supplier printed above these Conditions;
<b>50 "Party"</b>	1 the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;
<b>51 "Personal Data Breach"</b>	1 has the meaning given to it in the UK GDPR or the EU GDPR as the context requires and includes any breach of Data Protection Legislation relevant to Personal Data processed pursuant to the Contract;
<b>52 "Personal Data"</b>	1 has the meaning given to it in the UK GDPR or the EU GDPR as the context requires, which Processed by Supplier in its role as a Processor on behalf of Controller under this Contract;
<b>53 "Prescribed Person"</b>	1 a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> as updated from time to time;
<b>54 "Processor Personnel"</b>	1 all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor engaged in the performance of its obligations under the Contract;
<b>55 "Processor"</b>	1 has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>56 "Protective Measures"</b>	1 technical and organisational measures which must take account of: (a) the nature of the data to be protected; (b) harm that might result from Data Loss Event; (c) state of technological development;

	<p>(d) the cost of implementing any measures;</p> <p>2 including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it, including those outlined in Annex 1 (<i>Processing Personal Data</i>) and Annex 6 (<i>Security Management</i>) (if used);</p>
<b>57 "Purchase Order Number" or "PO Number"</b>	1 the Buyer's unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the Contract;
<b>58 "Rectification Plan"</b>	<p>1 the Supplier's plan (or revised plan) to rectify its Material Breach which shall include:</p> <p>(a) full details of the Material Breach that has occurred, including a root cause analysis;</p> <p>(b) the actual or anticipated effect of the Material Breach; and</p> <p>(c) the steps which the Supplier proposes to take to rectify the Material Breach (if applicable) and to prevent such Material Breach from recurring, including timescales for such steps and for the rectification of the Material Breach (where applicable);</p>
<b>59 "Regulations"</b>	1 the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
<b>60 "Request For Information"</b>	1 has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term <b>"request"</b> shall apply);
<b>61 "Security Requirements"</b>	1 the security requirements set out in the Order Form or in Schedule 16 (Security) Buyer-led Assurance;
<b>62 "Services"</b>	1 the services to be supplied by the Supplier to the Buyer under the Contract;
<b>63 "Specification"</b>	1 the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form;
<b>64 "Start Date"</b>	1 the start date of the Contract set out in the Order Form;
<b>65 "Sub-Contract"</b>	<p>1 any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party:</p> <p>(a) provides the Deliverables (or any part of them);</p> <p>(b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</p> <p>(c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</p>

<b>66</b>	<b>"Subcontractor"</b>	1 any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>67</b>	<b>"Subprocessor"</b>	1 any third party appointed to process Personal Data on behalf of the Processor related to the Contract;
<b>68</b>	<b>"Supplier Staff"</b>	1 any individual engaged, directly or indirectly, or employed by the Supplier or any Subcontractor, in the management or performance of the Supplier's obligations under this Contract;
<b>69</b>	<b>"Supplier"</b>	1 the person named as Supplier in the Order Form;
<b>70</b>	<b>"Supply Chain Intermediary"</b>	1 any entity (including any company or partnership) in an arrangement with a Worker, where the Worker performs or is under an obligation personally to perform, services for the Buyer;
<b>71</b>	<b>"Term"</b>	1 the period from the Start Date to the Expiry Date as such period may be extended in accordance with clause 11.2 or terminated in accordance with the Contract;
<b>72</b>	<b>"Third Party IPR"</b>	1 intellectual property rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
<b>73</b>	<b>"Transparency Information"</b>	<p>(a) any information which is published in accordance with guidance issued by His Majesty's Government, from time to time;</p> <p>(b) any information or notices, permitted or required to be published by the Procurement Act 2023, any Regulations published under it, and any PPNs, subject to any exemptions set out in sections 94 and 99 of the Procurement Act 2023, which shall be determined by the Buyer, taking into consideration any information which is Confidential Information; and</p> <p>(c) any information about the Contract, including the content of the Contract, and any changes to this Contract agreed from time to time, as well as any information relating to the Deliverables and performance pursuant to the Contract required to be disclosed under FOIA or the Environmental Information Regulations 2004, subject to any exemptions, which shall be determined by the Buyer, taking into consideration any information which is Confidential Information;</p>
<b>74</b>	<b>"US Data Privacy Framework"</b>	1 as applicable: (a) the UK Extension to the EU-US Data Privacy Framework; and/or (b) the EU-US Data Privacy Framework;
<b>75</b>	<b>"UK GDPR"</b>	1 has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4);
<b>76</b>	<b>"VAT"</b>	1 value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>77</b>	<b>"Worker"</b>	1 any individual that personally performs, or is under an obligation personally to perform services for the Buyer
<b>78</b>	<b>"Working Day"</b>	1 a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

## 2. Understanding the Contract

### 2.1 In the Contract, unless the context otherwise requires:

- 2.1.1 references to numbered clauses are references to the relevant clause in these Conditions;
- 2.1.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 2.1.3 references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.1.4 a reference to a Law includes a reference to that Law as modified, amended, extended, consolidated, replaced or re-enacted (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023) from time to time before or after the date of this Contract and any prior or subsequent legislation under it;
- 2.1.5 the word "including", "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation";
- 2.1.6 any reference which, immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to section 1A of the European Union (Withdrawal) Act 2018), is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- 2.1.7 a reference to a document (including this Contract) is to that document as varied, amended, novated, ratified or replaced from time to time.

## 3. How the Contract works

- 3.1 The Order Form is an offer by the Buyer to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier.
- 3.3 The Supplier warrants and represents that its tender (if any) and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

## 4. What needs to be delivered

### 4.1 All Deliverables

- 4.1.1 The Supplier must provide Deliverables:
  - 4.1.1.1 in accordance with the Specification, the tender in Annex 4 – Supplier Tender (Optional) (where applicable) and the Contract;

- 4.1.1.2 using reasonable skill and care;
  - 4.1.1.3 using Good Industry Practice;
  - 4.1.1.4 using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;
  - 4.1.1.5 on the dates agreed; and
  - 4.1.1.6 that comply with all Law.
- 4.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to its Buyers) from Delivery against all obvious defects.

## **4.2 Goods clauses**

- 4.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 4.2.2 The Supplier transfers ownership of the Goods on completion of Delivery or payment for those Goods, whichever is earlier.
- 4.2.3 Risk in the Goods transfers to the Buyer on Delivery, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.
- 4.2.4 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 4.2.5 The Supplier must Deliver the Goods on the date and to the location specified in the Order Form, during the Buyer's working hours (unless otherwise specified in the Order Form).
- 4.2.6 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 4.2.7 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 4.2.8 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 4.2.9 The Supplier will notify the Buyer of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify the Buyer against the costs arising as a result of any such request.
- 4.2.10 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable endeavours to minimise these costs.
- 4.2.11 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with clause 4.2. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.
- 4.2.12 The Buyer will not be liable for any actions, claims, costs or expenses incurred by the Supplier or any third party during Delivery of the Goods unless and to the extent that it is caused by negligence or other

wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall indemnify the Buyer from any losses, charges, costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Supplier or any of its Subcontractors or Supplier Staff.

#### **4.3 Services clauses**

- 4.3.1 Late Delivery of the Services will be a default of the Contract.
- 4.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including the Security Requirements (where any such requirements have been provided).
- 4.3.3 The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services
- 4.3.4 The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- 4.3.5 The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- 4.3.6 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 4.3.7 On completion of the Services, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's premises or property, other than fair wear and tear.
- 4.3.8 The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality and free from defects.
- 4.3.9 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

#### **5. Pricing and payments**

- 5.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the charges in the Order Form.
- 5.2 All Charges:
  - 5.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
  - 5.2.2 include all costs and expenses connected with the supply of Deliverables.
- 5.3 The Buyer must pay the Supplier the charges:
  - 5.3.1 within 30 days beginning with the day on which an invoice is received by the Buyer in respect of the sum, or
  - 5.3.2 if later, the day by which the payment falls due in accordance with the invoice,

subject to the invoice being verified as valid and undisputed.

5.4 A Supplier invoice is only valid if it:

- 5.4.1 includes the minimum required information set out in Section 88(7) of the Procurement Act 2023;
- 5.4.2 includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer; and
- 5.4.3 includes a detailed breakdown of Deliverables which have been delivered.

5.5 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 11.6. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 35.

5.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.

5.7 The Supplier must ensure that all Subcontractors are paid, in full:

- 5.7.1 within 30 days beginning with the day on which an invoice is received by the Buyer in respect of the sum; or
- 5.7.2 if later, the date by which the payment falls due in accordance with the invoice,

subject to the invoice being verified as valid and undisputed.

5.8 If the invoice is not paid in accordance with the timescales in clause 5.7, the Buyer can publish the details of the late payment or non-payment.

5.9 Where any invoice does not conform to the Buyer's requirements set out in clause 5.4, or the Buyer disputes the invoice, the Buyer shall notify the Supplier without undue delay and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

6. The Buyer's obligations to the Supplier

6.1 If Supplier fails to comply with the Contract as a result of a Buyer Cause:

- 6.1.1 the Buyer cannot terminate the Contract under clause 11;
- 6.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
- 6.1.3 the Supplier is entitled to additional time needed to deliver the Deliverables; and
- 6.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.

6.2 Clause 6.1 only applies if the Supplier:

- 6.2.1 gives notice to the Buyer within 10 Working Days of becoming aware;
- 6.2.2 demonstrates that the failure only happened because of the Buyer Cause; and
- 6.2.3 mitigated the impact of the Buyer Cause.

7. Record keeping and reporting

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for 7 years after the date of expiry or termination of the Contract and in accordance with the UK GDPR or the EU GDPR as the context requires.
- 7.3 The Supplier must allow any auditor appointed by the Buyer access to its premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the Audit.
- 7.4 The Buyer or an auditor can Audit the Supplier.
- 7.5 During an Audit, the Supplier must provide information to the auditor and reasonable co-operation at their request.
- 7.6 The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a Material Breach by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.
- 7.7 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
  - 7.7.1 tell the Buyer and give reasons;
  - 7.7.2 propose corrective action; and
  - 7.7.3 provide a deadline for completing the corrective action.
- 7.8 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
  - 7.8.1 require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand; and
  - 7.8.2 if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for Material Breach (or on such date as the Buyer notifies) and the consequences of termination in clause 11.5.1 shall apply.
- 7.9 If there is a Material Breach, the Supplier must notify the Buyer within 3 Working Days of the Supplier becoming aware of the Material Breach. The Buyer may request that the Supplier provide a Rectification Plan within 10 Working Days of the Buyer's request alongside any additional documentation that the Buyer requires. Once such Rectification Plan is agreed between the Parties (without the Buyer limiting its rights) the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.
- 7.10 At the end of each Contract Year, at its own expense, the Supplier will provide a report to the Buyer setting out a summary of its compliance with clause 5.7, such report to be certified by the Supplier's Authorised Representative as being accurate and not misleading.
- 8. Supplier Staff
  - 8.1 The Supplier Staff involved in the performance of the Contract must:

- 8.1.1 be appropriately trained and qualified;
- 8.1.2 be vetted in accordance with the Buyer's staff vetting procedures as specified in the Order Form or in Annex 6 (*Security Requirements*) (if used); and
- 8.1.3 comply with all conduct requirements when on the Buyer's premises.
- 8.2 Where the Buyer decides one of the Supplier's Staff isn't suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 8.3 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 8.4 The Supplier indemnifies the Buyer against all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 8.5 The Buyer indemnifies the Supplier against all claims brought by any person employed or engaged by the Buyer caused by an act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.
- 8.6 The Supplier shall use those persons nominated (if any) as Key Staff in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing, following agreement to the same by the Supplier to provide the Deliverables and shall not remove or replace any of them unless:
  - 8.6.1 requested to do so by the Buyer or the Buyer approves such removal or replacement (not to be unreasonably withheld or delayed);
  - 8.6.2 the person concerned resigns, retires or dies or is on parental or long-term sick leave; or
  - 8.6.3 the person's employment or contractual arrangement with the Supplier or any Subcontractor is terminated for material breach of contract by the employee.
- 8.7 The Supplier shall ensure that no person who discloses that they have a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a "**Relevant Conviction**"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a disclosure and barring service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.
- 9. Rights and protection
- 9.1 The Supplier warrants and represents that:
  - 9.1.1 it has full capacity and authority to enter into and to perform the Contract;
  - 9.1.2 the Contract is entered into by its authorised representative;
  - 9.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
  - 9.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
  - 9.1.5 all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its

- obligations under the Contract and the Buyer to receive the Deliverables;
  - 9.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
  - 9.1.7 it is not impacted by an Insolvency Event.
- 9.2 The warranties and representations in clause 3.3 and clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 9.3 The Supplier indemnifies the Buyer against each of the following:
  - 9.3.1 wilful misconduct of the Supplier, any of its Subcontractor and/or Supplier Staff that impacts the Contract; and
  - 9.3.2 non-payment by the Supplier of any tax or National Insurance.
- 9.4 If the Supplier becomes aware of a representation or warranty made in relation to the Contract that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.5 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier for free.
- 10. Intellectual Property Rights ("IPRs")
- 10.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable worldwide licence to use, copy and adapt the Supplier's Existing IPR to enable the Buyer and its sub-licensees to both:
  - 10.1.1 receive and use the Deliverables; and
  - 10.1.2 use the New IPR.

The termination or expiry of the Contract does not terminate any licence granted under this clause 10.
- 10.2 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a royalty-free, non-exclusive, non-transferable licence to use, copy, and adapt any Existing IPRs and the New IPR which the Supplier reasonably requires for the purpose of fulfilling its obligations during the Term and commercially exploiting the New IPR developed under the Contract. This licence is sub-licensable to a Subcontractor for the purpose of enabling the Supplier to fulfil its obligations under the Contract, and in that case the Subcontractor must enter into a confidentiality undertaking with the Supplier on the same terms as set out in clause 15 (What you must keep confidential).
- 10.3 Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR and keep this record updated throughout the Term.
- 10.4 Where a Party acquires ownership of intellectual property rights incorrectly under this Contract, it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 10.5 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in this clause 10 or otherwise agreed in writing.
- 10.6 If any claim is made against the Buyer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "**IPR Claim**"), then the Supplier indemnifies the Buyer against

- all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.
- 10.7 If an IPR Claim is made or anticipated, the Supplier must at its own option and expense, either:
- 10.7.1 obtain for the Buyer the rights in clause 10.1 without infringing any third-party intellectual property rights; and
  - 10.7.2 replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.
  - 10.7.3 If the Supplier is not able to resolve the IPR Claim to the Buyer's reasonable satisfaction within a reasonable time, the Buyer may give written notice that it terminates the Contract from the date set out in the notice, or where no date is given in the notice, the date of the notice. On termination, the consequences of termination in clause 11.5.1 shall apply.
- 10.8 The Supplier shall not use in the Delivery of the Deliverables any Third Party IPR unless:
- 10.8.1 the Buyer gives its approval to do so; and
  - 10.8.2 one of the following conditions applies:
    - 10.8.2.1 the owner or an authorised licensor of the relevant Third Party IPR has granted the Buyer a direct licence that provides the Buyer with the rights in clause 10.1; or
    - 10.8.2.2 if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a direct licence to the Third Party IPR as set out in clause 10.8.2.1:
      - (a) the Supplier provides the Buyer with details of the licence terms it can obtain and the identity of those licensors;
      - (b) the Buyer agrees to those licence terms; and
      - (c) the owner or authorised licensor of the Third Party IPR grants a direct licence to the Buyer on those terms; or
    - 10.8.2.3 the Buyer approves in writing, with reference to the acts authorised and the specific intellectual property rights involved.
- 10.9 In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Buyer and the ordering of any Deliverable under it, does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.
11. Ending the contract
- 11.1 The Contract takes effect on the Start Date and ends on the earlier of the Expiry Date or termination of the Contract, or earlier if required by Law.
- 11.2 The Buyer can extend the Contract where set out in the Order Form in accordance with the terms in the Order Form.

