



# Crown Commercial Service

## G-Cloud 10 Call-Off Contract

This Call-Off Contract for the G-Cloud 10 Framework Agreement (RM1557.10) includes:

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## Part A - Order Form

|                                               |                                                                                   |
|-----------------------------------------------|-----------------------------------------------------------------------------------|
| <b>Digital Marketplace service ID number:</b> | <b>430868984606890</b>                                                            |
| <b>Call-Off Contract reference:</b>           | <b>CCSO19A20</b>                                                                  |
| <b>Call-Off Contract title:</b>               | <b>Delivery of Adaptive Computer Testing</b>                                      |
| <b>Call-Off Contract description:</b>         | <b>The requirement for computer adaptive verbal and numerical reasoning tests</b> |
| <b>Start date:</b>                            | <b>13<sup>th</sup> June 2019</b>                                                  |
| <b>Expiry date:</b>                           | <b>31st May 2020</b>                                                              |
| <b>Call-Off Contract maximum value:</b>       | <b>£400,004.00</b>                                                                |
| <b>Charging method:</b>                       | <b>Payment in arrears</b>                                                         |
| <b>Purchase order number:</b>                 | <b>TBC</b>                                                                        |

This Order Form is issued under the G-Cloud 10 Framework Agreement (RM1557.10).

Buyers can use this order form to specify their G-Cloud service requirements when placing an Order.

The Order Form cannot be used to alter existing terms or add any extra terms that materially change the Deliverables offered by the Supplier and defined in the Application.

There are terms in the Call-Off Contract that may be defined in the Order Form. These are identified in the contract with square brackets.

|                                |                                        |
|--------------------------------|----------------------------------------|
| <b>From: the Buyer</b>         | REDACTED TEXT                          |
|                                | London<br>SW1A 2BQ                     |
| <b>To: the Supplier</b>        | IBM United Kingdom Limited<br>REDACTED |
| <b>Together: the 'Parties'</b> |                                        |

### Principle contact details

|                          |               |
|--------------------------|---------------|
| <b>For the Buyer:</b>    | REDACTED TEXT |
| <b>For the Supplier:</b> | REDACTED TEXT |

### Call-Off Contract term

|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Start date:</b>           | This Call-Off Contract Starts on the 13 <sup>th</sup> June 2019 and is valid for 12 months                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Ending (termination):</b> | The notice period needed for Ending the Call-Off Contract is at least [90] Working Days from the date of written notice for undisputed sums or at least [30] days from the date of written notice for Ending without cause.<br><i>Any orders placed under the terms of this Order form for any quantity of units as described within the Pricing document of the associated service listing on the digital marketplace will be charged for upfront. Any charges paid upfront are not refundable if the order is cancelled subsequently, unless within the suitable reasons outlined at Clause 18 of the Call-Off Terms and Conditions.</i> |

### Buyer contractual details

This Order is for the G-Cloud Services outlined below. It is acknowledged by the Parties that the volume of the G-Cloud Services used by the Buyer may vary during this Call-Off Contract.

|                     |                                                                                                |
|---------------------|------------------------------------------------------------------------------------------------|
| <b>G-Cloud Lot:</b> | This Call-Off Contract is for the provision of Services under:<br><br>Lot 2 - Cloud software - |
|---------------------|------------------------------------------------------------------------------------------------|

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>G-Cloud services required:</b> | <p>The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined below:</p> <p>1. The requirement for computer adaptive verbal and numerical reasoning tests This is a “Call Off Contract” volumes cannot be guaranteed however the estimated maximum number of tests required will be set at 400,004 tests and a minimum requirement of 100,001 Volumes cannot be guaranteed</p> |
| <b>Additional services:</b>       | Not applicable                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Location:</b>                  | The Services will be delivered remotely                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Quality standards:</b>         | <p>1. The quality standards required for this Call-Off Contract are [e To guard against cheating and maintain the current approach, and to ensure test-takers are not exposed to overly long tests or too easy/difficult items, adaptive testing methodology to be used, with alternative items presented between test occasions to ensure test-taker familiarity issues are minimised;</p>                                        |

|                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                             | <ol style="list-style-type: none"> <li>2. Readable items for test-takers of all ability ranges in scope for the testing (i.e. Administrative Assistant up to Grade 7/graduate ability level);</li> <li>3. Inclusive item content with demonstrated relevance and engagement of protected groups;</li> <li>4. Practice items, with simple performance feedback.</li> <li>5. Tests must be untimed to maintain current levels of accessibility</li> <li>6. The recommended tests must have demonstrably appropriate technical and psychometric properties for selection purposes in line with British Psychological Society guidelines. In particular, the PTC “Using Online Assessment Tools for Recruitment” guidelines.</li> <li>7. The tests can be packaged and integrated digitally as one test integration, but there needs to be the facility to order and deliver them as separate tests.</li> <li>8. We would not expect any of the selected tests to have an adverse impact in terms of test taking performance on any group protected under the Equality Act. As a minimum, there needs to be demonstrated prior evidence of this minimisation or avoidance of adverse impact for the verbal and numerical tests.</li> <li>9. Test and test content must be made available in alternative formats as per the requirement of the Act, including accessibility for assistive technology.</li> </ol> |
| <b>Technical standards:</b> | <ol style="list-style-type: none"> <li>1.1.1 The Suppliers on-line test must be fully compatible with and can run via the Oleo system versions 9 and VX , using an application program interface, to be available from June 2019 at the latest.</li> <li>1.1.2 The following specifications are applicable to both pathways. It is strongly advisable that you click the links and study the detail of the standards before submitting your response.</li> <li>1.1.3 Digital by Default Service Standards: The Suppliers test platform must meet the security – <a href="https://www.gov.uk/service-manual/making-software/information-security.html">https://www.gov.uk/service-manual/making-software/information-security.html</a> – and accessibility (including provision for the user’s assisted technology) –</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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|  | <p><a href="https://www.gov.uk/service-manual/user-centred-design/accessibility.html">https://www.gov.uk/service-manual/user-centred-design/accessibility.html</a> – standards adopted by government and must be accessible on the set of browsers and devices specified at <a href="https://www.gov.uk/service-manual/user-centred-design/browsers-and-devices.html">https://www.gov.uk/service-manual/user-centred-design/browsers-and-devices.html</a> (or excluded by prior agreement on grounds of test delivery integrity by setting a minimum operational level for the user). The Supplier will need to say how it intends to support users with assisted digital needs - <a href="https://www.gov.uk/service-manual/helping-people-touse-your-service/assisted-digital-support-introduction">https://www.gov.uk/service-manual/helping-people-touse-your-service/assisted-digital-support-introduction</a>.</p> <p>1.1.4 'It is highly desirable that the test player conforms to Level AA of the Web Content Accessibility Guidelines 2.</p> <p>1.1.5 It is also highly desirable that the look and feel of the Suppliers test platform is flexible enough to adopt the GOV.UK styles – <a href="https://www.gov.uk/service-manual/user-centred-design/service-user-experience.html">https://www.gov.uk/service-manual/user-centred-design/service-user-experience.html</a><br/> – element designs – <a href="http://govuk-elements.herokuapp.com/">http://govuk-elements.herokuapp.com/</a> – and design patterns – <a href="https://www.gov.uk/service-manual/user-centred-design/resources/patterns">https://www.gov.uk/service-manual/user-centred-design/resources/patterns</a>. It is also desirable that the look and feel of the candidate-facing screens on the Suppliers test platform be customisable both initially and throughout the lifetime of the contract.</p> <p>1.1.6 The Suppliers test player must provide facility for a compatibility checker for the test taker's device, browser, OS and internet availability, and provide a warning message on suitability of their mode of access.</p> <p>1.1.7 To facilitate effective integration design and user experience testing, there must be access to test instances of the Suppliers on-line assessment platform for development and pre-live user-testing and audit, including for accessibility and assistive technology needs.</p> <p>1.1.8 The Supplier must provide evidence of their experience, expertise and capability to deliver API integrations of test content with other providers' ATS systems. In addition, their capacity to resource the integration process in an agile way and at pace.</p> |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                 |                                                                                     |
|---------------------------------|-------------------------------------------------------------------------------------|
|                                 |                                                                                     |
| <b>Service level agreement:</b> | The service level and availability criteria required for this Call-Off Contract are |



|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                    | KPI/SLA | Service Area  | KPI/SLA description                                                                                                                                                                | Target |  |
|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|--|
|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 1       | Accessibility | Following a clear and positive compatibility check, the test taker is able to access the test on the pre-specified list of browsers, devices and internet speeds, 95% of attempts. | 95%    |  |
|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 2       | Data transfer | Test taker's data is transferred to CS Jobs within 1 hour of test completion, 100% of test takers.                                                                                 | 100%   |  |
|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 3       | Test support  | Test taker technical queries are responded to with a specific response within 1 working day of the initial query, 99.9% of test taker queries.                                     | 99.9%  |  |
|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 4       | System uptime | Test player system will be available for test-takers and not experiencing system downtime, 99.9% of time.                                                                          | 99.9%  |  |
| <b>Onboarding:</b>                  | Not Applicable                                                                                                                                                                                                                                                                                                                                                                                                                                     |         |               |                                                                                                                                                                                    |        |  |
| <b>Offboarding:</b>                 | Not Applicable                                                                                                                                                                                                                                                                                                                                                                                                                                     |         |               |                                                                                                                                                                                    |        |  |
| <b>Collaboration agreement:</b>     | the Supplier shall initially work with GRS internal IT experts in an Agile way, compliant with Government Digital Standards, and Digital by Default specifications, to put this mechanism in place.                                                                                                                                                                                                                                                |         |               |                                                                                                                                                                                    |        |  |
| <b>Limit on Parties' liability:</b> | <p>The annual total liability of either Party for all Property defaults will not exceed £900,009.00</p> <p>The annual total liability for Buyer Data defaults will not exceed 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term.</p> <p>The annual total liability for all other defaults will not exceed 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term.</p> |         |               |                                                                                                                                                                                    |        |  |

|                   |                                                                                                                                       |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| <b>Insurance:</b> | The insurance(s) required will be: a minimum insurance period of 6 years following the expiration or Ending of this Call-Off Contract |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------|

|                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                  | professional indemnity insurance cover to be held by the Supplier and by any agent, Subcontractor or consultant involved in the supply of the G-Cloud Services. This professional indemnity insurance cover will have a minimum limit of indemnity of £1,000,000 for each individual claim or any higher limit the Buyer requires (and as required by Law)<br>employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by Law. |
| <b>Force majeure:</b>            | A Party may End this Call-Off Contract if the Other Party is affected by a Force Majeure Event that lasts for more than 14 consecutive days.                                                                                                                                                                                                                                                                                                                                 |
| <b>Audit:</b>                    | The following Framework Agreement audit provisions will be incorporated under clause 2.1 of this Call-Off Contract to enable the Buyer to carry out audits as per the audit provisions 7.3 to 7.12 of the Framework Agreement                                                                                                                                                                                                                                                |
| <b>Buyer's responsibilities:</b> | Not applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Buyer's equipment:</b>        | Not applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