### **11.3 Ending the Contract without a reason**

The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice, and if it's terminated clause 11.6.2 applies.

### **11.4 When the Buyer can end the Contract**

- 11.4.1 If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier and the consequences of termination in clause 11.5.1 shall apply:
- 11.4.1.1 there's a Supplier Insolvency Event;
  - 11.4.1.2 the Supplier is in Material Breach of the Contract;
  - 11.4.1.3 there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;
  - 11.4.1.4 the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them; or
  - 11.4.1.5 the Supplier fails to comply with its legal obligations in the fields of environmental, social or employment Law when providing the Deliverables.

### **11.5 What happens if the Contract ends**

- 11.5.1 Where the Buyer terminates the Contract under clause 10.7.3, 11.4, 7.8.2, 32.4 or Paragraph 8 of Part B Joint Controller Agreement (Optional) of Annex 1 – Processing Personal Data (if used), all of the following apply:
- 11.5.1.1 the Supplier is responsible for the Buyer's reasonable costs of procuring replacement Deliverables for the rest of the term of the Contract;
  - 11.5.1.2 the Buyer's payment obligations under the terminated Contract stop immediately;
  - 11.5.1.3 accumulated rights of the Parties are not affected;
  - 11.5.1.4 the Supplier must promptly delete or return the Government Data other than Government Data (i) that is Personal Data in respect of which the Supplier is a Controller; (ii) in respect of which the Supplier has rights to hold the Government Data independently of this Contract; and (iii) where required to retain copies by Law;
  - 11.5.1.5 the Supplier must promptly return any of the Buyer's property provided under the Contract;
  - 11.5.1.6 the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re-procurement; and
  - 11.5.1.7 the Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.

- 11.5.2 The following clauses survive the expiry or termination of the Contract: 1, 4.2.9, 5, 7, 8.4, 10, 11.5, 11.6.2, 12, 14, 15, 16, 18, 19, 22, 31.2.2, 35 and 36 and any clauses which are expressly or by implication intended to continue.

**11.6 When the Supplier can end the Contract and what happens when the contract ends (Buyer and Supplier termination)**

- 11.6.1 The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.
- 11.6.2 Where the Buyer terminates the Contract in accordance with clause 11.3 or the Supplier terminates the Contract under clause 11.6 or 23.4:
- 11.6.2.1 the Buyer must promptly pay all outstanding charges incurred by the Supplier;
- 11.6.2.2 the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated; and
- 11.6.2.3 clauses 11.5.1.2 to 11.5.1.7 apply.
- 11.6.3 The Supplier also has the right to terminate the Contract in accordance with clauses 20.3 and 23.4.

**11.7 Partially ending and suspending the Contract**

- 11.7.1 Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.
- 11.7.2 The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- 11.7.3 The Parties must agree (in accordance with clause 25) any necessary variation required by clause 11.7, but the Supplier may not either:
- 11.7.3.1 reject the variation; or
- 11.7.3.2 increase the Charges, except where the right to partial termination is under clause 11.3.
- 11.7.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.7.

**12. How much you can be held responsible for**

- 12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.
- 12.2 No Party is liable to the other for:
- 12.2.1 any indirect losses; and/or

- 12.2.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 12.3 In spite of clause 12.1, neither Party limits or excludes any of the following:
  - 12.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
  - 12.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; or
  - 12.3.3 any liability that cannot be excluded or limited by Law.
- 12.4 In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 8.4, 9.3.2, 10.6, or 31.2.2.
- 12.5 In spite of clause 12.1, the Buyer does not limit or exclude its liability for any indemnity given under clause 8.5.
- 12.6 In spite of clause 12.1, but subject to clauses 12.2 and 12.3, the Supplier's total aggregate liability in each Contract Year under clause 14.5.4 is no more than the Data Protection Liability Cap.
- 12.7 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 12.8 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.
- 13. Obeying the Law
- 13.1 The Supplier, in connection with provision of the Deliverables:
  - 13.1.1 is expected to meet and have its Subcontractors meet the standards set out in the Supplier Code of Conduct:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1163536/Supplier\\_Code\\_of\\_Conduct\\_v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf)  
) as such Code of Conduct may be updated from time to time, and such other sustainability requirements as set out in the Order Form. The Buyer also expects to meet this Code of Conduct;
  - 13.1.2 must comply with the provisions of the Official Secrets Acts 1911 to 1989 and section 182 of the Finance Act 1989;
  - 13.1.3 must support the Buyer in fulfilling its Public Sector Equality duty under section 149 of the Equality Act 2010;
  - 13.1.4 must comply with the model contract terms contained in (a) to (l) of Annex C of the guidance to PPN 009 (Tackling Modern Slavery in Government Supply Chains), as such clauses may be amended or updated from time to time; and
  - 13.1.5 meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:  
<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>, as updated from time to time.
- 13.2 The Supplier indemnifies the Buyer against any costs resulting from any default by the Supplier relating to any applicable Law to do with the Contract.
- 13.3 The Supplier must appoint a compliance officer who must be responsible for ensuring that the Supplier complies with Law, clause 13.1 and clauses 27 to 33.
- 14. Data Protection and Security

- 14.1 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 14.2 The Supplier must ensure that any Supplier, Subcontractor, or Sub-processor system holding any Government Data, including back-up data, is a secure system that complies with the Security Requirements of Schedule 16 (Security) Buyer-led Assurance or as otherwise provided in writing by the Buyer (where any such requirements have been provided).
- 14.3 If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.
- 14.4 If the Government Data is any of (i) corrupted, (ii) lost or (iii) sufficiently degraded, in each case as a result of the Supplier's Default, so as to be unusable the Buyer may either or both:
  - 14.4.1 tell the Supplier (at the Supplier's expense) to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or
  - 14.4.2 restore the Government Data itself or using a third party and shall be repaid by the Supplier any reasonable expenses incurred in doing so.
- 14.5 The Supplier:
  - 14.5.1 must, subject to the Security Requirements (if any), provide the Buyer with all Government Data in an agreed format (provided it is secure and readable) within 10 Working Days of a written request;
  - 14.5.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
  - 14.5.3 must, subject to the Security Requirements (if any), securely erase (using a deletion method that ensures that even a determined expert using specialist techniques can recover only a small fraction of the data deleted) all Government Data and any copies it or a Subcontractor holds when asked to do so by the Buyer unless required by Law to retain it, other than in relation to Government Data in respect of which the Supplier is a Controller or which the Supplier has rights to hold the Government Data independently of this Contract; and
  - 14.5.4 indemnifies the Buyer against any and all losses incurred if the Supplier breaches clause 14 or any Data Protection Legislation.
- 14.6 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under the Contract dictates the status of each party under the DPA 2018. A Party may act as:
  - 14.6.1 "Controller" in respect of the other Party who is "Processor";
  - 14.6.2 "Processor" in respect of the other Party who is "Controller";
  - 14.6.3 "Joint Controller" with the other Party;
  - 14.6.4 "Independent Controller" of the Personal Data where the other Party is also "Controller",in respect of certain Personal Data under the Contract and shall specify in Part A Authorised Processing Template of Annex 1 – Processing Personal Data which scenario they think shall apply in each situation.

## **14.7 Where one Party is Controller and the other Party its Processor**

- 14.7.1 Where a Party is a Processor, the only processing that the Processor is authorised to do is listed in Part A Authorised Processing Template of Annex 1 – Processing Personal Data by the Controller and may not be determined by the Processor. The term "processing" and any associated terms are to be read in accordance with Article 4 of the UK GDPR and EU GDPR (as applicable).
- 14.7.2 The Processor must notify the Controller immediately if it thinks the Controller's instructions breach the Data Protection Legislation.
- 14.7.3 The Processor must give all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment before starting any processing, which may include, at the discretion of the Controller:
  - 14.7.3.1 a systematic description of the expected processing and its purpose;
  - 14.7.3.2 the necessity and proportionality of the processing operations;
  - 14.7.3.3 the risks to the rights and freedoms of Data Subjects; and
  - 14.7.3.4 the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data and assurance that those measures comply with any Security Requirements.
- 14.7.4 The Processor must, in relation to any Personal Data processed under this Contract:
  - 14.7.4.1 process that Personal Data only in accordance with this clause 14, Part A Authorised Processing Template of Annex 1 – Processing Personal Data and Schedule 16 (Security) Buyer-led Assurance, unless the Processor is required to do otherwise by Law. If lawful to notify the Controller, the Processor must promptly notify the Controller if the Processor is otherwise required to process Personal Data by Law before processing it.
  - 14.7.4.2 put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Controller.
  - 14.7.4.3 ensure that:
    - (a) the Processor Personnel do not process Personal Data except in accordance with clause 14, Part A Authorised Processing Template of Annex 1 – Processing Personal Data and Schedule 16 (Security) Buyer-led Assurance);
    - (b) it uses the Buyer's staff vetting procedures to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      - (i) are aware of and comply with the Processor's duties under this clause 14 and Schedule 16 (Security) Buyer-led Assurance;

- (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  - (iii) are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise allowed by the Contract; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data.
- (c) the Processor must not transfer Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the transfer is in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable), provided that if the destination country of a transfer is the United States:
    - (A) the Supplier shall ensure that prior to the transfer of any Personal Data to the United States relying on this adequacy (including to any United States-based Subcontractors and/or Subprocessors), the Supplier (and/or the applicable Subcontractor and/or Subprocessor) must be self-certified and continue to be self-certified on the US Data Privacy Framework;
    - (B) the Supplier shall notify the Buyer immediately if there are any, or there are reasonable grounds to believe there may be any, changes in respect of their and/or their Subcontractor's or Subprocessor's position on the US Data Privacy Framework (for example if that entity ceases to be certified or is at risk of being so, or there is a strong likelihood of a competent court finding the US Data Privacy Framework unlawful), and the Supplier must then take all appropriate steps to remedy the certification and/or put in place alternative data transfer mechanisms in compliance with this Paragraph 14.7.4.3(c)(i); and
    - (C) in the event that the Supplier (and/or the applicable Subcontractor or Subprocessor):
      - (1) ceases to be certified on the US Data Privacy Framework and the Supplier does not put in place the

alternative data transfer mechanisms required for compliance with this Paragraph 14.7.4.3(c)(i);

- (2) the US Data Privacy Framework is no longer available and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Paragraph 14.7.4.3(c)(i); and/or
- (3) fails to notify the Buyer of any changes to its certification status in accordance with Paragraph 14.7.4.3(c)(i)(B) above,

the Buyer shall have the right to terminate this Contract with immediate effect; or

- (d) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) and/or the transfer is in accordance with Article 46 of the EU GDPR (where applicable) as determined by the Controller which could include relevant parties entering into:
  - (i) where the transfer is subject to UK GDPR:
    - (A) the International Data Transfer Agreement (the "**IDTA**"), as published by the Information Commissioner's Office from time to time under section 119A(1) of the DPA 2018 as well as any additional measures determined by the Controller;
    - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("**EU SCCs**"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**") as published by the Information Commissioner's Office from time to time; and/or
  - (ii) where the transfer is subject to EU GDPR, the EU SCCs,  
as well as any additional measures determined by the Controller being implemented by the importing party;
- (e) the Data Subject has enforceable rights and effective legal remedies when transferred;
- (f) the Processor meets its obligations under the Data Protection Legislation by providing an adequate level

- of protection to any Personal Data that is transferred; and
  - (g) the Processor complies with the Controller's reasonable prior instructions about the processing of the Personal Data.
- 14.7.5 The Processor must at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 14.7.6 The Processor must notify the Controller immediately if it:
  - 14.7.6.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 14.7.6.2 receives a request to rectify, block or erase any Personal Data;
  - 14.7.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 14.7.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - 14.7.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law; and
  - 14.7.6.6 becomes aware of a Data Loss Event.
- 14.7.7 Any requirement to notify under clause 14.7.6 includes the provision of further information to the Controller in stages as details become available.
- 14.7.8 The Processor must promptly provide the Controller with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 14.7.6. This includes giving the Controller:
  - 14.7.8.1 full details and copies of the complaint, communication or request;
  - 14.7.8.2 reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
  - 14.7.8.3 any Personal Data it holds in relation to a Data Subject on request;
  - 14.7.8.4 assistance that it requests following any Data Loss Event; and
  - 14.7.8.5 assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office or any other regulatory authority.
- 14.7.9 The Processor must maintain full, accurate records and information to show it complies with this clause 14. This requirement does not apply

where the Processor employs fewer than 250 staff, unless either the Controller determines that the processing:

- 14.7.9.1 is not occasional;
  - 14.7.9.2 includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - 14.7.9.3 is likely to result in a risk to the rights and freedoms of Data Subjects.
- 14.7.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 14.7.11 Before allowing any Subprocessor to process any Personal Data, the Processor must:
- 14.7.11.1 notify the Controller in writing of the intended Subprocessor and processing;
  - 14.7.11.2 obtain the written consent of the Controller;
  - 14.7.11.3 enter into a written contract with the Sub-processor so that this clause 14 applies to the Sub-processor; and
  - 14.7.11.4 provide the Controller with any information about the Sub-processor that the Controller reasonably requires.
- 14.7.12 The Processor remains fully liable for all acts or omissions of any Sub-processor.
- 14.7.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority.

#### **14.8 Joint Controllers of Personal Data**

In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Part B Joint Controller Agreement (Optional) of Annex 1 – Processing Personal Data.

#### **14.9 Independent Controllers of Personal Data**

In the event that the Parties are Independent Controllers in respect of Personal Data under the Contract, the terms set out in Part C Independent Controllers (Optional) of Annex 1 – Processing Personal Data shall apply to this Contract.

### **15. What you must keep confidential**

#### **15.1 Each Party must:**

- 15.1.1 keep all Confidential Information it receives confidential and secure;
- 15.1.2 not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and
- 15.1.3 immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

#### **15.2 In spite of clause 15.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:**

- 15.2.1 where disclosure is required by applicable Law if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
- 15.2.2 if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
- 15.2.3 if the information was given to it by a third party without obligation of confidentiality;
- 15.2.4 if the information was in the public domain at the time of the disclosure;
- 15.2.5 if the information was independently developed without access to the disclosing Party's Confidential Information;
- 15.2.6 on a confidential basis, to its auditors or for the purposes of regulatory requirements;
- 15.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and
- 15.2.8 to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 15.4 The Buyer may disclose Confidential Information in any of the following cases:
  - 15.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
  - 15.4.2 on a confidential basis to any Crown Body, any successor body to a Crown Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
  - 15.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - 15.4.4 where requested by Parliament; and
  - 15.4.5 under clauses 5.8 and 16.
- 15.5 For the purposes of clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 15.
- 15.6 Transparency Information and any information which is disclosed under clause 16 is not Confidential Information.
- 15.7 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer and must take all reasonable endeavours to ensure that Supplier Staff do not either.
- 16. When you can share information
- 16.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.