#### Supplier's information

|                                    |                |
|------------------------------------|----------------|
| <b>Subcontractors or partners:</b> | Not Applicable |
|------------------------------------|----------------|

#### Call-Off Contract charges and payment

The Call-Off Contract charges and payment details are in the table below. See Schedule 2 for a full breakdown.

|                                                                                      |                                                                                                                                               |
|--------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Payment method:</b>                                                               | The payment method for this Call-Off Contract is Bacs.                                                                                        |
| <b>Payment profile:</b>                                                              | The payment profile for this Call-Off Contract is monthly in arrears.                                                                         |
| <b>Invoice details:</b>                                                              | The Supplier will issue electronic invoices monthly in arrears. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice. |
| <b>Who and where to send invoices to:</b>                                            | Invoices will be sent to BP2301 Benton Park View Newcastle Upon Tyne NE98 1ZZ.                                                                |
| <b>Invoice information required – for example purchase order, project reference:</b> | All invoices must include a valid Purchase order Number .                                                                                     |
| <b>Invoice frequency:</b>                                                            | Invoice will be sent monthly in arrears.                                                                                                      |
| <b>Call-Off Contract value:</b>                                                      | The total value of this Call-Off Contract is £400,004.00.                                                                                     |

|                                   |                                                                                                              |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------|
| <b>Call-Off Contract charges:</b> | The breakdown of the Charges is<br>As per the volume breakdown of the charges stated in the Pricing document |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------|

### Additional buyer terms

|                                                                                 |                                                                                                                                                                                                                                                                                                    |
|---------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Performance of the service and deliverables:</b>                             | This Call-Off Contract will include the following implementation plan, exit and offboarding plans and milestones: Continuation of Service from the 13 <sup>th</sup> June 2019                                                                                                                      |
| <b>Guarantee:</b>                                                               | Not Applicable                                                                                                                                                                                                                                                                                     |
| <b>Warranties, representations:</b>                                             | Not Applicable                                                                                                                                                                                                                                                                                     |
| <b>Supplemental requirements in addition to the CallOff terms:</b>              | Not Applicable                                                                                                                                                                                                                                                                                     |
| <b>Alternative clauses:</b>                                                     | Non Exclusivity clause*<br>Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Supplier. This call off contract shall not restrict Contracting Authorities from acquiring similar, equal or like goods and/or services from other entities or sources |
| <b>Buyer specific amendments to/refinements of the Call-Off Contract terms:</b> | Not Applicable                                                                                                                                                                                                                                                                                     |
| <b>Public Services Network (PSN):</b>                                           | Not Applicable                                                                                                                                                                                                                                                                                     |
| <b>Personal Data and Data Subjects:</b>                                         | Will Schedule 7 – Processing, Personal Data and Data Subjects be used<br>Yes                                                                                                                                                                                                                       |

## 1. Formation of contract

- 1.1 By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Call-Off Contract with the Buyer.
- 1.2 The Parties agree that they have read the Order Form (Part A) and the Call-Off Contract terms and by signing below agree to be bound by this Call-Off Contract.

- 1.3 This Call-Off Contract will be formed when the Buyer acknowledges receipt of the signed copy of the Order Form from the Supplier.

1.4 In cases of any ambiguity or conflict the terms and conditions of the Call-Off Contract and Order Form will supersede those of the Supplier Terms and Conditions.

## 2. Background to the agreement

(A) The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.10.

(B) The Buyer provided an Order Form for Services to the Supplier.

|                   |               |               |
|-------------------|---------------|---------------|
| <b>Signed:</b>    | Supplier      | Buyer         |
| <b>Name:</b>      | REDACTED TEXT | REDACTED TEXT |
| <b>Title:</b>     | REDACTED TEXT | REDACTED TEXT |
| <b>Signature:</b> | REDACTED TEXT | REDACTED TEXT |
| <b>Date:</b>      | REDACTED TEXT | REDACTED TEXT |

## **Schedule 1 – Services**

### **THE REQUIREMENT**

The recommended tests must have demonstrably appropriate technical and psychometric properties for selection purposes in line with British Psychological Society guidelines. In particular, the PTC “Using Online Assessment Tools for Recruitment” guidelines.

The tests can be packaged and integrated digitally as one test integration, but there needs to be the facility to order and deliver them as separate tests.

We would not expect any of the selected tests to have an adverse impact in terms of test taking performance on any group protected under the Equality Act. As a minimum, there needs to be demonstrated prior evidence of this minimisation or avoidance of adverse impact for the verbal and numerical tests.

Test and test content must be made available in alternative formats as per the requirement of the Act, including accessibility for assistive technology.

### **Test Results**

The Supplier must work with GRS to develop appropriate normative benchmarks that will be applied to applicant test results. These norms will need to be updated on a regular basis at the request of GRS.

For each applicant, their test scores and normative comparison should be provided via a seamless link to Civil Service Jobs. Non-system customers will need to be provided with the scores in an appropriate, alternative method – individually and in bulk.

For each applicant, further performance feedback will need to be provided in the form of a short, explanatory feedback summary that has customised content based on test performance. For pathway 1 (see below) clients, the reports will be provided to the applicant in their CS Jobs profile automatically at a pre-determined point, or when triggered locally. For pathway 2 clients (see below), by client access to the provider’s results platform, including provision for bulk download.

## Pathways

For the delivery and sitting of tests, two alternative pathways will be needed. Suppliers are required to comment and provide costs for each delivery pathway. The Supplier will be required to deliver both pathways for each test. These are:

Pathway 1 (approximately at 97% of test usage): Seamless link between the CS Jobs Applicant Tracking System and the Suppliers test hosting system. Key characteristics and requirements to include:

The Supplier must work with GRS's CS Jobs product management team and external ATS provider to ensure that tests are capable of being integrated into a coherent applicant user journey. This is expected to include integration that enables:

Applicant registration and authentication with GRS's system,

Seamless transfer of the applicant to the Supplier's online assessment platform,

No additional applicant-facing registration/authentication requirement on the Suppliers online assessment platform (i.e. - single sign on),

A seamless hand-back of the applicant to GRS's system on completion of an online assessment,

Immediate transfer of test results to the GRS system.

Pathway 2: (approximately 3% of test usage): Non-integrated (i.e. not the CS Jobs system) access to the Suppliers test hosting system – using anonymised access on a supported access basis. Key characteristics and requirements to include:

The Supplier must work with GRS to ensure that tests are capable of being integrated into a coherent applicant user journey. This is expected to include integration that enables:

Anonymised access, either directly to the test or via use of a pre-existing unique identifier id, with no additional personal details requested,

Timely, simple transfer of individual test results to the GRS client, which will ideally be immediately available on completion by an applicant, with the options to access via an online access platform to enable the client to extract individual and grouped results independently and via separate group transfer of test scores data.



The Supplier must be capable of making a temporary, non-integrated access to the verbal and numerical tests to be available within a two week period immediately following contract. This requirement will include creation of:

A bespoke direct access to the test via a unique hyperlink comprising CS Jobs applicant and vacancy id identifiers. (Please note, we are unable to accept proposals for alternatives where the test taker is required to submit their personal information via the test player, and the process needs to be as automated as possible).

Provision of scores data in CSV or xls format with applicant and campaign id details and provision of within-sample or pre-existing norms.

## Technical Requirements

The Supplier's on-line test must be fully compatible with and can run via the Oleo system versions 9 and VX, using an application program interface, to be available from June 2019 at the latest.

The following specifications are applicable to both pathways. It is strongly advisable that you click the links and study the detail of the standards before submitting your response.

Digital by Default Service Standards: The Supplier's test platform must meet the security – <https://www.gov.uk/service-manual/making-software/information-security.html> – and accessibility (including provision for the user's assisted technology) – <https://www.gov.uk/service-manual/usercentred-design/accessibility.html> – standards adopted by government and must be accessible on the set of browsers and devices specified at <https://www.gov.uk/service-manual/user-centred-design/browsers-and-devices.html> (or excluded by prior agreement on grounds of test delivery integrity by setting a minimum operational level for the user). The Supplier will need to say how it intends to support users with assisted digital needs - <https://www.gov.uk/service-manual/helping-people-to-use-your-service/assisted-digital-support-introduction>.

It is highly desirable that the test player must conform to Level AA of the Web Content Accessibility Guidelines 2.0.

It is also highly desirable that the look and feel of the Supplier's test platform is flexible enough to adopt the GOV.UK styles – <https://www.gov.uk/service-manual/user-centred-design/service-userexperience.html> – element designs – <http://govuk-elements.herokuapp.com/> – and design patterns – <https://www.gov.uk/service-manual/user-centred-design/resources/patterns>. It is also desirable that the look and feel of the candidate-facing screens on the Supplier's test platform be customisable both initially and throughout the lifetime of the contract.

The Supplier's test player must provide facility for a compatibility checker for the test taker's device, browser, OS and internet availability, and provide a warning message on suitability of their mode of access.

To facilitate effective integration design and user experience testing, there must be access to test instances of the Supplier's on-line assessment platform for development and pre-live user-testing and audit, including for accessibility and assistive technology needs.

This will require the Supplier to initially work with GRS internal IT experts in an Agile way, compliant with Government Digital Standards, and Digital by Default specifications, to put this mechanism in place.

The Supplier must provide evidence of their experience, expertise and capability to deliver API integrations of test content with other providers' ATS systems. In addition, their capacity to resource the integration process in an agile way and at pace.

## Volumes

Based on current test usage, we estimate volumes of 25,000 tests (combination of verbal and numerical) each month. The anticipated test usage required is a minimum of 100,001 tests for 4 months, with the option to extend to May 2020.

These estimates are subject to variation – as volumes are difficult to predict and not guaranteed.

The volume/frequency of usage will vary throughout the term of the agreement and the Supplier and its system must retain a flexible and resilient capacity.

No guarantee is given by the Authority in respect of the levels or aggregate value of the Services, which the Contracting Authority shall require the Supplier to provide during the call off contract. Any levels or aggregate values of Services referred to are indicative only and shall not be binding on the Authority.

## Security

Test questions and scoring keys are to be secure to prevent misuse that could adversely affect outcomes and results.

The Supplier must comply with, and consent in writing to audits in respect of, all current and future applicable aspects of relevant legislation, including but not limited to:

GDPR;

Human Rights Act 1998;

Freedom of Information Act 2000;

The Welsh Language Act 1993 & Measures 2011;

Safeguarding Vulnerable Groups Act 2006;

Employment Rights Act 2002;

Equality Act 2010 ;

Public Sector Equality Duty (2011) compliance;

Security Policy Framework;

Health and Safety legislation.

The Supplier must ensure that data collected on individuals (even if in anonymised form) is stored securely in the UK or destroyed as agreed with the client, in line with Data Protection Act and Security Policy Frameworks – <http://www.cabinetoffice.gov.uk/resource-library/security-policy-framework>. In addition, the Supplier must demonstrate its disaster recovery plans are effective.

Where applicable and relevant, the Supplier must agree with GRS's data destruction method to be used.

The Supplier must be prepared to provide relevant information and access in order for Cabinet Office's security and information directorate to carry out a rapid protection of information assessment. In its tender, the Supplier should indicate the degree to which it complies with ISO27001:2013 and CESG Cyber essentials.

#### Additional Requirements - administration Support

The Supplier shall work with the Authority to provide project and administrative support including activities such as but not limited to:

Provision of regular progress updates;

Delivery and project management of GRS's clients' orders – project manage the delivery of the required solution;

Provision of steady-state project management support to non-system customers (such as setting up the order, provision of access to the tests and forwarding data to the client)

To include, but not limited to, the following administration support for the steady-state process:

| Support issue | Pathway 1 – system using customers | Pathway 2 – non-system using customers |
|---------------|------------------------------------|----------------------------------------|
|---------------|------------------------------------|----------------------------------------|

|                        |                                                                                                                                                                |                                                                                                                                                            |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Test completion issues | Client/GRS team, first line – Supplier as second line, if needed                                                                                               | Client team, first line – Supplier as second line, if needed                                                                                               |
| Helpdesk support       | Supplier as first line & liaison with client/GRS team as second line as needed Please note we will issue test taker guidance about where to go for issues help | Supplier as first line & liaison with client team as second line as needed Please note we will issue test taker guidance about where to go for issues help |
| Technical issues       | Client/GRS team, first line – Supplier as second line, if needed                                                                                               | Client team, first line – Supplier as second line, if needed                                                                                               |
| Professional questions | Client/GRS team, first line – CSR psychology team as second line, if needed                                                                                    | Client team, first line – GRS psychology team as second line, if needed                                                                                    |
| RA requests            | Client/GRS team, first line – Supplier as second line, if needed                                                                                               | Client team, first line – Supplier as second line, if needed                                                                                               |
| Test resets            | Please note we intend to build in test-taker generated test resets                                                                                             | Client team, first line – Supplier as second line, if needed                                                                                               |
| Test reminders         | Please note we will be building in system autogenerated reminders                                                                                              | Client/Supplier to agree if needed                                                                                                                         |

## Timing

Tests in the integrated format must be available to use from June 2019 at the latest, to ensure smooth continuation of delivery of tests to departments.

## Schedule 2 - Call-Off Contract charges

For each individual Service, the applicable Call-Off Contract Charges (in accordance with the Supplier's Digital Marketplace pricing document) can't be amended during the term of the Call-Off Contract. The detailed Charges breakdown for the provision of Services during the Term will include:

- The requirement for computer adaptive verbal and numerical reasoning tests which can be packaged and integrated digitally as one test integration, but there needs to be the facility to order and deliver them as separate tests
- IBM Kenexa Skills Behavioural Hourly & Behavioural Professional Assessment on Cloud  
Required £400,004 tests acquired in 4 bulks of £100,001 each

## **Part B - Terms and conditions**

### **1. Call-Off Contract start date and length**

- 1.1 The Supplier must start providing the Services on the date specified in the Order Form.
- 1.2 This Call-Off Contract will expire on the Expiry Date in the Order Form. It will be for up to 24 months from the Start Date unless Ended earlier under clause 18 or extended by the Buyer under clause 1.3.
- 1.3 The Buyer can extend this Call-Off Contract, with written notice to the Supplier, by the period in the Order Form, as long as this is within the maximum permitted under the Framework Agreement of 2 periods of up to 12 months each.
- 1.4 The Parties must comply with the requirements under clauses 21.3 to 21.8 if the Buyer reserves the right in the Order Form to extend the contract beyond 24 months.

### **2. Incorporation of terms**

- 2.1 The following Framework Agreement clauses (including clauses and defined terms referenced by them) as modified under clause 2.2 are incorporated as separate Call-Off Contract obligations and apply between the Supplier and the Buyer:
  - 4.1 (Warranties and representations)
  - 4.2 to 4.7 (Liability)
  - 4.11 to 4.12 (IR35)
  - 5.2 to 5.3 (Force majeure)
  - 5.6 (Continuing rights)
  - 5.7 to 5.9 (Change of control)

- 5.10 (Fraud)
- 5.11 (Notice of fraud)
- 7.1 to 7.2 (Transparency)
- 8.3 (Order of precedence)
- 8.4 (Relationship)
- 8.7 to 8.9 (Entire agreement)
- 8.10 (Law and jurisdiction)
- 8.11 to 8.12 (Legislative change)
- 8.13 to 8.17 (Bribery and corruption)
- 8.18 to 8.27 (Freedom of Information Act)
- 8.28 to 8.29 (Promoting tax compliance)
- 8.30 to 8.31 (Official Secrets Act)
- 8.32 to 8.35 (Transfer and subcontracting)
- 8.38 to 8.41 (Complaints handling and resolution)
- 8.49 to 8.51 (Publicity and branding)
- 8.42 to 8.48 (Conflicts of interest and ethical walls)
- 8.52 to 8.54 (Equality and diversity)
- 8.66 to 8.67 (Severability)
- 8.68 to 8.82 (Managing disputes)
- 8.83 to 8.91 (Confidentiality)
- 8.92 to 8.93 (Waiver and cumulative remedies)
- paragraphs 1 to 10 of the Framework Agreement glossary and interpretations
- any audit provisions from the Framework Agreement set out by the Buyer in the Order Form

2.2 The Framework Agreement provisions in clause 2.1 will be modified as follows:

- a reference to the 'Framework Agreement' will be a reference to the 'Call-Off Contract'
  - a reference to 'CCS' will be a reference to 'the Buyer'
  - a reference to the 'Parties' and a 'Party' will be a reference to the Buyer and Supplier as Parties under this Call-Off Contract
- 2.3 The Framework Agreement incorporated clauses will be referred to as 'incorporated Framework clause XX', where 'XX' is the Framework Agreement clause number.
- 2.4 When an Order Form is signed, the terms and conditions agreed in it will be incorporated into this Call-Off Contract.

### **3. Supply of services**

- 3.1 The Supplier agrees to supply the G-Cloud Services and any Additional Services under the terms of the Call-Off Contract and the Supplier's Application.
- 3.2 The Supplier undertakes that each G-Cloud Service will meet the Buyer's acceptance criteria, as defined in the Order Form.

### **4. Supplier staff**

- 4.1 The Supplier Staff must:
- be appropriately experienced, qualified and trained to supply the Services
  - apply all due skill, care and diligence in faithfully performing those duties
  - obey all lawful instructions and reasonable directions of the Buyer and provide the Services to the reasonable satisfaction of the Buyer
  - respond to any enquiries about the Services as soon as reasonably possible
  - complete any necessary Supplier Staff vetting as specified by the Buyer
- 4.2 The Supplier must retain overall control of the Supplier Staff so that they are not considered to be employees, workers, agents or contractors of the Buyer.
- 4.3 The Supplier may substitute any Supplier Staff as long as they have the equivalent experience and qualifications to the substituted staff member.

- 4.4 The Buyer may conduct IR35 Assessments using the ESI tool to assess whether the Supplier's engagement under the Call-Off Contract is Inside or Outside IR35.
- 4.5 The Buyer may End this Call-Off Contract for Material Breach if the Supplier is delivering the Services Inside IR35.
- 4.6 The Buyer may need the Supplier to complete an Indicative Test using the ESI tool before the Start Date or at any time during the provision of Services to provide a preliminary view of whether the Services are being delivered Inside or Outside IR35. If the Supplier has completed the Indicative Test, it must download and provide a copy of the PDF with the 14digit ESI reference number from the summary outcome screen and promptly provide a copy to the Buyer.
- 4.7 If the Indicative Test indicates the delivery of the Services could potentially be Inside IR35, the Supplier must provide the Buyer with all relevant information needed to enable the Buyer to conduct its own IR35 Assessment.
- 4.8 If it is determined by the Buyer that the Supplier is Outside IR35, the Buyer will provide the ESI reference number and a copy of the PDF to the Supplier.