- 16.2 In accordance with a reasonable timetable and in any event within 5 Working Days of a request from the Buyer, at no additional cost, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
- 16.2.1 comply with any Request For Information; and
  - 16.2.2 comply with any of its obligations in relation to publishing Transparency Information.
- 16.3 Any such co-operation and/or information from the Supplier shall be provided at no additional cost.
- 16.4 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a Request For Information and may talk to the Supplier to help it decide whether to publish information under clause 16. However, the extent, content and format of the disclosure shall be decided by the Buyer, in its sole discretion.
17. Insurance
- 17.1 The Supplier shall ensure it has adequate insurance cover for this Contract.
18. Invalid parts of the contract
- 18.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract. The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements, or agreements whether written or oral. No other provisions apply.
19. Other people's rights in the contract
- 19.1 Subject to clause 19.2, no third parties may use the Contracts (Rights of Third Parties) Act ("**CRTPA**") to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.
- 19.2 Clauses 5.7, 24.4 and 24.5 confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
20. Circumstances beyond your control
- 20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
- 20.1.1 provides written notice to the other Party; and
  - 20.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 20.2 Any failure or delay by the Supplier to perform its obligations under the Contract that is due to a failure or delay by an agent, Subcontractor and/or Supplier Staff will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.
- 20.3 Either Party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously and the consequences of termination in clauses 11.5.1.2 to 11.5.1.7 shall apply.

- 20.4 Where a Party terminates under clause 20.3:
  - 20.4.1 each Party must cover its own losses; and
  - 20.4.2 clauses 11.5.1.2 to 11.5.1.7 apply.
- 21. Relationships created by the contract
  - 21.1 The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.
- 22. Giving up contract rights
  - 22.1 A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.
- 23. Transferring responsibilities
  - 23.1 The Supplier cannot assign, novate or in any other way dispose of the Contract or any part of it without the Buyer's written consent.
  - 23.2 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
  - 23.3 When the Buyer uses its rights under clause 23.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
  - 23.4 The Supplier can terminate the Contract novated under clause 23.2 to a private sector body that is experiencing an Insolvency Event.
  - 23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 24. Supply Chain
  - 24.1 The Supplier cannot sub-contract the Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with the name of any Subcontractor the Supplier proposes to engage for the purposes of the Contract. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within 10 Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:
    - 24.1.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
    - 24.1.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
    - 24.1.3 the proposed Subcontractor employs unfit persons.
  - 24.2 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of all such Subcontractors at all levels of the supply chain including:
    - 24.2.1 their name;
    - 24.2.2 the scope of their appointment; and
    - 24.2.3 the duration of their appointment.
  - 24.3 The Supplier must exercise due skill and care when it selects and appoints Subcontractors.

- 24.4 For Sub-Contracts in the Supplier's supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:
- 24.4.1 where such Sub-Contracts are entered into after the Start Date, the Supplier will ensure that they all contain provisions that; or
  - 24.4.2 where such Sub-Contracts are entered into before the Start Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions that:
    - 24.4.2.1 allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social or employment Law; and
    - 24.4.2.2 require that all Subcontractors are paid:
      - (a) before the end of the period of 30 days beginning with the day on which an invoice is received by the Supplier or other party in respect of the sum; or
      - (b) if later, the date by which the payment falls due in accordance with the invoice,subject to the invoice being verified by the party making payment as valid and undisputed;
    - 24.4.2.3 require the party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion and notify the Subcontractor without undue delay if it considers the invoice invalid or it disputes the invoice; and
    - 24.4.2.4 allow the Buyer to publish the details of the late payment or non-payment if this 30 day limit is exceeded.
- 24.5 The Supplier must ensure that a term equivalent to Clause 24.4 is included in each Sub-Contract in its supply chain, such that each Subcontractor is obliged to include those terms in any of its own Sub-Contracts in the supply chain for the delivery of this Contract. References to the "Supplier" and "Subcontractor", in clause 15.14(i) are to be replaced with references to the respective Subcontractors who are parties to the relevant contract.
- 24.6 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:
- 24.6.1 there is a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 of a Subcontractor which isn't pre-approved by the Buyer in writing;
  - 24.6.2 the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under clause 11.4;
  - 24.6.3 a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer; and/or
  - 24.6.4 the Subcontractor fails to comply with its obligations in respect of environmental, social or employment Law.
- 24.7 The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.
25. Changing the contract

- 25.1 Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties. The Buyer is not required to accept a variation request made by the Supplier.
- 26. How to communicate about the contract
  - 26.1 All notices under the Contract shall be in writing and be served by e-mail unless it is not practicable to do so. An e-mail is effective at 9am on the first Working Day after sending unless an error message is received.
  - 26.2 If it is not practicable for a notice to be served by e-mail in accordance with clause 26.1, notices can be served by means of personal delivery or Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery. If either of these options are used to serve a notice, such notices are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise, the notice is effective on the next Working Day.
  - 26.3 Notices to the Buyer or Supplier must be sent to their e-mail address (or address, where e-mail is not practicable) in the Order Form.
  - 26.4 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.
- 27. Dealing with claims
  - 27.1 If a Beneficiary becomes aware of any Claim, then it must notify the Indemnifier as soon as reasonably practical.
  - 27.2 at the Indemnifier's cost the Beneficiary must:
    - 27.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim;
    - 27.2.2 give the Indemnifier reasonable assistance with the Claim if requested; and
    - 27.2.3 not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.
  - 27.3 The Indemnifier must:
    - 27.3.1 consider and defend the Claim diligently and in a way that does not damage the Beneficiary's reputation; and
    - 27.3.2 not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 28. Equality, diversity and human rights
  - 28.1 The Supplier must follow all applicable employment and equality Law when they perform their obligations under the Contract, including:
    - 28.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
    - 28.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
  - 28.2 The Supplier must use all reasonable endeavours, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

- 29. Health and safety
  - 29.1 The Supplier must perform its obligations meeting the requirements of:
    - 29.1.1 all applicable Law regarding health and safety; and
    - 29.1.2 the Buyer's current health and safety policy while at the Buyer's premises, as provided to the Supplier.
  - 29.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer premises that relate to the performance of the Contract.
- 30. Environment and sustainability
  - 30.1 In performing its obligations under the Contract, the Supplier shall, to the reasonable satisfaction of the Buyer:
    - 30.1.1 meet, in all material respects, the requirements of all applicable Laws regarding the environment; and
    - 30.1.2 comply with its obligations under the Buyer's current environmental policy, which the Buyer must provide, and make Supplier Staff aware of such policy.
- 31. Tax
  - 31.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.
  - 31.2 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Supplier must both:
    - 31.2.1 comply with the Income Tax (Earnings and Pensions) Act 2003, the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to income tax and National Insurance contributions (including IR35); and
    - 31.2.2 indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Term in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
  - 31.3 At any time during the Term, the Buyer may specify information that the Supplier must provide with regard to the Supplier, the Supplier Staff, the Workers, or the Supply Chain Intermediaries and set a deadline for responding, which:
    - 31.3.1 demonstrates that the Supplier, Supplier Staff, Workers, or Supply Chain Intermediaries comply with the legislation specified in Clause 31.2.1, or why those requirements do not apply; and
    - 31.3.2 assists with the Buyer's due diligence, compliance, reporting, or demonstrating its compliance with any of the legislation in Clause 31.2.1.
  - 31.4 The Buyer may supply any information they receive from the Supplier under Clause 31.3 to HMRC for revenue collection and management and for audit purposes.

- 31.5 The Supplier must inform the Buyer as soon as reasonably practicable if there any Workers or Supplier Staff providing services to the Buyer who are contracting, begin contracting, or stop contracting via an intermediary which meets one of conditions A-C set out in section 61N of the Income Tax (Earnings and Pensions) Act 2003 and/or Regulation 14 of the Social Security Contributions (Intermediaries) Regulations 2000.
- 31.6 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains requirements that:
- 31.6.1 the Buyer may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause 31.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
  - 31.6.2 the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
  - 31.6.3 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with clause 31.2 or confirms that the Worker is not complying with those requirements; and
  - 31.6.4 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.
32. Conflict of interest
- 32.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.
- 32.2 The Supplier must promptly notify and provide details to the Buyer if an actual, perceived or potential Conflict of Interest happens or is expected to happen.
- 32.3 The Buyer will consider whether there are any reasonable steps that can be put in place to mitigate an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such steps do not or will not resolve an actual or potential Conflict of Interest, the Buyer may terminate the Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and, subject to clause 32.4, where the reason for the unresolvable actual or potential Conflict of Interest is in the reasonable opinion of the Buyer
- 32.3.1 outside of the control of the Supplier, clauses 11.5.1.2 to 11.5.1.7 shall apply
  - 32.3.2 within the control of the Supplier, the whole of clause 11.5.1 shall apply.
- 32.4 Where the Supplier has failed to notify the Buyer about an actual or potential Conflict of Interest and the Buyer terminates under clause 32.3, the whole of clause 11.5.1 shall apply.
33. Reporting a breach of the contract
- 33.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of Law, clause 13.1, or clauses 27 to 32.
- 33.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 33.1 to the Buyer or a Prescribed Person.

34. Further Assurances
- 34.1 Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of this Contract.
35. Resolving disputes
- 35.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute by commercial negotiation.
- 35.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 35.3 to 35.5.
- 35.3 Unless the Buyer refers the dispute to arbitration using clause 35.4, the Parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction.
- 35.4 The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 35.5 The Buyer has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 35.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 35.4.
- 35.6 The Supplier cannot suspend the performance of the Contract during any dispute.
36. Which law applies
- 36.1 This Contract and any issues or disputes arising out of, or connected to it, are governed by English law.

## V. Annex 1 – Processing Personal Data

### Part A Authorised Processing Template

This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Annex shall be with the Controller at its absolute discretion.

The contact details of the Controller's Data Protection Officer are: [REDACTED]

The contact details of the Processor's Data Protection Officer are: [REDACTED]

The Processor shall comply with the following written instructions with respect to processing by the Controller.

Any such further instructions shall be incorporated into this Annex.

Description of authorised processing	Details
Identity of Controller and Processor / Independent Controllers / Joint Controllers for each category of Personal Data	The Buyer will be the controller, and the supplier will be the processor.
Subject matter of the processing	HMRC Staff
Duration of the processing	Duration of the contract.
Nature and purposes of the processing	The processing is needed in order to ensure the processor can effectively deliver the contract.
Type of Personal Data being processed	HMRC Staff Contact details, including names, email addresses, HMRC Username, , IP Address
Categories of Data Subject	HMRC Staff
Plan for return and destruction of the data once the processing is complete UNLESS requirement under law to preserve that type of data	Processor will delete Personal Data within sixty (60) days post termination or expiration of this <i>Contract</i>
Locations at which the Supplier and/or its Subcontractors process Personal Data under this Contract and International transfers and legal gateway	Please see the following link: <a href="https://jfrog.com/trust/privacy/sub-processors/">https://jfrog.com/trust/privacy/sub-processors/</a>

Protective Measures that the Supplier and, where applicable, its Subcontractors have implemented to protect Personal Data processed under this Contract against a breach of security (insofar as that breach of security relates to data) or a Data Loss Event (noting that any Protective Measures are to be in accordance with Schedule 16 (Security) Buyer-led Assurance)	Please see the following link: <a href="https://jfrog.com/trust/privacy/sub-processors/">https://jfrog.com/trust/privacy/sub-processors/</a>
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Part B     **Joint Controller Agreement (*Not Used*)**

Part C     **Independent Controllers (*Not Used*)**

## VI. Annex 2 – Specification

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## VII. **Annex 3 – Charges**

Fee Grand Total 3 Years in USD: \$9,000,000.00 for 36 months, in the following instalments

[REDACTED]

[REDACTED]

[REDACTED]

The terms of Schedule 5 JFrog AWS Marketplace Order Form will apply to this Annex 3.

## **VIII. Annex 4 – Supplier Tender (Not Used)**

## IX. Annex 5 – Optional IPR Clauses

### Part B            Supplier ownership of New IPR with Buyer rights for the current Contract and broader public sector functions

1. Intellectual Property Rights ("IPRs")
  - 1.1 Each Party keeps ownership of its own Existing IPRs. Any New IPR created under the Contract is owned by the Supplier. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable worldwide licence to use, copy and adapt the Supplier's Existing IPR and the New IPR to enable the Buyer and its sub-licensees to receive and use the Deliverables and the New IPR for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function. For the purposes of this clause "**Public Sector Body**" means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service.
  - 1.2 The termination or expiry of the Contract does not terminate any licence granted under this clause 10.
  - 1.3 The Buyer gives the Supplier a royalty-free, non-exclusive, non-transferable licence to use, copy, and adapt any Existing IPRs for the purpose of fulfilling its obligations during the Term and commercially exploiting the New IPR developed under the Contract. This licence is sub-licensable to a Subcontractor for the purpose of enabling the Supplier to fulfil its obligations under the Contract, and in that case the Subcontractor must enter into a confidentiality undertaking with the Supplier on the same terms as set out in clause 15 (What you must keep confidential).
  - 1.4 Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR and keep this record updated throughout the Term.
  - 1.5 Where a Party acquires ownership of intellectual property rights incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
  - 1.6 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in this clause 10 or otherwise agreed in writing.
  - 1.7 If any claim is made against the Buyer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "**IPR Claim**"), then the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.
  - 1.8 If an IPR Claim is made or anticipated, the Supplier must at its own option and expense, either:
    - 1.8.1 obtain for the Buyer the rights in clause 10.1 without infringing any third party intellectual property rights; and
    - 1.8.2 replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.
  - 1.9 If the Supplier is not able to resolve the IPR Claim to the Buyer's reasonable satisfaction within a reasonable time, the Buyer may give written notice that it terminates the Contract from the date set out in the notice, or where no date is

given in the notice, the date of the notice. On termination, the consequences of termination in clause 11.5.1 shall apply.

- 1.10 The Supplier shall not use in the Delivery of the Deliverables any Third Party IPR unless:
- 1.10.1 the Buyer gives its approval to do so; and
  - 1.10.2 one of the following conditions applies:
    - 1.10.2.1 the owner or an authorised licensor of the relevant Third Party IPR has granted the Buyer a direct licence that provides the Buyer with the rights in clause 10.1; or
    - 1.10.2.2 if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a direct licence to the Third Party IPR as set out in clause 10.10.2.1:
      - (a) the Supplier provides the Buyer with details of the licence terms it can obtain and the identity of those licensors;
      - (b) the Buyer agrees to those licence terms; and
      - (c) the owner or authorised licensor of the Third Party IPR grants a direct licence to the Buyer on those terms; or
    - 1.10.2.3 the Buyer approves in writing, with reference to the acts authorised and the specific intellectual property rights involved.
- 1.11 In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Buyer and the ordering of any Deliverable under it, does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.