## **5. Due diligence**

- 5.1 Both Parties agree that when entering into a Call-Off Contract they:
- have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party
  - are confident that they can fulfil their obligations according to the Call-Off Contract terms
  - have raised all due diligence questions before signing the Call-Off Contract
  - have entered into the Call-Off Contract relying on its own due diligence

## **6. Business continuity and disaster recovery**

- 6.1 The Supplier will have a clear business continuity and disaster recovery plan in their service descriptions.
- 6.2 The Supplier's business continuity and disaster recovery services are part of the Services and will be performed by the Supplier when required.
- 6.3 If requested by the Buyer prior to entering into this Call-Off Contract, the Supplier must ensure that its business continuity and disaster recovery plan is consistent with the Buyer's own plans.



## **7. Payment, VAT and Call-Off Contract charges**

- 7.1 The Buyer must pay the Charges following clauses 7.2 to 7.11 for the Supplier's delivery of the Services.
- 7.2 The Buyer will pay the Supplier within the number of days specified in the Order Form on receipt of a valid invoice.
- 7.3 The Call-Off Contract Charges include all Charges for payment processing. All invoices submitted to the Buyer for the Services will be exclusive of any Management Charge.
- 7.4 If specified in the Order Form, the Supplier will accept payment for G-Cloud Services by the Government Procurement Card (GPC). The Supplier will be liable to pay any merchant fee levied for using the GPC and must not recover this charge from the Buyer.
- 7.5 The Supplier must ensure that each invoice contains a detailed breakdown of the G-Cloud Services supplied. The Buyer may request the Supplier provides further documentation to substantiate the invoice.
- 7.6 If the Supplier enters into a Subcontract it must ensure that a provision is included in each Subcontract which specifies that payment must be made to the Subcontractor within 30 days of receipt of a valid invoice.
- 7.7 All Charges payable by the Buyer to the Supplier will include VAT at the appropriate rate.
- 7.8 The Supplier must add VAT to the Charges at the appropriate rate with visibility of the amount as a separate line item.
- 7.9 The Supplier will indemnify the Buyer on demand against any liability arising from the Supplier's failure to account for or to pay any VAT on payments made to the Supplier under this Call-Off Contract. The Supplier must pay all sums to the Buyer at least 5 Working Days before the date on which the tax or other liability is payable by the Buyer.
- 7.10 The Supplier must not suspend the supply of the G-Cloud Services unless the Supplier is entitled to End this Call-Off Contract under clause 18.6 for Buyer's failure to pay undisputed sums of money. Interest will be payable by the Buyer on the late payment of any undisputed sums of money properly invoiced under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.11 If there's an invoice dispute, the Buyer must pay the undisputed amount and return the invoice within 10 Working Days of the invoice date. The Buyer will provide a covering statement with proposed amendments and the reason for any non-payment. The Supplier must notify the Buyer within 10 Working Days of receipt of the returned invoice if it accepts the amendments. If it does then the Supplier must provide a replacement valid invoice with the response.

7.12 Due to the nature of G-Cloud Services it isn't possible in a static Order Form to exactly define the consumption of services over the duration of the Call-Off Contract. The Supplier agrees that the Buyer's volumes indicated in the Order Form are indicative only.

## **8. Recovery of sums due and right of set-off**

8.1 If a Supplier owes money to the Buyer, the Buyer may deduct that sum from the Call-Off Contract Charges.

## **9. Insurance**

9.1 The Supplier will maintain the insurances required by the Buyer including those in this clause.

9.2 The Supplier will ensure that:

- during this Call-Off Contract, Subcontractors hold third-party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including the claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £1,000,000
- the third-party public and products liability insurance contains an 'indemnity to principals' clause for the Buyer's benefit
- all agents and professional consultants involved in the Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date
- all agents and professional consultants involved in the Services hold employers liability insurance (except where exempt under Law) to a minimum indemnity of £5,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date

9.3 If requested by the Buyer, the Supplier will obtain additional insurance policies, or extend existing policies bought under the Framework Agreement.

9.4 If requested by the Buyer, the Supplier will provide the following to show compliance with this clause:

- a broker's verification of insurance
- receipts for the insurance premium
- evidence of payment of the latest premiums due

9.5 Insurance will not relieve the Supplier of any liabilities under the Framework Agreement or this Call-Off Contract and the Supplier will:

- take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers
- promptly notify the insurers in writing of any relevant material fact under any insurances
- hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of insurance

9.6 The Supplier will not do or omit to do anything, which would destroy or impair the legal validity of the insurance.

9.7 The Supplier will notify CCS and the Buyer as soon as possible if any insurance policies have been, or are due to be, cancelled, suspended, Ended or not renewed.

9.8 The Supplier will be liable for the payment of any:

- premiums, which it will pay promptly
- excess or deductibles and will not be entitled to recover this from the Buyer

## **10. Confidentiality**

10.1 Subject to clause 24.1 the Supplier must during and after the Term keep the Buyer fully indemnified against all Losses, damages, costs or expenses and other liabilities (including legal fees) arising from any breach of the Supplier's obligations under the Data Protection Legislation or under incorporated Framework Agreement clauses 8.83 to 8.91. The indemnity doesn't apply to the extent that the Supplier breach is due to a Buyer's instruction.

## **11. Intellectual Property Rights**

11.1 Unless otherwise specified in this Call-Off Contract, a Party will not acquire any right, title or interest in or to the Intellectual Property Rights (IPRs) of the other Party or its licensors.

11.2 The Supplier grants the Buyer a non-exclusive, transferable, perpetual, irrevocable, royaltyfree licence to use the Project Specific IPRs and any Background IPRs embedded within the Project Specific IPRs for the Buyer's ordinary business activities.

11.3 The Supplier must obtain the grant of any third-party IPRs and Background IPRs so the Buyer can enjoy full use of the Project Specific IPRs, including the Buyer's right to publish the IPR as open source.

11.4 The Supplier must promptly inform the Buyer if it can't comply with the clause above and the Supplier must not use third-party IPRs or Background IPRs in relation to the Project Specific IPRs if it can't obtain the grant of a licence acceptable to the Buyer.

11.5 The Supplier will, on written demand, fully indemnify the Buyer and the Crown for all Losses which it may incur at any time from any claim of infringement or alleged infringement of a third party's IPRs because of the:

- rights granted to the Buyer under this Call-Off Contract
- Supplier's performance of the Services

- use by the Buyer of the Services

11.6 If an IPR Claim is made, or is likely to be made, the Supplier will immediately notify the Buyer in writing and must at its own expense after written approval from the Buyer, either:

- modify the relevant part of the Services without reducing its functionality or performance
- substitute Services of equivalent functionality and performance, to avoid the infringement or the alleged infringement, as long as there is no additional cost or burden to the Buyer
- buy a licence to use and supply the Services which are the subject of the alleged infringement, on terms acceptable to the Buyer

11.7 Clause 11.5 will not apply if the IPR Claim is from:

- the use of data supplied by the Buyer which the Supplier isn't required to verify under this Call-Off Contract
- other material provided by the Buyer necessary for the Services

11.8 If the Supplier does not comply with clauses 11.2 to 11.6, the Buyer may End this Call-Off Contract for Material Breach. The Supplier will, on demand, refund the Buyer all the money paid for the affected Services.

## **12. Protection of information**

12.1 The Supplier must:

- comply with the Buyer's written instructions and this Call-Off Contract when Processing Buyer Personal Data
- only Process the Buyer Personal Data as necessary for the provision of the G-Cloud Services or as required by Law or any Regulatory Body
- take reasonable steps to ensure that any Supplier Staff who have access to Buyer Personal Data act in compliance with Supplier's security processes

12.2 The Supplier must fully assist with any complaint or request for Buyer Personal Data including by:

- providing the Buyer with full details of the complaint or request
- complying with a data access request within the timescales in the Data Protection Legislation and following the Buyer's instructions

- providing the Buyer with any Buyer Personal Data it holds about a Data Subject (within the timescales required by the Buyer)
- providing the Buyer with any information requested by the Data Subject

12.3 The Supplier must get prior written consent from the Buyer to transfer Buyer Personal Data to any other person (including any Subcontractors) for the provision of the G-Cloud Services.

### **13. Buyer data**

The Supplier must not remove any proprietary notices in the Buyer Data.

13.1 The Supplier will not store or use Buyer Data except if necessary to fulfil its obligations.

13.2 If Buyer Data is processed by the Supplier, the Supplier will supply the data to the Buyer as requested.

13.3 The Supplier must ensure that any Supplier system that holds any Buyer Data is a secure system that complies with the Supplier's and Buyer's security policy and all Buyer requirements in the Order Form.

13.4 The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent its corruption and loss.

13.5 The Supplier will ensure that any Supplier system which holds any protectively marked Buyer Data or other government data will comply with:

- the principles in the Security Policy Framework at <https://www.gov.uk/government/publications/security-policy-framework> and the Government Security Classification policy at <https://www.gov.uk/government/publications/government-security-classifications>
- guidance issued by the Centre for Protection of National Infrastructure on Risk Management at <https://www.cpni.gov.uk/content/adopt-risk-management-approach> and Accreditation of Information Systems at <https://www.cpni.gov.uk/protectionsensitive-information-and-assets>
- the National Cyber Security Centre's (NCSC) information risk management guidance, available at <https://www.ncsc.gov.uk/guidance/risk-management-collection>
- government best practice in the design and implementation of system components, including network principles, security design principles for digital services and the secure email blueprint, available at

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<https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>

the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance at <https://www.ncsc.gov.uk/guidance/implementingcloud-security-principles>

- 13.6 The Buyer will specify any security requirements for this project in the Order Form.
- 13.7 If the Supplier suspects that the Buyer Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Supplier will notify the Buyer immediately and will (at its own cost if corruption, loss, breach or degradation of the Buyer Data was caused by the action or omission of the Supplier) comply with any remedial action reasonably proposed by the Buyer.
- 13.8 The Supplier agrees to use the appropriate organisational, operational and technological processes to keep the Buyer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.
- 13.9 The provisions of this clause 13 will apply during the term of this Call-Off Contract and for as long as the Supplier holds the Buyer's Data.

## **14. Standards and quality**

- 14.1 The Supplier will comply with any standards in this Call-Off Contract, the Order Form and the Framework Agreement.
- 14.2 The Supplier will deliver the Services in a way that enables the Buyer to comply with its obligations under the Technology Code of Practice, which is available at <https://www.gov.uk/government/publications/technology-code-of-practice/technologycode-of-practice>
- 14.3 If requested by the Buyer, the Supplier must, at its own cost, ensure that the G-Cloud Services comply with the requirements in the PSN Code of Practice.
- 14.4 If any PSN Services are Subcontracted by the Supplier, the Supplier must ensure that the services have the relevant PSN compliance certification.
- 14.5 The Supplier must immediately disconnect its G-Cloud Services from the PSN if the PSN Authority considers there is a risk to the PSN's security and the Supplier agrees that the Buyer and the PSN Authority will not be liable for any actions, damages, costs, and any other Supplier liabilities which may arise.

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## **15. Open source**

15.1 All software created for the Buyer must be suitable for publication as open source, unless otherwise agreed by the Buyer.



15.2 If software needs to be converted before publication as open source, the Supplier must also provide the converted format unless otherwise agreed by the Buyer.

## **16. Security**

16.1 If requested to do so by the Buyer, before entering into this Call-Off Contract the Supplier will, within 15 Working Days of the date of this Call-Off Contract, develop (and obtain the Buyer's written approval of) a Security Management Plan and an Information Security Management System. After Buyer approval the Security Management Plan and Information Security Management System will apply during the Term of this Call-Off Contract. Both plans will comply with the Buyer's security policy and protect all aspects and processes associated with the delivery of the Services.

16.2 The Supplier will use software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.

16.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Service Data, the Supplier will help the Buyer to mitigate any losses and restore the Services to operating efficiency as soon as possible.

16.4 Responsibility for costs will be at the:

- Supplier's expense if the Malicious Software originates from the Supplier software or the Service Data while the Service Data was under the control of the Supplier, unless the Supplier can demonstrate that it was already present, not quarantined or identified by the Buyer when provided
- Buyer's expense if the Malicious Software originates from the Buyer software or the Service Data, while the Service Data was under the Buyer's control

16.5 The Supplier will immediately notify CCS of any breach of security of CCS's Confidential Information (and the Buyer of any Buyer Confidential Information breach). Where the breach occurred because of a Supplier Default, the Supplier will recover the CCS and Buyer Confidential Information however it may be recorded.

16.6 Any system development by the Supplier should also comply with the government's '10 Steps to Cyber Security' guidance, available at <https://www.ncsc.gov.uk/guidance/10steps-cyber-security>

16.7 If a Buyer has requested in the Order Form that the Supplier has a Cyber Essentials certificate, the Supplier must provide the Buyer with a valid Cyber Essentials certificate (or equivalent) required for the Services before the Start Date.

## 17. Guarantee

17.1 If this Call-Off Contract is conditional on receipt of a Guarantee that is acceptable to the Buyer, the Supplier must give the Buyer on or before the Start Date:

- an executed Guarantee in the form at Schedule 5
- a certified copy of the passed resolution or board minutes of the guarantor approving the execution of the Guarantee

## 18. Ending the Call-Off Contract

18.1 The Buyer can End this Call-Off Contract at any time by giving 30 days' written notice to the Supplier, unless a shorter period is specified in the Order Form. The Supplier's obligation to provide the Services will end on the date in the notice.

18.2 The Parties agree that the:

- Buyer's right to End the Call-Off Contract under clause 18.1 is reasonable considering the type of cloud Service being provided
- Call-Off Contract Charges paid during the notice period is reasonable compensation and covers all the Supplier's avoidable costs or Losses

18.3 Subject to clause 24 (Liability), if the Buyer Ends this Call-Off Contract under clause 18.1, it will indemnify the Supplier against any commitments, liabilities or expenditure which result in any unavoidable Loss by the Supplier, provided that the Supplier takes all reasonable steps to mitigate the Loss. If the Supplier has insurance, the Supplier will reduce its unavoidable costs by any insurance sums available. The Supplier will submit a fully itemised and costed list of the unavoidable Loss with supporting evidence.

18.4 The Buyer will have the right to End this Call-Off Contract at any time with immediate effect by written notice to the Supplier if either the Supplier commits:

- a Supplier Default and if the Supplier Default cannot, in the reasonable opinion of the Buyer, be remedied
- any fraud

18.5 A Party can End this Call-Off Contract at any time with immediate effect by written notice if:

- the other Party commits a Material Breach of any term of this Call-Off Contract (other than failure to pay any amounts due) and, if that breach is remediable, fails to remedy it within 15 Working Days of being notified in writing to do so

- an Insolvency Event of the other Party happens
- the other Party ceases or threatens to cease to carry on the whole or any material part of its business

18.6 If the Buyer fails to pay the Supplier undisputed sums of money when due, the Supplier must notify the Buyer and allow the Buyer 5 Working Days to pay. If the Buyer doesn't pay within 5 Working Days, the Supplier may End this Call-Off Contract by giving the length of notice in the Order Form.

18.7 A Party who isn't relying on a Force Majeure event will have the right to End this Call-Off Contract if clause 23.1 applies.

## **19. Consequences of suspension, ending and expiry**

19.1 If a Buyer has the right to End a Call-Off Contract, it may elect to suspend this Call-Off Contract or any part of it.

19.2 Even if a notice has been served to End this Call-Off Contract or any part of it, the Supplier must continue to provide the Ordered G-Cloud Services until the dates set out in the notice.

19.3 The rights and obligations of the Parties will cease on the Expiry Date or End Date (whichever applies) of this Call-Off Contract, except those continuing provisions described in clause 19.4.

19.4 Ending or expiry of this Call-Off Contract will not affect:

- any rights, remedies or obligations accrued before its Ending or expiration
- the right of either Party to recover any amount outstanding at the time of Ending or expiry
- the continuing rights, remedies or obligations of the Buyer or the Supplier under clauses 7 (Payment, VAT and Call-Off Contract charges); 8 (Recovery of sums due and right of set-off); 9 (Insurance); 10 (Confidentiality); 11 (Intellectual property rights); 12 (Protection of information); 13 (Buyer data); 19 (Consequences of suspension, ending and expiry); 24 (Liability); incorporated Framework Agreement clauses: 4.2 to 4.7 (Liability); 8.42 to 8.48 (Conflicts of interest and ethical walls) and 8.92 to 8.93 (Waiver and cumulative remedies)
- any other provision of the Framework Agreement or this Call-Off Contract which expressly or by implication is in force even if it Ends or expires

19.5 At the end of the Call-Off Contract Term, the Supplier must promptly:

- return all Buyer Data including all copies of Buyer software, code and any other software licensed by the Buyer to the Supplier under it
- return any materials created by the Supplier under this Call-Off Contract if the IPRs are owned by the Buyer
- stop using the Buyer Data and, at the direction of the Buyer, provide the Buyer with a complete and uncorrupted version in electronic form in the formats and on media agreed with the Buyer
- destroy all copies of the Buyer Data when they receive the Buyer's written instructions to do so or 12 calendar months after the End or Expiry Date, and provide written confirmation to the Buyer that the data has been securely destroyed, except if the retention of Buyer Data is required by Law
- work with the Buyer on any ongoing work
- return any sums prepaid for Services which have not been delivered to the Buyer, within 10 Working Days of the End or Expiry Date

19.6 Each Party will return all of the other Party's Confidential Information and confirm this has been done, unless there is a legal requirement to keep it or this Call-Off Contract states otherwise.

19.7 All licences, leases and authorisations granted by the Buyer to the Supplier will cease at the end of the Call-Off Contract Term without the need for the Buyer to serve notice except if this Call-Off Contract states otherwise.

## 20. Notices

20.1 Any notices sent must be in writing. For the purpose of this clause, an email is accepted as being 'in writing'.

| Manner of delivery | Deemed time of delivery                    | Proof of service                                                          |
|--------------------|--------------------------------------------|---------------------------------------------------------------------------|
| Email              | 9am on the first Working Day after sending | Sent by PDF to the correct email address without getting an error message |

20.2 This clause does not apply to any legal action or other method of dispute resolution which should be sent to the addresses in the Order Form (other than a dispute notice under this Call-Off Contract).

## 21. Exit plan

21.1 The Supplier must provide an exit plan in its Application which ensures continuity of service and the Supplier will follow it.

21.2 When requested, the Supplier will help the Buyer to migrate the Services to a replacement supplier in line with the exit plan. This will be at the Supplier's own expense if the Call-Off Contract Ended before the Expiry Date due to Supplier cause.

21.3 If the Buyer has reserved the right in the Order Form to extend the Call-Off Contract Term beyond 24 months the Supplier must provide the Buyer with an additional exit plan for approval by the Buyer at least 8 weeks before the 18 month anniversary of the Start Date.

21.4 The Supplier must ensure that the additional exit plan clearly sets out the Supplier's methodology for achieving an orderly transition of the Services from the Supplier to the Buyer or its replacement Supplier at the expiry of the proposed extension period or if the contract Ends during that period.

21.5 Before submitting the additional exit plan to the Buyer for approval, the Supplier will work with the Buyer to ensure that the additional exit plan is aligned with the Buyer's own exit plan and strategy.

21.6 The Supplier acknowledges that the Buyer's right to extend the Term beyond 24 months is subject to the Buyer's own governance process. Where the Buyer is a central government department, this includes the need to obtain approval from GDS under the Spend Controls process. The approval to extend will only be given if the Buyer can clearly demonstrate that the Supplier's additional exit plan ensures that:

- the Buyer will be able to transfer the Services to a replacement supplier before the expiry or Ending of the extension period on terms that are commercially reasonable and acceptable to the Buyer
- there will be no adverse impact on service continuity
- there is no vendor lock-in to the Supplier's Service at exit
- it enables the Buyer to meet its obligations under the Technology Code Of Practice

21.7 If approval is obtained by the Buyer to extend the Term, then the Supplier will comply with its obligations in the additional exit plan.