**SCHEDULE 16 (SECURITY)**  
**BUYER-LED ASSURANCE**

**BUYER OPTIONS**

Where the Buyer has selected an option in the table below, the Supplier must comply with the requirements relating to that option set out in the relevant Paragraph:

<b>Buyer Security Policies</b> (see Paragraph <b>Error! Reference source not found.</b> )		
<p>The Buyer requires the Supplier to reasonably comply, as applicable, with the following policies relating to the security management agreed standards herein, provided that in the event of an ambiguity, discrepancy, contradiction or irrelevancy between any provision of such policies and the terms of the main agreement (including this Schedule 16), the latter shall supersede and prevail:</p> <ul style="list-style-type: none"> <li>• Data protection policy</li> <li>• HMRC Security policy</li> <li>• Data Retention policy</li> <li>• Data loss prevention policy</li> <li>• Offshoring policy</li> <li>• HMRC Security Controls Policy</li> <li>• HMRC IT Network Security Policy</li> <li>• HMRC Protective Monitoring Policy</li> <li>• HMRC Encryption Policy</li> <li>• HMRC Access Policy</li> <li>• HMRC Identity Policy</li> <li>• HMRC Remote Working Policy</li> <li>• HMRC Personnel Security Policy</li> </ul>	<input checked="" type="checkbox"/>	
<b>Locations</b> (see Paragraph <b>Error! Reference source not found.</b> of the Security Requirements)		
The Supplier and Subcontractors may store, access or Handle Government Data in:	the United Kingdom only	<input type="checkbox"/>
	any territory as permitted by and in accordance with any regulations for the time being in force made under section 17A of the Data Protection Act	<input type="checkbox"/>

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	2018 (adequacy decisions by the Secretary of State)	
	anywhere in the world not prohibited by the Buyer, operating a risk-based approach	<input checked="" type="checkbox"/>
<b>Support Locations</b> (see Paragraph <b>Error! Reference source not found.</b> of the Security Requirements)		
The Supplier may operate Support Locations in:	the United Kingdom only	<input type="checkbox"/>
	any territory as permitted by and in accordance with any regulations for the time being in force made under section 17A of the Data Protection Act 2018 (adequacy decisions by the Secretary of State)	<input type="checkbox"/>
	anywhere in the world not prohibited by the Buyer, operating a risk-based approach	<input checked="" type="checkbox"/>
<b>Development Activity</b> (see <b>Error! Reference source not found.</b> )		
The Buyer does not require the Supplier to undertake Development Activity under this Contract and, as a consequence, <b>Error! Reference source not found.</b> is not applicable		<input checked="" type="checkbox"/>

[Redacted content]

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The image shows a document page where the text is almost entirely obscured by thick, horizontal black bars. These bars are of varying lengths and are placed across the page, likely to redact sensitive information. Only small fragments of text are visible at the top and bottom of the page, but they are not legible.

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## Schedule 1 (Performance Levels)

### Definitions

In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (*Definitions*):

**"Critical KPI Failure"** has the meaning given to it in the Award Form;

**"KPI Failure"** a failure to meet the KPI Performance Measure in respect of a Key Performance Indicator;

**"KPI Performance Measure"** shall be as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule;

**"KPI Threshold"** shall be as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule;

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**"Measurement Period"** in relation to a Key Performance Indicator, the period over which the Supplier's performance is measured as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule;

**"Performance Monitoring Reports"** has the meaning given in Paragraph 1.2 of Part B of this Schedule;

**"Performance Review Meetings"** has the meaning given in Paragraph 1.3 of Part B of this Schedule;

**"Service Credits"** any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Key Performance Indicators; and

**"Service Credit Cap"** has the meaning given to it in the Award Form.

### **What happens if you don't meet the Key Performance Indicators**

The Supplier shall at all times provide the Deliverables to meet or exceed the KPI Performance Measure for each Key Performance Indicator.

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The Supplier acknowledges that any KPI Failure shall entitle the Buyer to the right to any Service Credits.

The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule to enable the Buyer to assess the Supplier's performance against each Key Performance Indicator in each Measurement Period.

A Service Credit shall be the Buyer's exclusive remedy for a KPI Failure except where:

**Critical KPI Failure**

On the occurrence of a Critical KPI Failure

any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period (**"Compensation for Critical KPI Failure"**),

provided that the operation of this Paragraph 3 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for Material Default.

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## **Part A: Key Performance Indicators and Service Credits**

### **Key Performance Indicators**

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KPIs shall be managed as specified in the Annex to Part A: Key Performance Indicators and Service Credits Table

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### **Service Credits**

The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.

Service Credits shall apply in accordance with the formula presented in the Annex to Part A of this Schedule.

**Annex to Part A: Key Performance Indicators and Service Credits Table**

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Schedule 1 (Performance Levels), Crown Copyright 2025

Key Performance Indicators (KPIs)					
KPI details					
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold	Service Credit for each Service Period	Measurement Period
Continuance service	Uptime Guarantee - the percentage of time for which JFrog Cloud or the Cloud Feature available (including third-party services sourced by or provisioned by Supplier, but excluding any third-party Technology sourced or provisioned by Buyer) , as calculated by Supplier per month.	Uptime will be calculated by Supplier according to the following formula:  <b>Where:</b> T = total number of minutes in the applicable calendar month D = total number of Downtime minutes in the	The Supplier will use commercially reasonable efforts to ensure that the Uptime of the Artifactory will be at least 99.90%.	Buyer will be eligible to receive Credits for any failure of Supplier to meet the Uptime Guarantee, in an amount equal to a percentage of the Monthly Commitment or Monthly Subscription, as applicable, for the month in which the failure to meet the Uptime Guarantee occurred, in accordance with the following table:	During the Contract term, until the Expiry Date  *All is subject to the terms of Schedule 3 (JFrog Subscription Agreement – Hybrid “JSA”) – Exhibit B (Cloud Terms) and Attachment 1 to Exhibit B. Undefined shall have

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Key Performance Indicators (KPIs)						
KPI details						
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold	Service Credit for each Service Period		Measurement Period
		applicable calendar month. "Downtime" means a period of time, measured in one (1) minute increments, during which JFrog Cloud or the Cloud Feature is not available to Buyer. Downtime is measured based on Supplier's server-side		Uptime	Credits Percentage	their meaning as defined therein and shall apply <i>mutatis mutandis</i> .
				<99.90%->99.0%	5%	
				<99%.0%->=90.0%	25%	
				<90.0%	100%	

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Key Performance Indicators (KPIs)					
KPI details					
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold	Service Credit for each Service Period	Measurement Period
		error rate of applicable health-check pings from two (2) sources in a cluster for each cloud platform of JFrog Cloud or Cloud Feature, based on Supplier's system of record. Downtime does not include time during which JFrog Cloud or Cloud Feature is		Credits are Supplier's sole obligation and liability and Buyer's sole and exclusive remedy for any failure of Supplier to meet the Uptime Guarantee. Buyer will not be entitled to receive Credits if Buyer is in breach of the Contract. Credits may only be applied toward Buyer's next Monthly Commitment or Monthly Subscription, as applicable, and cannot be transferred or applied to any other entity.	

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Key Performance Indicators (KPIs)					
KPI details					
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold	Service Credit for each Service Period	Measurement Period
		unavailable due to: (i) Buyer's use of JFrog Cloud or the Cloud Feature in a manner not authorized in the Contract or not in accordance with the Documentation; (ii) Force Majeure Events; (iii) migration between cloud platforms/providers initiated by Buyer; (iv)			

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Key Performance Indicators (KPIs)					
KPI details					
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold	Service Credit for each Service Period	Measurement Period
		third-party Technology (excluding Third-Party Components); (v) Maintenance Time; and (vii) any suspension or termination of access to the JFrog Platform by Supplier pursuant to the Contract.			

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Key Performance Indicators (KPIs)							
KPI details							
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold			Service Credit for each Service Period	Measurement Period
		$\text{Uptime (\%)} = \frac{T - D}{T} \times 100$					
Service levels response times	Response time	Supplier's Response times to Issues raised by the Buyer.	Severity Level	Description of Severity	Response Times	Not applicable	During the Contract term, until the Expiry Date.  All is subject to JFrog Platinum SLA, available

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Key Performance Indicators (KPIs)						
KPI details						
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold			Service Credit for each Service Period
		<p>"Response Time" means the time interval between Notification and Supplier's response to you acknowledging receipt of the Notification.</p> <p>"Issue" means a failure of the JFrog Software to substantially conform to its Documentation.</p>	<p>Severity 1 ("Critical Issue")</p>	<p>(i) A catastrophic problem which renders the JFrog Software inoperative within your production system; or</p> <p>(ii) your production functionality and you cannot continue your essential operations.</p>	<p>Thirty (30) minutes from Notification.</p>	<p>here <a href="https://jfrog.com/platinum/sla/">https://jfrog.com/platinum/sla/</a>. Undefined shall have their meaning as defined therein, and shall apply <i>mutatis mutandis</i>, as provided in terms of Schedule 3 (JFrog Subscription Agreement –</p>

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Key Performance Indicators (KPIs)						
KPI details						
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold			Service Credit for each Service Period
				This Service Level will not apply to your non-production or development systems.		
			Severity 2 ("High Issue")	(i) A high-impact problem which significantly degrades the performance of the JFrog Software but	Eight (8) hours from Notification.	Hybrid "JSA" – section 4(a).

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Key Performance Indicators (KPIs)						
KPI details						
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold		Service Credit for each Service Period	Measurement Period
				does not cause complete inoperability for you; or (ii) an Issue that prevents you from enabling a feature in a production environment that the production system		

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Key Performance Indicators (KPIs)							
KPI details							
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold			Service Credit for each Service Period	Measurement Period
				does not currently rely on.			
			Severity 3 ("Medium Issue")	A lower impact problem on a production or non-production system that involves a partial or limited loss of non-critical functionality, or some other problem	Twenty-four (24) hours from Notification		

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Key Performance Indicators (KPIs)							
KPI details							
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold			Service Credit for each Service Period	Measurement Period
				involving no loss in functionality but you are able to continue essential operations. All Issues in connection with non-production systems, such as test and development systems.			

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Key Performance Indicators (KPIs)							
KPI details							
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold			Service Credit for each Service Period	Measurement Period
			Severity 4 ("Low Issue")	Issues with no impact on the quality, performance, or functionality of the JFrog Software in a production or non-production system.	Twenty-four (24) hours from Notification		

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KPI Performance Indications (KPIs)					
Key Details					
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold	Service Credit for each Service Period	Measurement Period
Tackling economic inequality	Create new jobs and new skills	Increase workforce percentage	<p>JFrog commits to increase its workforce in the UK by at least 10% during the full Contract term.</p> <p>This commitment may be fulfilled at other JFrog locations in extraordinary circumstances</p>		<p>During the full Contract term, until the Expiry Date.</p> <p>KPI threshold can be met during the Contract term and fulfilled prior to the end of the Term.</p>

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			such as significant changes in law, economic impossibility, or other business continuity events, preventing the continuation of business in the UK.		
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**Suppliers Uptime Calculation**

Uptime shall be calculated by the Supplier using the following formula:

$$\text{Uptime (\%)} = ((T - D) / T) \times 100$$

Where:

- **T** = Total number of minutes in the applicable calendar month
- **D** = Total number of Downtime minutes in the applicable calendar month

**“Downtime”** means a period of time, measured in one (1) minute increments, during which the Suppliers Cloud Feature is not available to the Buyer. Downtime is measured based on the Supplier’s server-side error rate of applicable health-check pings from two (2) sources in a cluster for each cloud platform, based on the Supplier’s system of record. Downtime does not include time during which JFrog Cloud or Cloud Feature is unavailable due to: (i) Buyer’s use of JFrog Cloud or the Cloud Feature in a manner not authorized in this Contract or not in accordance with the Documentation; (ii) Force Majeure Events; (iii) migration between cloud platforms/providers initiated by Buyer; (iv) third-party Technology (excluding Third-Party Components); (v) Maintenance Time; and (vii) any suspension or termination of access to the JFrog Platform by Supplier pursuant to this Agreement. Undefined terms shall have their meaning in Schedule 3 (JFrog Subscription Agreement – Hybrid **“JSA”**)

**Report Contents**

Each Quarterly Uptime Report shall include:

- The calculated uptime percentage for the month
- Total minutes in the month (T)
- Total Downtime minutes (D)
- Any applicable exclusions applied

**Uptime Reporting Requirement**

**The Supplier shall provide the Buyer with a Quarterly Uptime Report for the Suppliers Cloud Feature, covering the preceding quarter s availability performance.**

**As applied in Buyer’s Platinum Support SLA (See <https://jfrog.com/platinum/sla/> )**

**And the Uptime Guarantee in section 2 of Exhibit B (“Cloud Terms”) and Attachment 1 of Exhibit B (“Cloud Terms”) of the Schedule 3 (JFrog Subscription Agreement – Hybrid).**

## Schedule 2

### **AUTHORITY'S MANDATORY TERMS**

- A.** For the avoidance of doubt, references to 'the Agreement' mean the attached Call-Off Contract between the Supplier and the Authority. References to 'the Authority' mean 'the Buyer' (the Commissioners for His Majesty's Revenue and Customs).
- B.** The Agreement incorporates the Authority's mandatory terms set out in this Schedule 2.
- C.** In case of any ambiguity or conflict, the Authority's mandatory terms in this Schedule 2 will supersede any other terms in the Agreement.
- D.** For the avoidance of doubt, the relevant definitions for the purposes of the defined terms set out in the Authority's mandatory terms in this Schedule 2 are the definitions set out at Clause 1 of this Schedule 2.

#### **1. Definitions**

<b>"Affiliate"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
<b>"Authority Data"</b>	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p style="padding-left: 40px;">(i) supplied to the Supplier by or on behalf of the Authority; and/or</p> <p style="padding-left: 40px;">(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>(b) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;</p>
<b>"Charges"</b>	the charges for the Services as specified in Annex 3 ;
<b>"Connected Company"</b>	means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;
<b>"Control"</b>	the possession by a person, directly or indirectly, of 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 “Controls” and “Controlled” shall be interpreted accordingly;

**“Controller”,  
“Processor”,  
“Data Subject”,**

take the meaning given in the UK GDPR;

**“Data Protection  
Legislation”**

- (a) "the data protection legislation" as defined in section 3(9) of the Data Protection Act 2018; and;
- (b) all applicable Law about the processing of personal data and privacy;

**“Key  
Subcontractor”**

any Subcontractor:

- (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or
- (b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract;

**“Law”**

any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

**“Personal Data”**

has the meaning given in the UK GDPR;

**“Purchase Order  
Number”**

the Authority’s unique number relating to the supply of the Services;

**“Services”**

the services to be supplied by the Supplier to the Authority under the Agreement, including the provision of any Goods;

**“Subcontract”**

any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any

part thereof or necessary for the management, direction or control of the Services or any part thereof;

**“Subcontractor”**

any third party with whom:

- (a) the Supplier enters into a Subcontract; or
- (b) a third party under (a) above enters into a Subcontract, or the servants or agents of that third party;

**“Supplier Personnel”**

all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;

**“Supporting Documentation”**

sufficient information in writing to enable the Authority to reasonably verify the accuracy of any invoice;

**“Tax”**

- (a) all forms of tax whether direct or indirect;
- (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
- (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
- (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

**“Tax Non-Compliance”**

where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC’s “Test for Tax Non-Compliance”, as set out in Annex 1, where:

- (a) the “Economic Operator” means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 4.3; and
- (b) any “Essential Subcontractor” means any Key Subcontractor;

**“UK GDPR”** the UK General Data Protection Regulation, the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679);

**“VAT”** value added tax as provided for in the Value Added Tax Act 1994.

## **2. Payment and Recovery of Sums Due**

1. The Supplier shall invoice the Authority as specified within this call off contract. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Authority prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:
  1. the Supplier does so at its own risk; and
  2. the Authority shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.
- 2.1 Each invoice and any Supporting Documentation required to be submitted in accordance with the invoicing procedure specified in the Agreement shall be submitted by the Supplier, as directed by the Authority from time to time via the Authority’s electronic transaction system.
- 2.2 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Authority. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

## **3. Warranties**

- 3.1 The Supplier represents and warrants that:
  - 3.1.1 in the three years prior to the Start Date, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established;
  - 3.1.2 it has notified the Authority in writing of any Tax Non-Compliance it is involved in; and
  - 3.1.3 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier’s assets or revenue and the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the Start Date.
- 3.2 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1.1, 3.1.2 and/or 3.1.3 has been breached, is untrue, or is misleading, it shall immediately notify the Authority of

the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

- 3.3** In the event that the warranty given by the Supplier pursuant to Clause 3.1.2 is materially untrue, the Authority shall be entitled to terminate the Agreement pursuant to the Call-Off clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

#### **4. Promoting Tax Compliance**

- 4.1** All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 4.2** To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
- 4.3** The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Authority, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.
- 4.4** If, at any point during the Term, there is Tax Non-Compliance, the Supplier shall:
- 4.4.1** notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- 4.4.2** promptly provide to the Authority:
- (a)** details of the steps which the Supplier is taking to resolve the Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (b)** such other information in relation to the Tax Non-Compliance as the Authority may reasonably require.
- 4.5** The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.
- 4.6** Upon the Authority's request, the Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.
- 4.7** If the Supplier:
- 4.7.1** fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this shall be a material breach of the Agreement;
  - 4.7.2** fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Authority that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or
  - 4.7.3** fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Authority are acceptable this shall be a material breach of the Agreement;

and any such material breach shall allow the Authority to terminate the Agreement pursuant to the Call-Off Clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

- 4.8** The Authority may internally share any information which it receives under Clauses 4.3 to 4.4 (inclusive) and 4.6, for the purpose of the collection and management of revenue for which the Authority is responsible.