21.8 The additional exit plan must set out full details of timescales, activities and roles and responsibilities of the Parties for:

- the transfer to the Buyer of any technical information, instructions, manuals and code reasonably required by the Buyer to enable a smooth migration from the Supplier
- the strategy for exportation and migration of Buyer Data from the Supplier system to the Buyer or a replacement supplier, including conversion to open standards or other standards required by the Buyer
- the transfer of Project Specific IPR items and other Buyer customisations, configurations and databases to the Buyer or a replacement supplier
- the testing and assurance strategy for exported Buyer Data
- if relevant, TUPE-related activity to comply with the TUPE regulations
- any other activities and information which is reasonably required to ensure continuity of Service during the exit period and an orderly transition

## **22. Handover to replacement supplier**

22.1 At least 10 Working Days before the Expiry Date or End Date, the Supplier must provide any:

- data (including Buyer Data), Buyer Personal Data and Buyer Confidential Information in the Supplier's possession, power or control
- other information reasonably requested by the Buyer

22.2 On reasonable notice at any point during the Term, the Supplier will provide any information and data about the G-Cloud Services reasonably requested by the Buyer (including information on volumes, usage, technical aspects, service performance and staffing). This will help the Buyer understand how the Services have been provided and to run a fair competition for a new supplier.

22.3 This information must be accurate and complete in all material respects and the level of detail must be sufficient to reasonably enable a third party to prepare an informed offer for replacement services and not be unfairly disadvantaged compared to the Supplier in the buying process.

## **23. Force majeure**

23.1 If a Force Majeure event prevents a Party from performing its obligations under this Call-Off Contract for more than the number of consecutive days set out in the Order Form, the other Party may End this Call-Off Contract with immediate effect by written notice.

## **24. Liability**

24.1 Subject to incorporated Framework Agreement clauses 4.2 to 4.7, each Party's Yearly total liability for defaults under or in connection with this Call-Off Contract (whether expressed as an indemnity or otherwise) will be set as follows:

- Property: for all defaults resulting in direct loss to the property (including technical infrastructure, assets, IPR or equipment but excluding any loss or damage to Buyer Data) of the other Party, will not exceed the amount in the Order Form
- Buyer Data: for all defaults resulting in direct loss, destruction, corruption, degradation or damage to any Buyer Data caused by the Supplier's default will not exceed the amount in the Order Form
- Other defaults: for all other defaults, claims, Losses or damages, whether arising from breach of contract, misrepresentation (whether under common law or statute), tort (including negligence), breach of statutory duty or otherwise will not exceed the amount in the Order Form

## **25. Premises**

25.1 If either Party uses the other Party's premises, that Party is liable for all loss or damage it causes to the premises. It is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.

25.2 The Supplier will use the Buyer's premises solely for the performance of its obligations under this Call-Off Contract.

25.3 The Supplier will vacate the Buyer's premises when the Call-Off Contract Ends or expires.

25.4 This clause does not create a tenancy or exclusive right of occupation.

25.5 While on the Buyer's premises, the Supplier will:

- comply with any security requirements at the premises and not do anything to weaken the security of the premises
- comply with Buyer requirements for the conduct of personnel
- comply with any health and safety measures implemented by the Buyer
- immediately notify the Buyer of any incident on the premises that causes any damage to Property which could cause personal injury

25.6 The Supplier will ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Buyer on request.

## **26. Equipment**

26.1 The Supplier is responsible for providing any Equipment which the Supplier requires to provide the Services.

26.2 Any Equipment brought onto the premises will be at the Supplier's own risk and the Buyer will have no liability for any loss of, or damage to, any Equipment.

26.3 When the Call-Off Contract Ends or expires, the Supplier will remove the Equipment and any other materials leaving the premises in a safe and clean condition.

## **27. The Contracts (Rights of Third Parties) Act 1999**

27.1 Except as specified in clause 29.8, a person who isn't Party to this Call-Off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. This does not affect any right or remedy of any person which exists or is available otherwise.

## **28. Environmental requirements**

28.1 The Buyer will provide a copy of its environmental policy to the Supplier on request, which the Supplier will comply with.

28.2 The Supplier must provide reasonable support to enable Buyers to work in an environmentally friendly way, for example by helping them recycle or lower their carbon footprint.

## **29. The Employment Regulations (TUPE)**

29.1 The Supplier agrees that if the Employment Regulations apply to this Call-Off Contract on the Start Date then it must comply with its obligations under the Employment Regulations and (if applicable) New Fair Deal (including entering into an Admission Agreement) and will indemnify the Buyer or any Former Supplier for any loss arising from any failure to comply.

29.2 Twelve months before this Call-Off Contract expires, or after the Buyer has given notice to End it, and within 28 days of the Buyer's request, the Supplier will fully and accurately disclose to the Buyer all staff information including, but not limited to, the total number of staff assigned for the purposes of TUPE to the Services. For each person identified the Supplier must provide details of:

- the activities they perform
- age
- start date
- place of work



- notice period
  - redundancy payment entitlement
  - salary, benefits and pension entitlements
  - employment status
  - identity of employer
  - working arrangements
  - outstanding liabilities
  - sickness absence
  - copies of all relevant employment contracts and related documents
  - all information required under regulation 11 of TUPE or as reasonably requested by the Buyer
- 29.3 The Supplier warrants the accuracy of the information provided under this TUPE clause and will notify the Buyer of any changes to the amended information as soon as reasonably possible. The Supplier will permit the Buyer to use and disclose the information to any prospective Replacement Supplier.
- 29.4 In the 12 months before the expiry of this Call-Off Contract, the Supplier will not change the identity and number of staff assigned to the Services (unless reasonably requested by the Buyer) or their terms and conditions, other than in the ordinary course of business.
- 29.5 The Supplier will co-operate with the re-tendering of this Call-Off Contract by allowing the Replacement Supplier to communicate with and meet the affected employees or their representatives.
- 29.6 The Supplier will indemnify the Buyer or any Replacement Supplier for all Loss arising from both:
- its failure to comply with the provisions of this clause
  - any claim by any employee or person claiming to be an employee (or their employee representative) of the Supplier which arises or is alleged to arise from any act or omission by the Supplier on or before the date of the Relevant Transfer
- 29.7 The provisions of this clause apply during the Term of this Call-Off Contract and indefinitely after it Ends or expires.

29.8 For these TUPE clauses, the relevant third party will be able to enforce its rights under this clause but their consent will not be required to vary these clauses as the Buyer and Supplier may agree.

### **30. Additional G-Cloud services**

30.1 The Buyer may require the Supplier to provide Additional Services. The Buyer doesn't have to buy any Additional Services from the Supplier and can buy services that are the same as or similar to the Additional Services from any third party.

30.2 If reasonably requested to do so by the Buyer in the Order Form, the Supplier must provide and monitor performance of the Additional Services using an Implementation Plan.

### **31. Collaboration**

31.1 If the Buyer has specified in the Order Form that it requires the Supplier to enter into a Collaboration Agreement, the Supplier must give the Buyer an executed Collaboration Agreement before the Start Date.

31.2 In addition to any obligations under the Collaboration Agreement, the Supplier must:

- work proactively and in good faith with each of the Buyer's contractors
- co-operate and share information with the Buyer's contractors to enable the efficient operation of the Buyer's ICT services and G-Cloud Services

### **32. Variation process**

32.1 The Buyer can request in writing a change to this Call-Off Contract if it isn't a material change to the Framework Agreement/or this Call-Off Contract. Once implemented, it is called a Variation.

32.2 The Supplier must notify the Buyer immediately in writing of any proposed changes to their G-Cloud Services or their delivery by submitting a Variation request. This includes any changes in the Supplier's supply chain.

32.3 If Either Party can't agree to or provide the Variation, the Buyer may agree to continue performing its obligations under this Call-Off Contract without the Variation, or End this CallOff Contract by giving 30 days notice to the Supplier.

### **33. Data Protection Legislation (GDPR)**

33.1 The Parties will comply with the Data Protection Legislation and agree that the Buyer is the Controller and the Supplier is the Processor. The only Processing the Supplier is authorised to do is listed at Schedule 7 unless Law requires otherwise (in which case the Supplier will promptly notify the Buyer of any additional Processing if permitted by Law).

- 33.2 The Supplier will assist the Buyer with the preparation of any Data Protection Impact Assessment required by the Data Protection Legislation before commencing any Processing (including provision of detailed information and assessments in relation to Processing operations, risks and measures) and must notify the Buyer immediately if it considers that the Buyer's instructions infringe the Data Protection Legislation.
- 33.3 The Supplier must have in place Protective Measures, details of which shall be provided to the Buyer on request, to guard against a Data Loss Event, which take into account the nature of the data, the harm that might result, the state of technology and the cost of implementing the measures.
- 33.4 The Supplier will ensure that the Supplier Staff only process Personal Data in accordance with this Call-Off Contract and take all reasonable steps to ensure the reliability and integrity of Supplier staff with access to Personal Data, including by ensuring they:
- i) are aware of and comply with the Supplier's obligations under this Clause;
  - ii) are subject to appropriate confidentiality undertakings with the Supplier
  - iii) are informed of the confidential nature of the Personal Data and don't publish, disclose or divulge it to any third party unless directed by the Buyer or in accordance with this Call-Off Contract
  - iv) are given training in the use, protection and handling of Personal Data.
- 33.5 The Supplier will not transfer Personal Data outside of the European Union unless the prior written consent of the Buyer has been obtained, which shall be dependent on such a transfer satisfying relevant Data Protection Legislation requirements.
- 33.6 The Supplier will delete or return Buyer's Personal Data (including copies) if requested in writing by the Buyer at the End or Expiry of this Call-Off Contract, unless required to retain the Personal Data by Law.
- 33.7 The Supplier will notify the Buyer without undue delay if it receives any communication from a third party relating to the Parties' obligations under the Data Protection Legislation, or it becomes aware of a Data Loss Event, and will provide the Buyer with full and ongoing assistance in relation to each Party's obligations under the Data Protection Legislation, and insofar as this is possible, in accordance with any timescales reasonably required by the Buyer

33.8 The Supplier will maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

- i) the Buyer determines that the Processing is not occasional;
- ii) the Buyer determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- iii) the Buyer determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

33.9 Before allowing any Sub-processor to Process any Personal Data related to this Call-Off Contract, the Supplier must:

- i. notify the Buyer in writing of the proposed Sub-processor(s) and obtain its written consent;
- ii. ensure that it has entered into a written agreement with the Subprocessor(s) which gives effect to obligations set out in this Clause 33 such that they apply to the Sub-processor(s); and
- iii. inform the Buyer of any additions to, or replacements of the notified Sub-processors and the Buyer shall either i) provide its written consent or ii) object.

33.10 The Buyer may at any time put forward a Variation request to amend this Call-Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### **Schedule 3 - Collaboration agreement**

The Collaboration agreement is available at <https://www.gov.uk/guidance/g-cloud-templates-andlegal-documents>

### **Schedule 4 - Alternative clauses**

The Alternative clauses are available at <https://www.gov.uk/guidance/g-cloud-templates-andlegal-documents>

## Schedule 5 - Guarantee

The Guarantee is available at <https://www.gov.uk/guidance/g-cloud-templates-and-legaldocuments>

## Schedule 6 - Glossary and interpretations

In this Call-Off Contract the following expressions mean:

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <b>Additional Services</b> | Any services ancillary to the G-Cloud Services that are in the scope of Framework Agreement Section 2 (Services Offered) which a Buyer may request.                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Admission Agreement</b> | The agreement to be entered into to enable the Supplier to participate in the relevant Civil Service pension scheme(s).                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Application</b>         | The response submitted by the Supplier to the Invitation to Tender (known as the Invitation to Apply on the Digital Marketplace).                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Audit</b>               | An audit carried out under the incorporated Framework Agreement clauses specified by the Buyer in the Order (if any).                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Background IPRs</b>     | <p>For each Party, IPRs:</p> <ul style="list-style-type: none"><li>• owned by that Party before the date of this Call-Off Contract (as may be enhanced and/or modified but not as a consequence of the Services) including IPRs contained in any of the Party's Know-How, documentation and processes</li><li>• created by the Party independently of this Call-Off Contract, or</li></ul> <p>For the Buyer, Crown Copyright which isn't available to the Supplier otherwise than under this Call-Off Contract, but excluding IPRs owned by that Party in Buyer software or Supplier software.</p> |
| <b>Buyer</b>               | The contracting authority ordering services as set out in the Order Form.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Buyer Data</b>          | All data supplied by the Buyer to the Supplier including Personal Data and Service Data that is owned and managed by the Buyer.                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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| <b>Buyer Personal Data</b>                | The personal data supplied by the Buyer to the Supplier for purposes of, or in connection with, this Call-Off Contract.                                                                                                                                                                         |
| <b>Buyer Representative</b>               | The representative appointed by the Buyer under this Call-Off Contract.                                                                                                                                                                                                                         |
| <b>Buyer Software</b>                     | Software owned by or licensed to the Buyer (other than under this Agreement), which is or will be used by the Supplier to provide the Services.                                                                                                                                                 |
| <b>Call-Off Contract</b>                  | This call-off contract entered into following the provisions of the Framework Agreement for the provision of Services made between the Buyer and the Supplier comprising the Order Form, the Call-Off terms and conditions, the Call-Off schedules and the Collaboration Agreement.             |
| <b>Charges</b>                            | The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under this Call-Off Contract.                                                                                                                                                                                   |
| <b>Collaboration Agreement</b>            | An agreement, substantially in the form set out at Schedule 3, between the Buyer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of the Buyer's Services and to ensure that the Buyer receives end-to-end services across its IT estate. |
| <b>Commercially Sensitive Information</b> | Information, which the Buyer has been notified about by the Supplier in writing before the Start Date with full details of why the Information is deemed to be commercially sensitive.                                                                                                          |

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| <b>Confidential Information</b> | <p>Data, personal data and any information, which may include (but isn't limited to) any:</p> <ul style="list-style-type: none"> <li>information about business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above</li> <li>other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential').</li> </ul> |
| <b>Control</b>                  | 'Control' as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly.                                                                                                                                                                                                                                                                                                                                                                                                            |

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| <b>Controller</b>                        | Takes the meaning given in the Data Protection Legislation.                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Crown</b>                             | The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies carrying out functions on its behalf.                                                                                      |
| <b>Data Loss Event</b>                   | Means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed                                                                                                                                                                                                                                    |
| <b>Data Protection Impact Assessment</b> | An assessment by the Controller of the impact of the envisaged processing by the Processor under this Call-Off Contract on the protection of Personal Data.                                                                                                                                                                                                                                                                           |
| <b>Data Protection Legislation</b>       | <p>Data Protection Legislation means:</p> <p>i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; iii) all applicable Law about the processing of personal data and privacy, including if applicable legally binding guidance and codes of practice issued by the Information Commissioner.</p> |
| <b>Data Subject</b>                      | Takes the meaning given in the Data Protection Legislation.                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Default</b>                           | <p>Default is any:</p> <ul style="list-style-type: none"> <li>• breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term)</li> </ul>                                                                                                                                                                                                                                               |

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|                                                          | <ul style="list-style-type: none"> <li>• other default, negligence or negligent statement of the Supplier, of its Subcontractors or any Supplier Staff (whether by act or omission), in connection with or in relation to this Call-Off Contract</li> </ul> <p>Unless otherwise specified in the Framework Agreement the Supplier is liable to CCS for a Default of the Framework Agreement and in relation to a Default of the Call-Off Contract, the Supplier is liable to the Buyer.</p> |
| <b>Deliverable</b>                                       | The G-Cloud Services the Buyer contracts the Supplier to provide under this Call-Off Contract.                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Digital Marketplace</b>                               | The government marketplace where Services are available for Buyers to buy. ( <a href="https://www.digitalmarketplace.service.gov.uk/">https://www.digitalmarketplace.service.gov.uk/</a> )                                                                                                                                                                                                                                                                                                  |
| <b>DPA 2018</b>                                          | Data Protection Act 2018.                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Employment Regulations</b>                            | The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ('TUPE') which implements the Acquired Rights Directive.                                                                                                                                                                                                                                                                                                                                             |
| <b>End</b>                                               | Means to terminate; and Ended and Ending are construed accordingly.                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Environmental Information Regulations or EIR</b>      | The Environmental Information Regulations 2004 together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department about the regulations.                                                                                                                                                                                                                                                                                              |
| <b>Equipment</b>                                         | The Supplier's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from CCS or the Buyer) in the performance of its obligations under this Call-Off Contract.                                                                                                                                                                                                                                 |
| <b>ESI Reference Number</b>                              | The 14 digit ESI reference number from the summary of outcome screen of the ESI tool.                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Employment Status Indicator test tool or ESI tool</b> | The HMRC Employment Status Indicator test tool. The most up-to-date version must be used. At the time of drafting the tool may be found here:<br><a href="http://tools.hmrc.gov.uk/esi">http://tools.hmrc.gov.uk/esi</a>                                                                                                                                                                                                                                                                    |



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| <b>Expiry Date</b>         | The expiry date of this Call-Off Contract in the Order Form.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Force Majeure</b>       | <p>A Force Majeure event means anything affecting either Party's performance of their obligations arising from any:</p> <ul style="list-style-type: none"> <li>• acts, events or omissions beyond the reasonable control of the affected Party</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                            | <ul style="list-style-type: none"> <li>• riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare</li> <li>• acts of government, local government or Regulatory Bodies</li> <li>• fire, flood or disaster and any failure or shortage of power or fuel</li> <li>• industrial dispute affecting a third party for which a substitute third party isn't reasonably available</li> </ul> <p>The following do not constitute a Force Majeure event:</p> <ul style="list-style-type: none"> <li>• any industrial dispute about the Supplier, its staff, or failure in the Supplier's (or a Subcontractor's) supply chain</li> <li>• any event which is attributable to the wilful act, neglect or failure to take reasonable precautions by the Party seeking to rely on Force Majeure</li> <li>• the event was foreseeable by the Party seeking to rely on Force Majeure at the time this Call-Off Contract was entered into</li> <li>• any event which is attributable to the Party seeking to rely on Force Majeure and its failure to comply with its own business continuity and disaster recovery plans</li> </ul> |
| <b>Former Supplier</b>     | A supplier supplying services to the Buyer before the Start Date that are the same as or substantially similar to the Services. This also includes any Subcontractor or the Supplier (or any subcontractor of the Subcontractor).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Framework Agreement</b> | The clauses of framework agreement RM1557.10 together with the Framework Schedules.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Fraud</b>               | Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this CallOff Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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| <b>Freedom of Information Act or FOIA</b> | The Freedom of Information Act 2000 and any subordinate legislation made under the Act together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department in relation to the legislation.                                                                                           |
| <b>G-Cloud Services</b>                   | The cloud services described in Framework Agreement Section 2 (Services Offered) as defined by the Service Definition, the Supplier Terms and any related Application documentation, which the Supplier must make available to CCS and Buyers and those services which are deliverable by the Supplier under the Collaboration Agreement. |

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| <b>GDPR</b>                                   | The General Data Protection Regulation (Regulation (EU) 2016/679).                                                                                                                                                                                                                                                          |
| <b>Good Industry Practice</b>                 | Standards, practices, methods and process conforming to the Law and the exercise of that 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 in a similar undertaking in the same or similar circumstances. |
| <b>Guarantee</b>                              | The guarantee described in Schedule 5.                                                                                                                                                                                                                                                                                      |
| <b>Guidance</b>                               | Any current UK Government guidance on the Public Contracts Regulations 2015. In the event of a conflict between any current UK Government guidance and the Crown Commercial Service guidance, current UK Government guidance will take precedence.                                                                          |
| <b>Indicative Test</b>                        | ESI tool completed by contractors on their own behalf at the request of CCS or the Buyer (as applicable) under clause 4.6.                                                                                                                                                                                                  |
| <b>Information</b>                            | Has the meaning given under section 84 of the Freedom of Information Act 2000.                                                                                                                                                                                                                                              |
| <b>Information Security Management System</b> | The information security management system and process developed by the Supplier in accordance with clause 16.1.                                                                                                                                                                                                            |
| <b>Inside IR35</b>                            | Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool.                                                                                                                                                                             |