## **5. Use of Off-shore Tax Structures**

- 5.1** Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.
- 5.2** The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
- 5.3** In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.
- 5.4** Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

## **6 Data Protection and off-shoring**

- 6.1** The parties agree that the Supplier shall, whether it is the Controller or Processor, in relation to any Personal Data processed in connection with its obligations under the Agreement:
- 6.1.1** not process or permit to be processed Personal Data outside of the United Kingdom unless the prior explicit written consent of the Authority has been obtained and the following conditions are fulfilled:
- (a)** the Supplier or any applicable Processor has provided appropriate safeguards in relation to any transfer of the Personal Data (whether in accordance with UK GDPR Article 46 or, where relevant, section 75 of the Data Protection Act 2018) as determined by either the Authority or the Supplier when it is the Controller;
  - (b)** the Data Subject has enforceable rights and effective legal remedies;

- (c) the Supplier or any applicable Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is processed (or, if it is not so bound, uses its best endeavours to assist either the Authority or the Supplier when it is the Controller in meeting its obligations); and
- (d) the Supplier or any applicable Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

**6.2** Failure by the Supplier to comply with the obligations set out in Clause 6.1 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

## **7 Commissioners for Revenue and Customs Act 2005 and related Legislation**

- 7.1** To the extent applicable to the Supplier and the Services under the Agreement, The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.
- 7.2** To the extent applicable to the Supplier and the Services under the Agreement, The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
- 7.3** The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in the Official Secrets Acts 1911 to 1989 and the obligations set out in Section 182 of the Finance Act 1989.
- 7.4** The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel who will have access to, or are provided with, Authority Data in writing of the obligations upon Supplier Personnel set out in Clause 7.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
- 7.5** The Supplier shall ensure that a supplier representative of sufficient authority will sign (or have previously signed) a Confidentiality Declaration, in the form provided at Annex 2. The Supplier representative signing the Confidentiality Declaration shall be responsible for ensuring that all supplier personnel, who may have access to the Confidential Information are made aware of, and comply with, the obligations set out in this agreement. The Supplier shall provide a copy of the signed declaration to the Authority upon demand.
- 7.6** In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 7, the Authority reserves the right to terminate the Agreement pursuant to the clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

## **8 Confidentiality, Transparency and Publicity**

**8.1** The Supplier shall not, and shall take reasonable steps to ensure that the Supplier Personnel shall not:

8.1.1 make any press announcement or publicise the Agreement or any part of the Agreement in any way;  
or

8.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders, except with the prior written consent of the Authority.

**8.2** Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

**8.3** The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 ("FOIA"), the content of this Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Supplier hereby gives its consent for the Authority to publish the Agreement in its entirety, (*but any information which is exempt from disclosure in accordance with the provisions of the FOIA may be redacted by the Authority*) including from time-to-time agreed changes to the Agreement, to the general public. The Authority may consult with the Supplier to inform its decision regarding any redactions, but the Authority shall have the final decision at its absolute discretion.

**8.4** The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

## **9 Security Requirements**

**9.1** The Supplier shall comply with the security management plan set out in Schedule 16 ("Security Management Plan") and the security policy identified as such within the Security Management Plan ("Security Policy").

**9.2** The Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.'

### **Annex 1**

#### **Excerpt from HMRC's "Test for Tax Non-Compliance"**

##### **Condition one (An in-scope entity or person)**

1. There is a person or entity ("X") which is either:
  - (a) The Economic Operator or Essential Subcontractor ("EOS");
  - (b) Part of the same group of companies as EOS. An entity will be treated as within the same group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with *IFRS 10 Consolidated Financial Accounts*<sup>1</sup>;
  - (c) Any director, shareholder or other person ("P") which exercises control over EOS. 'Control' means P can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

##### **Condition two (Arrangements involving evasion, abuse or tax avoidance)**

2. X has been engaged in one or more of the following:
  - (a) Fraudulent evasion<sup>2</sup>;
  - (b) Conduct caught by the General Anti-Abuse Rule<sup>3</sup>;

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<sup>1</sup> <https://www.iasplus.com/en/standards/ifrs/ifrs10>

<sup>2</sup> 'Fraudulent evasion' means any 'UK tax evasion offence' or 'UK tax evasion facilitation offence' as defined by section 52 of the Criminal Finances Act 2017 or a failure to prevent facilitation of tax evasion under section 45 of the same Act.

<sup>3</sup> "General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions

- (c) Conduct caught by the Halifax Abuse principle<sup>4</sup>;
- (d) Entered into arrangements caught by a DOTAS or VADR scheme<sup>5</sup>;
- (e) Conduct caught by a recognised 'anti-avoidance rule'<sup>6</sup> being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not effected for commercial purposes. 'Targeted Anti-Avoidance Rules' (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
- (f) Entered into an avoidance scheme identified by HMRC's published Spotlights list<sup>7</sup>;
- (g) Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

Condition three (Arrangements are admitted, or subject to litigation/prosecution or identified in a published list (Spotlights))

3. X's activity in *Condition 2* is, where applicable, subject to dispute and/or litigation as follows:
  - (a) In respect of 2(a), either X:
    - (i) Has accepted the terms of an offer made under a Contractual Disclosure Facility ("CDF") pursuant to the Code of Practice 9 (COP9) procedure<sup>8</sup>; or,
    - (ii) Has been charged with an offence of fraudulent evasion.
  - (b) In respect of 2(b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB: Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.
  - (c) In respect of 2(b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
  - (d) In respect of 2(f) this condition is satisfied without any further steps being taken.
  - (e) In respect of 2(g) the foreign equivalent to each of the corresponding steps set out above in 3(a) to (c).

For the avoidance of doubt, any reference in this Annex 1 to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation.

<sup>4</sup> "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others

<sup>5</sup> A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

<sup>6</sup> The full definition of 'Anti-avoidance rule' can be found at Paragraph 25(1) of Schedule 18 to the Finance Act 2016 and Condition 2 (a) above shall be construed accordingly.

<sup>7</sup>

Targeted list of tax avoidance schemes that HMRC believes are being used to avoid paying tax due and which are listed on the Spotlight website: <https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight>

<sup>8</sup> The Code of Practice 9 (COP9) is an investigation of fraud procedure, where X agrees to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct that has led to irregularities in their tax affairs following which HMRC will not pursue a criminal investigation into the conduct disclosed.

## Annex 2 Form

### CONFIDENTIALITY DECLARATION

CONTRACT REFERENCE: **SR2496978868** ('the Agreement')

#### DECLARATION:

I solemnly declare that:

1. I am aware that the duty of confidentiality imposed by section 18 of the Commissioners for Revenue and Customs Act 2005 applies to Authority Data (as defined in the Agreement) that has been or will be provided to me in accordance with the Agreement.
2. I understand and acknowledge that under Section 19 of the Commissioners for Revenue and Customs Act 2005 it may be a criminal offence to disclose any Authority Data provided to me.

SIGNED: [REDACTED]
FULL NAME: [REDACTED]
POSITION: [REDACTED]
COMPANY: [REDACTED]
DATE OF SIGNATURE: [REDACTED]

## SCHEDULE 3

### JFROG SUBSCRIPTION AGREEMENT – HYBRID

This JFrog Subscription Agreement – Hybrid (this “**Agreement**”) is entered into as of the date last signed by a Party below (“**Effective Date**”) by and between the applicable JFrog Contracting Entity specified in Section 12(g) (JFrog Contracting Entity; Governing Law and Jurisdiction) (“**JFrog**”) and Customer. JFrog and Customer may be referred to in this Agreement, individually, as a “**Party**” and collectively, as the “**Parties**”. Capitalized terms not otherwise defined in the body of this Agreement will have the respective meanings assigned to them in EXHIBIT A (Definitions).

“ <b>Customer</b> ”	Full legal name:	██████████
	Postal address for legal notices:	██████████
	Email address for legal notices:	██████████

#### **1. ACCESS AND USE OF JFROG PLATFORM.**

(a) **JFrog Platform.** JFrog provides a proprietary end-to-end DevSecOps platform for the management, scanning and distribution of Customer Artifacts, Cloud Features, and any other JFrog software, portal, features or add-ons, hosted and managed either by JFrog or by Customer, as applicable to Customer’s Subscription or included in Customer’s Order Form (“**JFrog Platform**”). JFrog will use commercially reasonable efforts to make the JFrog Platform available in accordance with this Agreement, the Order Form, and laws and government regulations applicable to JFrog’s provision of its services to its customers generally. Each duly executed Order Form is hereby incorporated by reference into and made part of this Agreement. When registering for a Subscription by executing an Order Form, Customer will select: (i) a Prepaid Subscription; (ii) the Subscription Level; and (iii) the Subscription Term, if applicable. Where the JFrog Platform is hosted and managed by JFrog on a Cloud Platform on behalf of Customer or a Cloud Feature is included in Customer’s self-hosted Subscription Level or Order Form, EXHIBIT B (Cloud Terms) will apply. Customer is responsible for contracting with a cloud platform provider that will store and process the Customer Artifacts. Nothing in this Agreement creates a contractual relationship between JFrog and any such cloud platform provider.

(b) **License.** Subject to the terms and conditions of this Agreement, JFrog hereby grants Customer and its Affiliates a non-exclusive, non-transferable, non-sublicensable, revocable, limited right and license during the Subscription Term to: (i) download and install, and access and use the features of, the JFrog Platform set forth in the applicable Order Form solely for Customer’s Internal Use; and (ii) use the Documentation and the Material is solely for Customer’s Internal Use in connection with the foregoing, in each case, in accordance with this Agreement, including the Order Form.

(c) **Restrictions on Use.** Customer will not, directly or indirectly, permit, facilitate, or otherwise allow any other person or entity to:

(i) access or use the JFrog Platform: (A) in a manner that does not comply with this Agreement (including the applicable Order Form), the Acceptable Use Policy (accessible online at <https://jfrog.com/acceptable-use-policy/>), the Documentation, and/or with JFrog's written instructions; (B) for fraudulent, misleading, or unlawful activities or purposes; or (C) for benchmarking or competitive activities or purposes;

(ii) use any proxying, caching or other mechanism to provide any third parties (other than those permitted under this Agreement) with access to and/or use of the JFrog Platform.

(iii) sublicense, assign, publish, resell, transfer, distribute, pledge, loan, lease, market, rent, make available, or provide use of the JFrog Platform to any entity or person, including on or in connection with any service bureau arrangement, facility management or third-party training, except as expressly allowed under the license grant in this Agreement.

(iv) delete, obscure, or alter JFrog's Marks, brand features, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the JFrog Platform or Documentation;

(v) upload or transmit any personal data viruses or other malicious content or code into or through the JFrog Platform;

(vi) translate, reverse-translate, decipher, decode, disassemble, or otherwise reverse-engineer, or otherwise attempt to discover the source code or underlying ideas of the JFrog Platform;

(vii) breach, bypass, or otherwise interfere with security-related or limiting features of the JFrog Platform;

(viii) copy, modify, or create derivative works of, the JFrog Platform or Documentation;

(ix) develop, implement, or install any third-party extension, plug-in, or other means of access or use of the JFrog Platform, without prior written approval from JFrog; or

(x) access or use the JFrog Platform in any manner, or by using any means, including, but not limited to, caching mechanism, intended to avoid incurring fees that would otherwise be incurred for such access or use.

(d) **Customer Responsibilities.** Customer agrees to: (i) maintain the JFrog Platform on a recently issued version that is within eighteen (18) months from its release date, otherwise JFrog will not be liable for any breach of the JFrog Platform Warranty or required to provide maintenance and support for the JFrog Platform; (ii) monitor its usage of the Platform Metrics and, upon JFrog's request, accurately report this information through JFrog's customer online portal dedicated to the management of Subscriptions and made available at <https://my.jfrog.com/> ("MyJFrog") or in the form of a usage report; (iii) immediately notify JFrog of any unauthorized disclosure or use of login credentials, and be responsible

for maintaining the confidentiality of the foregoing; (iv) provide accurate, complete, and current registration, billing and contact information during registration and keep that information up to date during the Subscription Term; (v) not upload to the JFrog Platform any unlawful data or content and (vi) host and maintain the JFrog Platform on a cloud platform approved by JFrog and using minimum technical specifications to be provided by JFrog.

(e) **Customer's Affiliates.** Customer's Affiliates may enter into an Order Form with JFrog to enable a Customer's Affiliate to use the JFrog Platform. Each such Order Form entered into by Customer's Affiliate and JFrog is hereby incorporated by reference into and made part of this Agreement. When interpreting the terms of this Agreement with respect to a given Order Form entered into by Customer's Affiliate, references to "Customer" will be construed as references to the Customer Affiliate that signed the Order Form, except where the context requires otherwise.

(f) **Third-Party Components.** "Third-Party Components" means third-party software, files, components, integrations, and materials. The JFrog Platform is made with certain Third-Party Components that are subject to open source or third-party license terms which are listed in the Documentation and on JFrog About Box (accessible online at <https://jfrog.com/about-box/>). JFrog will maintain and update the Documentation and JFrog About Box following any changes to the Third-Party Components forming part of the JFrog Platform. Subject to the terms and conditions of this Agreement, Customer may link, connect or use Third-Party Components in conjunction with the JFrog Platform at Customer's sole risk and responsibility and solely in accordance with the Documentation and the applicable third-party license agreement. Customer is bound by and will comply with all such license agreements, and Customer expressly acknowledges and agrees that any breach by Customer of any such license agreements is also a breach of this Agreement.

## 2. FEES AND PAYMENT.

(a) **Fees.** Customer will pay the fees as set forth in an Order Form, the SOW, or the Website as applicable, which may comprise fees for: (i) the applicable Subscription Level; (ii) purchasing additional Platform Metrics to be used during the applicable Subscription Term; (iii) Subscription support services; or (iv) other services set forth in an Order Form (the "**Fees**"). Fees will be payable, for Prepaid Subscriptions, in advance of the Subscription Term. All Fees are non-refundable, unless stated otherwise in this Agreement.

(b) **Prepaid Subscriptions.** For a Prepaid Subscription, JFrog will, on a monthly basis, deduct from the Fees set forth in the applicable Order Form: (i) the applicable Monthly Commitment; and (ii) any Fees for Customer's usage of the JFrog Platform in excess of the Monthly Commitment. Unless stated otherwise in an applicable Order Form, Platform Metrics will be used on a monthly basis based on the Monthly Commitment and not accumulate or roll over during the Subscription Term or upon renewal of a Subscription.

(c) **Cloud Marketplace.** To the extent Customer has purchased a Subscription through a digital catalog of software listings from cloud computing services providers supported by the JFrog Platform ("**Cloud Marketplace**"), Customer will pay the Fees: (i) specified on the applicable offer as provided in the Cloud Marketplace; or (ii) as set out in an Order Form included in the Cloud Marketplace offer. All Fees will be paid through the billing of Customer's account with the applicable Cloud Marketplace in accordance with the payment terms set out in the applicable offer. Fees for usage of Platform Metrics in excess of the Monthly Commitment will be billed on a monthly basis.

(d) **Resellers.** Customer may purchase Prepaid Subscriptions through a third party authorized by JFrog to sell a Subscription to Customer on behalf of JFrog ("**Reseller**"). If Customer chooses to use a Reseller, Customer hereby agrees

and acknowledges that: (i) JFrog and Reseller will enter into an Order Form in which Reseller will purchase a Subscription on behalf of Customer and pay to JFrog the applicable Fees; (ii) JFrog will not be bound by any commitment, agreement or understanding entered into between Customer and Reseller; (iii) JFrog will not be liable for any acts or omissions of Reseller; (iv) Customer's use of and access to the JFrog Platform will be governed by the terms and conditions of this Agreement; and (v) any failure of Reseller to pay JFrog applicable Fees will be considered a breach of this Agreement by Customer, entitling JFrog to collect payment and interest directly from Customer without limiting JFrog's rights or remedies set out in this Agreement or prescribed by applicable law.

(e) **Taxes.** All Fees and amounts payable under this Agreement are exclusive of sales, use, value-added, withholding, and other taxes and duties ("**Taxes**"). Customer will pay all applicable Taxes, except for Taxes payable on JFrog's net income. If any Tax must be withheld or deducted from any payment made by Customer under this Agreement, Customer will gross-up such payment by an amount that will ensure that after applying the required withholding or deduction, JFrog will receive an amount equal to the payment otherwise due to JFrog.

(f) **Invoices and Payment.** JFrog will issue to Customer an invoice upon execution of an applicable Order Form in accordance with the terms set forth in the Order Form. The Order Form will set forth the applicable pricing, payment, and invoicing terms for Customer's Subscription. JFrog may charge interest on any amount overdue at the maximum rate permitted by law and Customer will reimburse JFrog for all reasonable costs incurred by JFrog in collecting any such overdue amounts or interest, including attorneys' fees. JFrog may also deduct the amount of any debt or unpaid fees from the Fees paid for a renewal of a Prepaid Subscription.

(g) **New Prices.** Any changes to the Fees will not apply during the then current subscription. JFrog reserves the right to modify the Fees within 30 days notice at any time in the regular course of business. and such change will take effect upon renewal of the Subscription or any change to the Subscription Level.

(h) **Records; Audit.** Customer will keep and maintain complete and accurate records relating to its access and use of the JFrog Materials, including as necessary for JFrog to: (i) calculate, or verify the calculation of, the Fees; (ii) determine whether a breach of this Agreement has occurred or is reasonably likely to occur; and (iii) inspect Customer's access and use of the JFrog Materials, including verifying that Customer is not interfering with JFrog mechanisms or systems or engaging in illegal activity. Customer will retain such records for the duration of the Term and an additional period of at least two (2) years following the expiration or termination of this Agreement, or for such longer period as may be required under applicable law (the "**Audit Period**"). During the Audit Period, upon providing reasonable advance written notice (including via email) to Customer, JFrog may audit, and/or may direct a third-party auditor to audit, such records and Customer's access and use of the JFrog Materials during Customer's normal business hours. Customer will provide all cooperation and assistance, as may reasonably be requested by or on behalf of JFrog with respect to such audit.

### 3. **TERM, SUSPENSION AND TERMINATION.**

(a) **Agreement Term.** This Agreement will commence on the Effective Date and continue until: (i) the expiration or termination of all of Customer's Subscriptions; or (ii) terminated as set forth herein ("**Term**").

(b) **Prepaid Subscription Term.** A Prepaid Subscription will commence on the Subscription start date set forth in an Order Form and continue until the Subscription expiration date set forth in the Order Form, unless otherwise stated in the Order Form.

(c) **Suspension.** In addition to other remedies available to JFrog, JFrog expressly reserves the right to suspend access to the JFrog Platform or access to maintenance and support if Customer: (i) fails to pay any applicable Fees when due; or (ii) is in breach of Section 1(c) (Restrictions on Use). JFrog will use commercially reasonable efforts, if practicable, to notify Customer of such suspension in advance.

(d) **Termination for Material Breach.** Either Party may terminate any Prepaid Subscription or SOW, effective on written notice to the other Party, upon the material breach of any term of this Agreement by the other Party which is: (i) incapable of cure; or (ii) capable of cure, but not cured within thirty (30) days following the delivery of such written notice by the other Party. If Customer terminates this Agreement due to a material breach of JFrog in accordance with this Section, Customer will receive a prorated refund of any unused prepaid Fees after the effective date of termination.

(e) **Immediate Termination.** JFrog may terminate this Agreement, effective immediately upon written notice to Customer, if Customer breaches Section 1(c)(i)(A) or Section 1(c)(i)(C) of this Agreement, or if JFrog reasonably believes that Customer has breached Section 1(c)(i)(B) of this Agreement.

(f) **Termination for Cause.** Either Party may terminate this Agreement, any Subscription and/or SOW, effective on written notice to the other Party, if: (i) the other Party becomes insolvent, undergoes a dissolution, or ceases operation without a successor; or (ii) the other Party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such Party (and not dismissed within thirty (30) days thereafter); (iii) the other Party commences negotiations or enters into an agreement with all or any class of its creditors in relation to any assignment for the benefit of such creditors, the rescheduling of any of its debts, and/or any compromise or other arrangement with any of its creditors; or (iv) if applicable law or applicable government or court order prohibits performance under this Agreement.

(g) **Effect of Termination.** Upon termination or expiration of this Agreement, any Subscription and/or SOW: (i) JFrog will terminate Customer's access to the JFrog Platform and/or the provision of Professional Services; (ii) the rights and licenses granted to Customer under this Agreement will cease; (iii) Customer will cease all use of the JFrog Materials; (iv) JFrog will retain Usage Data; (v) Customer will lose all access to the JFrog Platform; and (vi) Customer will immediately pay any outstanding Fees due and payable under this Agreement. The foregoing rights and obligations will also apply to the termination or expiration of a specific Subscription, but solely to the specific Instance associated with the applicable Subscription.

(h) **Survival.** Sections 2(h), 3(g), 3(h), 4(b), 5, 6, 8, 9(f), and 10 to 12, and any other Sections that by their nature are intended to continue beyond the termination or expiration of this Agreement, will survive any termination or expiration of this Agreement.

#### **4. MAINTENANCE AND SUPPORT, PROFESSIONAL SERVICES.**

(a) **Subscription Support.** If Customer selects a Subscription that includes standard support or decides to purchase enhanced support services to the JFrog Platform, JFrog will provide Customer with the applicable support set

forth in the Order Form and in accordance with the applicable JFrog Service Level Agreement (accessible online at <https://jfrog.com/platform/sla/>).

(b) **Professional Services.** In addition to the support set forth in Section 4(a) (Subscription Support), Customer may choose to engage JFrog to provide additional Professional services, including configuration, implementation, deployment, consulting, training or similar services related to the JFrog Platform ("**Professional Services**"). Professional Services will be detailed in a statement of work ("**SOW**") and charged in accordance with the applicable SOW. Each SOW will be incorporated by reference into and made part of this Agreement. Completion of the Professional Services contemplated herein will not impact the applicable Subscription Term purchased separately for a Subscription to the JFrog Platform. JFrog may engage its Representatives to perform, in whole or in part, any of its obligations under a SOW, provided that the acts and omissions of any such Representatives in performing JFrog's obligations under a SOW will be treated as the acts and omissions of JFrog under the SOW. To the extent the Professional Services to be provided by JFrog hereunder are based upon information supplied by the Customer, among other certain elements, reports, samples and models, JFrog does not guarantee or warrant such Professional Services to any specifications, function or other standards, except as specifically set forth hereunder. The provision of the Professional Services by JFrog does not contemplate the development of any deliverables or intellectual property rights for the benefit of Customer. For the avoidance of doubt, JFrog will not be developing any work product for Customer, and nothing under this section 4 will be construed as work for hire.

## 5. INTELLECTUAL PROPERTY RIGHTS.

(a) **Reservation of Rights.** All right, title, and interest in and to the: (i) JFrog Materials, including associated intellectual property rights, are and will remain with JFrog, its Affiliates and/or their respective suppliers and licensors; and (ii) Customer Artifacts, together with associated intellectual property rights, are and will remain with Customer, its Affiliates and/or their respective suppliers and licensors. The Parties do not transfer, and are under no obligation to transfer, any title or ownership interest in or to their respective intellectual property rights in connection with this Agreement. JFrog reserves all rights not expressly granted to Customer in this Agreement. There are no implied licenses under this Agreement. Customer will not, directly or indirectly, permit, facilitate, or otherwise allow any other person or entity to develop, build, train, or run a machine learning or artificial intelligence application, functionality, logic, model, software system, or process on the Output.

(b) **Feedback.** Customer grants to JFrog and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate into JFrog's or its Affiliates' products, services, or Technology, any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer relating to the operation of the JFrog Platform and its services.

## 6. USAGE DATA.

During the Subscription Term JFrog may collect, store and use Usage Data in order to facilitate the provision of the JFrog Platform, to monitor and secure compliance with Section 1(c) (Restrictions on Use), and for maintenance, support, account management, and billing purposes. JFrog may use Usage Data to enhance the JFrog Platform and improve Customer's utilization of the JFrog Platform during and after the Subscription Term. Usage Data that is not used to service the

Customer will be used in an aggregated and/or anonymized manner. JFrog reserves the right to retain Usage Data after expiration or termination of this Agreement.

## 7. SECURITY.

(a) **Technical and Organizational Measures.** JFrog maintains technical and organizational measures (“**JFrog TOMs**”) (accessible online at <https://jfrog.com/jfrog-toms/>) in accordance with generally recognized industry practices for similar services and as applicable to the JFrog Platform.

(b) **JFrog Certificate Program.** To the extent applicable to the JFrog Platform, JFrog will annually validate compliance with the JFrog Certificate Program (accessible online at <https://jfrog.com/trust/certificate-program/>) and audit its controls and infrastructure in line with: (i) the applicable risk level; (ii) JFrog’s policies and procedures; (iii) legal and regulatory requirements; and (iv) generally recognized industry practices for similar services.

## 8. CONFIDENTIALITY.

(a) **Generally. “Confidential Information”** means any information of a Party (“**Discloser**”), whether written, visual, verbal, tangible, or intangible, that is disclosed to, directly or indirectly, or observed by, the other Party (“**Recipient**”) in connection with this Agreement or other potential business relationship between the Parties, which at the time of disclosure is designated by the Discloser as confidential, expressly marked as being “Confidential” or “Proprietary”, or is reasonably identifiable as confidential given the nature of the information or the circumstances of disclosure. Confidential Information may include, but is not limited to, ideas, inventions, procedures, processes, specifications, software, computer programs, trade secrets, know-how, methods, business plans, financial data and analyses, financial forecasts, marketing plans, roadmaps, customer and supplier information, drawings, models or other intellectual property. The Confidential Information of a Party includes Confidential Information disclosed by its Representatives or Affiliates in connection with this Agreement. Notwithstanding the foregoing, the JFrog Platform, results of the Professional Services, and non-public information related to JFrog’s or its Affiliates’ products, services, and intellectual property rights, will be deemed to be JFrog’s Confidential Information.

(b) **Exclusions. “Confidential Information”** will not include any information that: (i) was already known to Recipient at or prior to the time of disclosure; (ii) is independently developed by or for Recipient without reference to or use of Discloser’s Confidential Information; (iii) is obtained by Recipient without restriction on disclosure or use, from an entity or person other than the Discloser; or (iv) is or becomes publicly known or generally available to the public through no wrongful act or omission of Recipient.

(c) **Use and Non-Disclosure.** Recipient will: (i) hold the Confidential Information it receives in strict confidence and take appropriate precautions to protect Discloser’s Confidential Information using the same degree of care Recipient uses to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care; (ii) not use Discloser’s Confidential Information, except solely to exercise its rights and fulfill its obligations under this Agreement; (iii) not disclose Discloser’s Confidential Information, except to its Affiliates, and to its and its Affiliates’ employees, officers, directors, agents, contractors, consultants, service providers, subcontractors and professional advisors (collectively, “**Representatives**”) who: (A) “need to know” the Confidential Information in connection

with Recipient exercising its rights and fulfilling its obligations under this Agreement; and (B) are bound by confidentiality obligations no less stringent than those in this Agreement; and (iv) not reverse-engineer, disassemble, decompile or remove proprietary markings from Confidential Information without Discloser's prior written consent.

(d) **Compelled Disclosure.** Notwithstanding Section 8(c) (Use and Non-Disclosure), Recipient may disclose Discloser's Confidential Information to the extent required by applicable law, regulatory authority, or order of a court of competent jurisdiction or other governmental body ("**Compelled Disclosure**"), provided that Recipient: (i) gives prompt written notice to Discloser of such Compelled Disclosure when legally permissible; (ii) reasonably cooperates with Discloser in seeking a protective order or otherwise preventing or restricting such disclosure; and (iii) only discloses that portion of Confidential Information required to comply with the Compelled Disclosure.

(e) **Destruction of Confidential Information.** Recipient, upon the expiration or termination of this Agreement or upon written request by Discloser, will promptly destroy (and notify the Discloser in writing that it has complied with the requirements of this Section at the request of Discloser) all copies of the Discloser's Confidential Information in its possession or under its control; provided that, Recipient may retain copies of Confidential Information as required to comply with applicable law or as part of its standard archival or computer back-up systems, and further provided that such Confidential Information will continue to be subject to the terms of this Section.

## 9. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS.

(a) **Mutual.** Each Party represents and warrants that: (i) it has, and will retain, the full right, power, and authority to enter into and perform under this Agreement; (ii) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented in this Agreement under the laws and regulations of its jurisdiction of incorporation, organization, or chartering; (iii) when executed and delivered by such Party, this Agreement will be legally binding upon and enforceable against such Party, and this Agreement will not conflict with any agreement, instrument, or understanding, oral or written, to which such Party is a party or by which it may be bound; and (iv) such Party has not given, offered, received or been offered any illegal or improper bribe, kickback, payment, gift, donation, or thing of value from an employee or agent of the other Party or otherwise in connection with this Agreement. For clarity, reasonable gifts and entertainment provided customarily and in good faith in the ordinary course of legitimate business activities do not violate the foregoing.

(b) **By Customer.** Customer represents, warrants, and covenants that Customer owns or otherwise has and will have the necessary rights, licenses, and consents in and relating to the Customer Data and the Customer's Marks such that, as used by JFrog in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any intellectual property rights, or any privacy or other rights, of any third party or violate any applicable law.

(c) **Sanctions; Compliance with Law.** The JFrog Platform may be subject to export control laws and regulations of the U.S. and other jurisdictions. Customer represents, warrants, and covenants that: (i) it is not subject to sanctions or otherwise designated on any list of prohibited or restricted parties; (ii) it will not, directly or indirectly, export, re-export, or release the JFrog Platform to, or make the JFrog Platform accessible from or to, any country, jurisdiction or

person/entity to which export, re-export, or release is prohibited or restricted by applicable laws and regulations; and (iii) its access and use of the JFrog Platform is and will be at all times in compliance with applicable laws and regulations.

(d) **Limited JFrog Platform Warranty.** JFrog represents and warrants, solely for Customer's benefit, that the JFrog Platform, if operated as instructed by JFrog and as specified in the Documentation and/or this Agreement, will operate substantially in accordance with the functional specifications in the Documentation ("**JFrog Platform Warranty**"). The scope of the JFrog Platform Warranty applies to the JFrog Platform licensed under Customer's Order Form. JFROG'S SOLE OBLIGATION AND LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE JFROG PLATFORM WARRANTY WILL BE THE REMEDIES SET FORTH IN THIS SECTION. In the event of any breach of the JFrog Platform Warranties, subject to Customer promptly notifying JFrog in writing of such breach, Customer's sole remedy will be the repair of any errors in the JFrog Platform which are causing it not to substantially operate in accordance with the JFrog Platform Warranty, within thirty (30) days from the verification of such errors by JFrog, provided that Customer provides JFrog with all information JFrog requests to resolve the error, including sufficient information to enable JFrog to recreate such error.

(e) **JFrog Platform Warranty Exclusions.** The JFrog Platform Warranty only applies to errors causing failures in the operation of the JFrog Platform as made generally available and expressly excludes any breach of the JFrog Platform Warranty that: (i) is caused by third-party Technology, or the combination, operation or use of the JFrog Platform with software, hardware or other materials not authorized by JFrog; (ii) is caused by problems inherent to Customer's use and/or configuration; (iii) occurs while the JFrog Platform is used in violation of this Agreement or not in accordance with the Documentation; (iv) is caused by an error arising out of maintenance, installation, repairs or modifications done by or on behalf of Customer not in accordance with the Documentation or without JFrog's authorization; or (v) is caused by an error that would have been avoided by the use of an updated version of the JFrog Platform made generally available by JFrog.

(f) **Disclaimers.** EXCEPT AS SET FORTH IN THIS AGREEMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE JFROG PLATFORM IS LICENSED, AND THE PROFESSIONAL SERVICES (INCLUDING ANY RESULTS THEREOF) ARE PROVIDED, TO CUSTOMER ON AN "AS IS" BASIS AND JFROG HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, STATUTORY OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, ACCURACY, COMPLETENESS, OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, JFROG MAKES NO WARRANTY OF ANY KIND THAT THE JFROG PLATFORM, THE OUTPUT OR PROFESSIONAL SERVICES (INCLUDING ANY RESULTS THEREOF), OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF (INCLUDING ANY REPORTS, RECOMMENDATIONS, LISTS, GRAPHS, INSIGHTS AND/OR STATISTICS), WILL MEET CUSTOMER'S OR ANY OTHER ENTITY'S OR PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY TECHNOLOGY OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE. ALL THIRD-PARTY TECHNOLOGY IS PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY TECHNOLOGY IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY TECHNOLOGY. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY CUSTOMER ACTS OR OMISSIONS BASED ON THE CUSTOMER'S USE OF THE JFROG PLATFORM OR ANY OUTPUT. THE JFROG PLATFORM AND ANY OUTPUT WILL NOT BE CONSIDERED LEGAL ADVICE AND ANY OUTPUT IS PROVIDED FOR CONVENIENCE PURPOSES ONLY. OUTPUT MAY BE BASED ON THIRD-PARTY RESOURCES AND DATABASES

AND THEREFORE JFROG DOES NOT GUARANTEE THAT OUTPUTS ARE INCLUSIVE OF ALL COMPONENTS, LIBRARIES, DEPENDENCIES, LICENSES AND VULNERABILITIES OR THAT THE ANNOTATION OF THE FOREGOING IS COMPLETE.

## 10. LIMITATION OF LIABILITY.

(a) **DAMAGES DISCLAIMER.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY LOSS OR DAMAGE OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, INCLUDING FOR: (I) LOSS OF BUSINESS PROFITS, GOODWILL OR REPUTATION; (II) BUSINESS INTERRUPTION; AND (III) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER ARTIFACTS, IN EACH CASE, WHETHER AN ACTION IS IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY, AND EVEN IF SUCH PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

(b) **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S AND ITS AFFILIATES' AGGREGATE LIABILITY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER AND ITS AFFILIATES TO JFROG IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO A CLAIM.

(c) **UNLIMITED LIABILITIES.** SECTION 10(b) (LIMITATION OF LIABILITY) WILL NOT APPLY TO: (I) EITHER PARTY'S DEFENSE AND INDEMNIFICATION OBLIGATIONS; (II) CUSTOMER'S BREACH OF SECTION 1(c) (RESTRICTIONS ON USE); (III) CUSTOMER'S PAYMENT OBLIGATIONS TO JFROG; OR (IV) MATTERS FOR WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

(d) **Essential Element.** The Parties agree that the limitations and exclusions of liability specified in this Section will survive and apply even if any limited remedy specified in this Agreement is found to have failed in its essential purpose.

(e) **Responsibility for Others.** Customer will be liable for the acts and omissions of its Affiliates, Customer Users, and External Users in connection with this Agreement as if such acts or omissions were those of Customer.

## 11. INDEMNIFICATION.

(a) **Indemnification by Customer.** Customer will defend JFrog and its Affiliates from and against any claim, demand, suit or proceeding made or brought against JFrog by a third party that: (i) Customer's use of the JFrog Platform infringes, misappropriates, or violates any third-party proprietary rights; or (ii) any acts or omissions of Customer constitute a breach of Section 1(c) (Restrictions on Use) or Section 9 (Representations and Warranties; Disclaimers), and will indemnify JFrog from any damages finally awarded against JFrog as a result of, or for any amounts paid by JFrog under a settlement approved by Customer in writing, together with all reasonable attorney fees and costs incurred in connection with, such litigations or settlements.

(b) **Indemnification by JFrog.** JFrog will defend Customer and its Affiliates from and against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the JFrog Platform infringes or misappropriates such third party's intellectual property rights (an "**Infringement Claim**"), and will indemnify Customer

from any damages finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by JFrog in writing of, an Infringement Claim, together with all reasonable attorney fees and costs incurred in connection with such litigations or settlements. In the event of an Infringement Claim or if JFrog reasonably determines that the following actions are essential to avoid material liability, JFrog will have the right in its sole discretion to either: (i) procure for Customer the right to continue using the JFrog Platform materially as contemplated by this Agreement; (ii) replace any allegedly infringing feature of the JFrog Platform with a non-infringing feature of substantially equivalent function and performance; (iii) modify the JFrog Platform to avoid an Infringement Claim without materially derogating from its functionality and performance; or (iv) terminate this Agreement upon written notice to Customer and provide a prorated refund of unused prepaid Fees for the then current Subscription Term. THIS SECTION SETS OUT CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, AND JFROG'S SOLE LIABILITY AND OBLIGATION, FOR ANY INFRINGEMENT CLAIM.

(c) **Exclusions.** Section 11(b) (Indemnification by JFrog) will not apply to the extent the underlying allegation of an Infringement Claim arises from: (i) third-party Technology; (ii) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of JFrog; (iii) modifications to the JFrog Platform not authorized or made by JFrog, but solely to the extent the alleged infringement is caused by such modification; (iv) combination of the JFrog Platform with other products, applications, or processes not authorized or made by JFrog, but solely to the extent the alleged infringement is caused by such combination; or (v) any breach of this Agreement, or the third-party license terms applicable to the Third-Party Components, by Customer, Customer Users and/or External Users.

(d) **Indemnification Process.** The Party seeking indemnification or defense ("**Indemnified Party**") pursuant to this Section will provide the other Party ("**Indemnifying Party**") with prompt written notice of any claim subject to such Section. The Indemnifying Party will have sole control and authority over the defense and/or settlement of the claim, provided that the Indemnified Party may join in defense with counsel of its own choice at its own expense. The Indemnified Party will provide reasonable assistance in the investigation and defense of the claim at the Indemnifying Party's expense. The Indemnified Party's failure to comply with its obligations under Section 11(a) (Indemnification by Customer) or Section 11(b) (Indemnification by JFrog) will excuse the Indemnifying Party from its indemnification obligation, solely to the extent it was materially prejudiced as a result of such failure. The Indemnifying Party will not consent to the entry of any judgment or enter into any settlement or compromise requiring the Indemnified Party to admit liability, pay money, or take or refrain from any action without the prior written consent of the Indemnified Party, which will not be unreasonably withheld, conditioned or delayed.

## 12. GENERAL PROVISIONS.

(a) **Insurance.** Each Party will maintain, during the Term, insurance coverages with a reputable insurer as set forth in such Party's certificate of insurance, which will be available upon written request.

(b) **Publicity Rights.** JFrog may identify Customer as a customer in JFrog's promotional materials, Website or other public communications. Customer hereby grants JFrog a worldwide, non-exclusive, sub-licensable, transferable, royalty-free and revocable (by submitting an email to [REDACTED] at any time) right and license during the Subscription Term to display and use Customer's Marks in connection therewith. Revocation of the foregoing license does not affect JFrog's right and license to use or display Customer's Marks in connection with any promotional material, Website or other public communication that was in existence at the time of revocation. Any use of JFrog's Marks by Customer must be in accordance with the JFrog Brand Guidelines (accessible online at <https://jfrog.com/brand->

guidelines/). Each Party acknowledges and agrees that any and all goodwill accruing from the use of the other Party's Marks will inure solely to such other Party's benefit.

(c) **Notices.** Except as set forth herein, any notice required or permitted by this Agreement must be in writing, delivered to the applicable address of the Party set forth herein, and will be effective: (i) upon receipt when delivered personally; (ii) two (2) days (other than weekends or public holidays) after it is sent if sent by certified or registered mail (return receipt requested); or (iii) one (1) day (other than weekends or public holidays) after it is sent if sent by next-day delivery by a major delivery service or via email.

(d) **Severability; No Waiver; Amendment.** If any term of this Agreement is or becomes invalid, illegal or unenforceable in any jurisdiction it will, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction. No failure of either Party to enforce or exercise any rights under this Agreement will be effective, unless in a writing signed by a duly authorized signatory on behalf of the Party claimed to have waived. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by both Parties. Referenced policies may be amended from time to time by JFrog in its sole discretion.

(e) **Force Majeure.** A Party to this Agreement (the “**Affected Party**”) will not be liable to the other Party for any delay or failure to perform any obligation under this Agreement if the delay or failure is due to third-party strikes, blockades, wars, terrorism, pandemics, riots, natural disasters, widespread disruptions in communication services, acts or determinations of government, or other circumstances or events beyond the reasonable control of the Affected Party (each a “**Force Majeure Event**”), insofar as the Force Majeure Event prevents or delays the Affected Party from fulfilling its obligations because of impossibility and the Affected Party was not able to prevent or remove the Force Majeure Event using commercially reasonable efforts. As soon as practicable following the occurrence of such Force Majeure Event, the Affected Party will notify the other Party regarding: (i) the date on which the Force Majeure Event started; (ii) its likely or potential duration; and (iii) the effect it is having on the Affected Party's ability to perform its obligations. For the avoidance of doubt, Customer will not be relieved of its payment obligations hereunder if JFrog continues to perform its obligations under this Agreement during a Force Majeure Event.

(f) **Relationship of the Parties.** The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each Party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes. There are no third-party beneficiaries under this Agreement.

(g) **JFrog Contracting Entity; Governing Law and Jurisdiction.** The Convention on Contracts for the International Sale of Goods and conflicts of laws principles do not apply to this Agreement. The applicable JFrog Contracting Entity, governing law, and courts depend on where Customer is domiciled in accordance with the following table:

Row	If Customer is domiciled in	Governing law	Courts with exclusive and sole jurisdiction (including non-contractual)	JFrog Contracting Entity entering into this Agreement
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I	The USA; or a country in North America, Central America, South America or the Caribbean	State of California, USA	U.S. District Court for the Northern District of California or a state court located in or having jurisdiction over Santa Clara County, California	JFrog, Inc.  270 E Caribbean Dr., Sunnyvale, CA 94089
II	A country in EMEA (Europe, Middle East, and Africa) or APAC (Asia Pacific), excluding countries in row III or IV below	English	Courts in London, UK	JFrog Ltd  3 HaMachshev St., Netanya, Israel
III	Israel	Israel	Tel Aviv, Israel	JFrog Ltd  3 HaMachshev St., Netanya, Israel
IV	Bahrain, Belgium, Egypt, France, French Polynesia, Indonesia, Kuwait, Luxembourg, Malaysia, New Caledonia, Qatar, Saudi Arabia or United Arab Emirates	France	Paris, France	JFrog SAS  21, boulevard de la Marquette, Toulouse (31000), France
V	Anywhere else	Israel	Tel Aviv, Israel	JFrog Ltd  3 HaMachshev St., Netanya, Israel

(h) **Remedies.** Unless expressly set forth otherwise in this Agreement, any and all remedies expressly conferred upon a Party are cumulative with and not exclusive of any other remedy conferred by this Agreement or by law on that Party, and the exercise of any one remedy does not preclude the exercise of any other available remedy. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and attorneys' fees.

(i) **Assignment.** This Agreement is not assignable or transferable by either Party, without the other Party's prior written consent. Notwithstanding the foregoing, either Party may transfer and/or assign this Agreement to a successor in connection with a merger, acquisition, or sale of all or substantially all of its assets to which this Agreement relates. Notwithstanding the foregoing, JFrog may freely assign or transfer this Agreement (including assigning its rights and licenses and delegating its obligations) to any of its Affiliates. Except as expressly authorized under this Section, any attempt to transfer or assign this Agreement will be null and void. This Agreement will bind and inure to the benefit of each of its respective Parties and their permitted successors and assigns.

(j) **Titles and Headings.** Title and headings of this Agreement are for convenience only and will not affect the construction of any provision of this Agreement.

(k) **Entire Agreement; Conflicts.** This Agreement (including any and all Order Forms, SOWs, Exhibits, Documentation, and other documentation incorporated by reference into and made part of this Agreement) constitutes the complete, final and exclusive statement of the terms of the agreement between the Parties regarding its subject matter (which, for clarity, includes Customer's use of the JFrog Platform and any other JFrog services), and supersedes all prior and contemporaneous agreements, representations or understandings, written or oral, concerning its subject matter. The Parties agree that any term or condition stated in a Customer purchase order, or portal or in any Customer

order documentation is void and will not apply to this Agreement. Any Customer terms in any purchase order, portal or otherwise will not apply to Customer’s purchase and/or use of the JFrog Platform. In the event of any conflict or inconsistency among the following documents, the order of precedence will be: (i) this Agreement; (ii) the Order Form; and (iii) the Documentation.

**IN WITNESS WHEREOF** the Parties hereto caused this Agreement to be duly executed by their authorized representatives effective as of the Effective Date.

JFROG	CUSTOMER
By: [REDACTED]	By: [REDACTED]
Name: [REDACTED]	Name: [REDACTED]
Title: [REDACTED]	Title: [REDACTED]
Date: [REDACTED]	Date: [REDACTED]

## **EXHIBIT A**

### **DEFINITIONS**

The singular includes the plural, and the plural includes the singular. References to “herein,” “hereunder,” “hereinabove,” or like words will refer to this Agreement as a whole and not to any particular section, subsection, or clause contained in this Agreement. References to a URL include references to any successor or replacement URL. The terms “include” and “including” are not limiting. Reference to any agreement, website or document includes any modifications, supplements, amendments and replacements thereto. References to “day” refer to a calendar day, unless otherwise expressly stated. The following defined terms will have the meanings set forth below.

**“Affiliate”** means, with respect to a specified entity, any other entity, now or in the future, that directly or indirectly controls, is controlled by, or is under common control with such specified entity, where “control” means the possession, directly or indirectly, of the power to independently direct or cause the direction of the management and policies of an entity, whether through ownership of more than fifty percent (50%) of the voting interests of such entity, by contract, or otherwise.

**“Cloud Feature”** means a Distribution Edge, or other feature or add-on of the JFrog Platform, which is hosted and managed by JFrog on a cloud platform on behalf of Customer.

**“Contributing User”** means any Customer User who contributes to projects being scanned or monitored by security features in the JFrog Platform by creating, modifying, configuring or updating code, scripts, Customer Artifacts, or by downloading public packages or other artifacts to the JFrog Platform within a Subscription Term. A Contributing User may also be referred to as a “Contributing Developer” in JFrog’s Documentation.

**“Customer Artifacts”** means binary artifacts, containers, images or configuration files uploaded to the JFrog Platform which are provided by, on behalf of, or at the direction of Customer in connection with Customer’s software. For clarity, Customer Artifacts excludes Usage Data.

**“Customer User”** means Customer’s or its Affiliates’ employees, contractors, consultants, service providers or development partners authorized by Customer that access or use the JFrog Platform through Customer’s Subscription.

**“Distribution Edge”** means a JFrog distribution edge (i.e., a read-only repository for Customer Artifacts that is part of the JFrog Platform) as applicable to Customer’s Subscription Level or included in Customer’s Order Form.

**“Documentation”** means the written, visual, and electronic end-user technical documentation pertaining to the JFrog Platform as provided by JFrog and made available at <https://www.jfrog.com/confluence/display/JFROG/JFrog+Documentation>.

**“External User”** means an entity or person which is not a Customer User.

**“Instance”** means a service of the JFrog Platform hosted and managed by Customer, or a Distribution Edge hosted and managed by JFrog on a cloud platform on behalf of Customer.

**"Internal Use"** means use of the JFrog Platform within Customer's and/or Customer's Affiliates' organization for internal DevSecOps purposes under the direction of Customer and/or Customer's Affiliates subject to the scope and limitations of the applicable Subscription Level. Internal Use excludes: (a) access or use by any third party; and/or (b) access or use for the benefit of any third party.

**"JFrog Materials"** means the JFrog Platform, Documentation, JFrog's Marks, results of the Professional Services, Website (accessible online at [www.jfrog.com](http://www.jfrog.com)), and any other Technology, material, data, or information that JFrog provides to Customer in connection with this Agreement.

**"Marks"** means, with respect to a specified entity, the trademarks, service marks, logos, domain names, and other distinctive brand features, graphic images and icons owned or licensable by the entity.

**"Monthly Commitment"** means the Fees for a Subscription (excluding Fees for Standard, Gold or Platinum Support, Professional Services, or other services set forth in an Order Form) divided by the number of months during the applicable Subscription Term.

**"Order Form"** means an ordering document, whether by way of an online registration to the JFrog Platform through the Website, Cloud Marketplace or by way of a document executed by and between the Parties, that identifies the commercial terms for a purchase of a Subscription, including the applicable Subscription Level, Subscription Term and Fees.

**"Output"** means all information or data, insights, including recommendation, database, reports, results, lists, graph, or any information, in any format, that is made available to Customer or that is delivered to Customer by the JFrog Platform.

**"Platform Metrics"** means the metrics by which a Customer is billed for the use of the JFrog Platform as set forth in an Order Form, including data consumption, number of Instances, number of Contributing Users, and number of actions taken regarding Customer Artifacts.

**"Prepaid Subscription"** means a Subscription with a minimum period of twelve (12) months unless stated otherwise in an Order Form for which Customer has pre-paid Fees for the applicable Subscription Term.

**"Subscription"** means a JFrog plan that Customer subscribes to in order to download, install, access and use the JFrog Platform, as further described in an Order Form.

**"Subscription Level"** means a Subscription tier reflecting the features, Cloud Features and Platform Metrics that Customer will be entitled to use as part of the JFrog Platform as well as the applicable level of maintenance and support.

**"Subscription Term"** means the effective term of a Subscription as set forth in the applicable Order Form.

**"Technology"** means APIs, SDKs, software (including object and source code), applications, technical integrations, payment processing or other platforms, hardware, equipment, information technology infrastructure, systems, other technology, and any updates or modifications to, and documentation (e.g., instructional materials) related to, any of the foregoing.

**"Usage Data"** means any data or information that is based on, generated or created from, or data or information about Customer's access or use of the JFrog Platform, which includes version, setup, configuration, integration, logs and consumption. For clarity, Usage Data excludes Customer Artifacts.



**EXHIBIT B**  
**CLLOUD TERMS**

**1. GENERAL.**

(a) **Application.** The provisions set forth in this Exhibit will apply where a (i) JFrog Cloud Subscription is selected by Customer or (ii) Cloud Feature is included in Customer's self-hosted Subscription Level or Order Form. Any capitalized terms which are not defined herein, will have the meaning ascribed to them in the Agreement. To the extent any language in this Exhibit B conflicts with language in the Agreement, the language in this Exhibit will control as it relates to JFrog Cloud or a Cloud Feature.

(b) **Definitions.** For the purposes of this Exhibit, "**Customer Data**" means Customer Artifacts and Customer User Information; "**Customer User Information**" means each Customer User's name, username, email address and IP address; "**Security Incident**" means a breach of security leading to any unauthorized, accidental or unlawful destruction, loss, alteration, disclosure of, or access to Customer Data transmitted, stored or otherwise processed by JFrog, which has been validated by JFrog; and "**JFrog Cloud**" means the JFrog Platform, hosted and managed by JFrog on a Cloud Platform on behalf of the Customer, as applicable to Customer's Subscription or included in Customer's Order Form.

**2. CLOUD PLATFORM AND FEATURES.**

(a) **Cloud Platform.** When registering for a Subscription by executing an Order Form, Customer will select the cloud platform(s) and geographic hosting region(s) in which Customer Data will be stored by the cloud platform provider. JFrog will use commercially reasonable efforts to make JFrog Cloud and the Cloud Features available in accordance with Attachment 1 (Uptime Guarantee) to this Exhibit.

(b) **License to JFrog Cloud and Cloud Features.** The license to the JFrog Platform set forth in Section 1(a) (JFrog Platform) of this Agreement includes the right and license to: (i) access and use JFrog Cloud and/or Cloud Features set forth in the applicable Order Form, solely for Customer's Internal Use; and (ii) permit External Users to download Customer Artifacts from Customer's Distribution Edge under a Cloud Enterprise or Enterprise+ Subscription Level.

(c) **Additional Customer Responsibilities.** The customer responsibilities set forth in Section 1(d) (Customer Responsibilities) of this Agreement include the obligation on Customer to: (i) immediately notify JFrog of any unauthorized disclosure or use of Customer User Information, and be responsible for maintaining the confidentiality of the foregoing; and (ii) not upload to the JFrog Platform any unlawful Customer Data.

(d) **Fees for JFrog Cloud and Cloud Features.** "**Fees**" may also comprise fees for access and use of JFrog Cloud or Cloud Features set forth in the applicable Order Form. Fees will be payable, for Cloud Features, in advance of the Subscription Term.

**3. DATA; SECURITY.**

(a) **License to Customer Data.** Customer hereby grants JFrog a worldwide, non-exclusive, transferable, sub-licensable, royalty-free, fully paid-up, right and license to store, display, and use Customer Data solely as necessary to exercise its rights and perform its obligations in accordance with this Agreement, including to provide Customer with access to and use of JFrog Cloud or the Cloud Features during the Subscription Term. Customer maintains full administrative control over Customer Data including the right to view, modify, download or delete it at any time. All right, title, and interest in and to the Customer Data, together with associated intellectual property rights, are and will remain with Customer, its Affiliates and/or their respective suppliers and licensors. Section 6 (Usage Data) of this Agreement will survive any termination or expiration of this Agreement for as long as JFrog retains Customer Data.

(b) **Customer User Information.** Customer may choose to disclose Customer User Information to JFrog to allow access to JFrog Cloud or the Cloud Feature. JFrog will: (i) collect, use, process and transfer (as applicable) Customer User Information in accordance with the General Data Protection Regulation of the EU; and (ii) reasonably assist Customer to comply with exercising rights by a data subject or supervisory authority.

(c) **Processing of Personal Data.** To the extent JFrog processes any personal data on Customer's behalf under this Agreement, the provisions of the JFrog Data Processing Addendum (available online at <https://jfrog.com/jfrog-cloud-data-processing-addendum/>) ("**JFrog DPA**") will apply and are hereby incorporated by reference. Customer is responsible for providing disclosures and obtaining all rights and consents necessary for JFrog's performance under this Agreement.

(d) **Technical and Organizational Measures.** JFrog maintains technical and organizational measures ("**JFrog TOMs**") (accessible online at <https://jfrog.com/jfrog-toms/>) and monitors Customer Data in accordance with generally recognized industry practices for similar services.

(e) **Security Incident.** In the event of a Security Incident, JFrog will, within seventy-two (72) hours from JFrog's validation, notify Customer of a Security Incident which has affected Customer Data, unless such notification is delayed or prohibited by applicable law or by an act or order of any governmental agency or similar authority. JFrog will use commercially reasonable efforts to provide Customer with a description of: (i) the nature of the Security Incident; (ii) the likely consequences of the Security Incident; and (iii) mitigation measures taken to address the Security Incident. JFrog will take all necessary steps consistent with industry best practices, considering the severity of the risk, to resolve such Security Incident as quickly as possible and to prevent its recurrence. JFrog's notification of or response to a Security Incident will not be construed as an acknowledgement by JFrog of any fault or liability with respect to the Security Incident.

#### **4. WARRANTIES; LIABILITY.**

Notwithstanding Section 9(d) (Limited JFrog Platform Warranty), the JFrog Platform Warranty will apply to JFrog Cloud or any Cloud Feature during the applicable Subscription Term. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL JFROG OR ITS AFFILIATES BE LIABLE FOR LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA, IN EACH CASE, WHETHER AN ACTION IS IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR

OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY, AND EVEN IF JFROG OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

## 5. TERMINATION OR EXPIRATION.

(a) **Effect of Termination for JFrog Cloud and Cloud Features.** Upon termination or expiration of this Agreement, any Subscription and/or SOW: (i) JFrog will maintain all Customer Data for sixty (60) days post termination or expiration of this Agreement and promptly delete it thereafter; and (ii) Customer will lose all access to the JFrog Platform and any Customer Data stored therein. Customer is responsible for downloading all Customer Data prior to termination or expiration of this Agreement. The foregoing rights and obligations will also apply to the termination or expiration of a specific Subscription, but solely to the specific Instance and Customer Data associated with the applicable Subscription. In the event of a termination, expiration or suspension by JFrog, JFrog reserves the right to immediately delete all Customer Data.

(b) **Additional Surviving Provisions.** Sections 2, 4 and 5 of this Exhibit will survive any termination or expiration of this Agreement.

### ATTACHMENT 1 TO EXHIBIT B

#### UPTIME GUARANTEE

## 1. DEFINITIONS.

(a) **"Credit"** means an amount calculated in accordance to Section 3(a) of this Exhibit.

(b) **"Downtime"** means a period of time, measured in one (1) minute increments, during which JFrog Cloud or the Cloud Feature is not available to Customer. Downtime is measured based on JFrog's server-side error rate of applicable health-check pings from two (2) sources in a cluster for each cloud platform of JFrog Cloud or Cloud Feature, based on JFrog's system of record. Downtime does not include time during which JFrog Cloud or Cloud Feature is unavailable due to: (i) Customer's use of JFrog Cloud or the Cloud Feature in a manner not authorized in this Agreement or not in accordance with the Documentation; (ii) Force Majeure Events; (iii) migration between cloud platforms/providers initiated by Customer; (iv) third-party Technology; (v) Maintenance Time; and (vi) any suspension or termination of access to the JFrog Platform by JFrog pursuant to this Agreement.

(c) **"Maintenance Time"** means any periods of planned maintenance, upgrade or update during which JFrog Cloud or the Cloud Feature may not be available to Customer.

(d) **"Uptime"** means the percentage of time for which JFrog Cloud or the Cloud Feature (including third-party services sourced by or provisioned by JFrog, but excluding any third-party Technology used in conjunction with the JFrog Platform) is available, as calculated by JFrog per month. Uptime information and Maintenance Time is available at <https://status.jfrog.io/>.

## 2. UPTIME GUARANTEE.

(a) **Subject** to the terms and conditions of this Agreement and solely during the applicable Subscription Term, JFrog will use commercially reasonable efforts to ensure an Uptime of at least 99.90% ("**Uptime Guarantee**").

(b) Uptime will be calculated by JFrog according to the following formula:

$$\text{Uptime (\%)} = \frac{T - D}{T} \times 100$$

Where:

T = total number of minutes in the applicable calendar month

D = total number of Downtime minutes in the applicable calendar month.

(c) JFrog will use commercially reasonable efforts to provide Customer with electronic notification prior to any Maintenance Time.

## 3. CREDITS.

(a) Customer will be eligible to receive Credits for any failure of JFrog to meet the Uptime Guarantee, in an amount equal to a percentage of the Monthly Commitment or Monthly Subscription, as applicable, for the month in which the failure to meet the Uptime Guarantee occurred, in accordance with the following table:

Uptime	Credits Percentage
< 99.90% - ≥ 99.0%	5%
< 99.0% - ≥ 90.0%	25%
< 90.0%	100%

(b) Credits are JFrog's sole obligation and liability and Customer's sole and exclusive remedy for any failure of JFrog to meet the Uptime Guarantee. Customer will not be entitled to receive Credits if Customer is in breach of this Agreement. Credits may only be applied toward Customer's next Monthly Commitment or Monthly Subscription, as applicable, and cannot be transferred or applied to any other entity.

(c) To receive Credits, Customer must notify JFrog in writing to [REDACTED] within thirty (30) days following the end of the calendar month during which JFrog did not meet the Uptime Guarantee. Failure to comply with this requirement will forfeit Customer's right to receive a Credit.



Schedule 4

JFrog List of Subcontractors

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Schedule 5

JFrog AWS Marketplace Order Form

Bill To

**Customer Name:** CDIO, CEPO HM Revenue & Customs (HMRC)

**Billing Address:** 100 Parliament Street Westminster, London United Kingdom SW1A 2BQ

**Billing Contact:** [REDACTED]

**Billing Email:** [REDACTED]

**Contact Phone:** [REDACTED]

Ship To

**Customer Name:** CDIO, CEPO HM Revenue & Customs (HMRC)

**Shipping Address:** [REDACTED]

**License Owner:** [REDACTED]

**Email:** [REDACTED]

**Issue Date** July 24, 2025

<b>Expiry Date</b>	September 26, 2025
<b>Account Manager</b>	[REDACTED]
<b>Email</b>	[REDACTED]

## AWS Marketplace Pricing Table - 36 Months

[illegible]

**Fee Grand Total 3 Years in USD \$9,000,000.00**

## Terms & Conditions

## 1. Terms and Conditions

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