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| <b>Insolvency Event</b>                    | <p>Can be:</p> <ul style="list-style-type: none"> <li>• a voluntary arrangement</li> <li>• a winding-up petition</li> <li>• the appointment of a receiver or administrator • an unresolved statutory demand • a Schedule A1 moratorium.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Intellectual Property Rights or IPR</b> | <p>Intellectual Property Rights are:</p> <ul style="list-style-type: none"> <li>• copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information</li> <li>• applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction</li> </ul> |
|                                            | <ul style="list-style-type: none"> <li>• all other rights having equivalent or similar effect in any country or jurisdiction</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Intermediary</b>                        | <p>For the purposes of the IR35 rules an intermediary can be:</p> <ul style="list-style-type: none"> <li>• the supplier's own limited company</li> <li>• a service or a personal service company</li> <li>• a partnership</li> </ul> <p>It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example, an employment agency).</p>                                                                                                                                                                                                                                                                 |
| <b>IPR Claim</b>                           | A claim as set out in clause 11.5.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>IR35</b>                                | IR35 is also known as 'Intermediaries legislation'. It's a set of rules that affect tax and National Insurance where a Supplier is contracted to work for a client through an Intermediary.                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>IR35 Assessment</b>                     | Assessment of employment status using the ESI tool to determine if engagement is Inside or Outside IR35.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

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| <b>Know-How</b>           | All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the G-Cloud Services but excluding knowhow already in the Supplier's or CCS's possession before the Start Date.                                                                                                        |
| <b>Law</b>                | 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, judgment of a relevant court of law, or directives or requirements of any Regulatory Body. |
| <b>LED</b>                | Law Enforcement Directive (EU) 2016/680.                                                                                                                                                                                                                                                                                                                      |
| <b>Loss</b>               | All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and ' <b>Losses</b> ' will be interpreted accordingly.           |
| <b>Lot</b>                | Any of the 3 Lots specified in the ITT and Lots will be construed accordingly.                                                                                                                                                                                                                                                                                |
| <b>Malicious Software</b> | Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software                                                                                                                                                                    |

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|                               | macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.                                                                                                                   |
| <b>Management Charge</b>      | The sum paid by the Supplier to CCS being an amount of up to 1% but currently set at 0.75% of all Charges for the Services invoiced to Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or End of any Call-Off Contract. |
| <b>Management Information</b> | The management information specified in Framework Agreement section 6 (What you report to CCS).                                                                                                                                                                                               |

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| <b>Material Breach</b>          | Those breaches which have been expressly set out as a material breach and any other single serious breach or persistent failure to perform as required under this Call-Off Contract.                                         |
| <b>Ministry of Justice Code</b> | The Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000.                                                                      |
| <b>New Fair Deal</b>            | The revised Fair Deal position in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 as amended.                                                        |
| <b>Order</b>                    | An order for G-Cloud Services placed by a Contracting Body with the Supplier in accordance with the Ordering Processes.                                                                                                      |
| <b>Order Form</b>               | The order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services.                                                                                                                   |
| <b>Ordered G-Cloud Services</b> | G-Cloud Services which are the subject of an Order by the Buyer.                                                                                                                                                             |
| <b>Outside IR35</b>             | Contractual engagements which would be determined to not be within the scope of the IR35 intermediaries legislation if assessed using the ESI tool.                                                                          |
| <b>Party</b>                    | The Buyer or the Supplier and 'Parties' will be interpreted accordingly.                                                                                                                                                     |
| <b>Personal Data</b>            | Takes the meaning given in the Data Protection Legislation.                                                                                                                                                                  |
| <b>Personal Data Breach</b>     | Takes the meaning given in the Data Protection Legislation.                                                                                                                                                                  |
| <b>Processing</b>               | Takes the meaning given in the Data Protection Legislation but, for the purposes of this Call-Off Contract, it will include both manual and automatic Processing. 'Process' and 'processed' will be interpreted accordingly. |
| <b>Processor</b>                | Takes the meaning given in the Data Protection Legislation.                                                                                                                                                                  |

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <b>Prohibited Act</b>                 | <p>To directly or indirectly offer, promise or give any person working for or engaged by a Buyer or CCS a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>• induce that person to perform improperly a relevant function or activity</li> <li>• reward that person for improper performance of a relevant function or activity</li> <li>• commit any offence: <ul style="list-style-type: none"> <li>○ under the Bribery Act 2010</li> <li>○ under legislation creating offences concerning Fraud</li> <li>○ at common Law concerning Fraud</li> <li>○ committing or attempting or conspiring to commit Fraud</li> </ul> </li> </ul> |
| <b>Project Specific IPRs</b>          | Any intellectual property rights in items created or arising out of the performance by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call-Off Contract including databases, configurations, code, instructions, technical documentation and schema but not including the Supplier's Background IPRs.                                                                                                                                                                                                                                                                                                        |
| <b>Property</b>                       | Assets and property including technical infrastructure, IPRs and equipment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Protective Measures</b>            | Appropriate technical and organisational measures which may include: 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 such measures adopted by it.                                                                                                                                                                                                                                             |
| <b>PSN or Public Services Network</b> | The Public Services Network (PSN) is the Government's highperformance network which helps public sector organisations work together, reduce duplication and share resources.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Regulatory Body or Bodies</b>      | Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in this Call-Off Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Relevant Person</b>                | Any employee, agent, servant, or representative of the Buyer, any other public body or person employed by or on behalf of the Buyer, or any other public body.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

|                              |                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Relevant Transfer</b>     | A transfer of employment to which the Employment Regulations applies.                                                                                                                                                                                                                                                                                                                       |
| <b>Replacement Services</b>  | Any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services after the expiry or Ending or partial Ending of the Call-Off Contract, whether those services are provided by the Buyer or a third party.                                                                                           |
| <b>Replacement Supplier</b>  | Any third party service provider of Replacement Services appointed by the Buyer (or where the Buyer is providing replacement Services for its own account, the Buyer).                                                                                                                                                                                                                      |
| <b>Services</b>              | The services ordered by the Buyer as set out in the Order Form.                                                                                                                                                                                                                                                                                                                             |
| <b>Service Data</b>          | Data that is owned or managed by the Buyer and used for the G-Cloud Services, including backup data.                                                                                                                                                                                                                                                                                        |
| <b>Service Definition(s)</b> | The definition of the Supplier's G-Cloud Services provided as part of their Application that includes, but isn't limited to, those items listed in Section 2 (Services Offered) of the Framework Agreement.                                                                                                                                                                                 |
| <b>Service Description</b>   | The description of the Supplier service offering as published on the Digital Marketplace.                                                                                                                                                                                                                                                                                                   |
| <b>Service Personal Data</b> | The Personal Data supplied by a Buyer to the Supplier in the course of the use of the G-Cloud Services for purposes of or in connection with this Call-Off Contract.                                                                                                                                                                                                                        |
| <b>Spend Controls</b>        | The approval process used by a central government Buyer if it needs to spend money on certain digital or technology services, see <a href="https://www.gov.uk/service-manual/agile-delivery/spendcontrols-check-if-you-need-approval-to-spend-money-on-a-service">https://www.gov.uk/service-manual/agile-delivery/spendcontrols-check-if-you-need-approval-to-spend-money-on-a-service</a> |
| <b>Start Date</b>            | The start date of this Call-Off Contract as set out in the Order Form.                                                                                                                                                                                                                                                                                                                      |

|                                |                                                                                                                                                                                                                                                                                                             |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Subcontract</b>             | Any contract or agreement or proposed agreement between the Supplier and a Subcontractor in which the Subcontractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the G-Cloud Services or any part thereof. |
| <b>Subcontractor</b>           | Any third party engaged by the Supplier under a Subcontract (permitted under the Framework Agreement and the Call-Off Contract) and its servants or agents in connection with the provision of G-Cloud Services.                                                                                            |
| <b>Subprocessor</b>            | Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract.                                                                                                                                                                                                  |
| <b>Supplier Representative</b> | The representative appointed by the Supplier from time to time in relation to the Call-Off Contract.                                                                                                                                                                                                        |
| <b>Supplier Staff</b>          | All persons employed by the Supplier together with the Supplier's servants, agents, suppliers and Subcontractors used in the performance of its obligations under this Call-Off Contract.                                                                                                                   |
| <b>Supplier Terms</b>          | The relevant G-Cloud Service terms and conditions as set out in the Terms and Conditions document supplied as part of the Supplier's Application.                                                                                                                                                           |
| <b>Term</b>                    | The term of this Call-Off Contract as set out in the Order Form.                                                                                                                                                                                                                                            |
| <b>Variation</b>               | This has the meaning given to it in clause 32 (Variation process).                                                                                                                                                                                                                                          |
| <b>Working Days</b>            | Any day other than a Saturday, Sunday or public holiday in England and Wales.                                                                                                                                                                                                                               |
| <b>Year</b>                    | A contract year.                                                                                                                                                                                                                                                                                            |



## **Schedule 7 - Processing, Personal Data and Data Subjects**

### **Subject matter of the processing:**

Online test scores on verbal and numerical reasoning tests

### **Duration of the processing:**

June 2019 – May 2020 data collection

### **Nature and purposes of the Processing:**

Provision of pseudonymised ID by Oleo through API integration, collation of test performance of CS Jobs applicants, retention in IBM system of pseudonymised scores, scores are converted to a percentile score to provide a performance metric, return of a copy of pseudonymised ID and overall test score to Oleo system (CS Jobs).

Same as above via non-system access for GRS staff.

### **Type of Personal Data:**

- Pseudonymised ID generated by WCN system
- Item performance data on verbal and numerical
- Overall score
- Percentile score

### **Categories of Data Subject:**

Applicants for jobs using CS Jobs

### **Plan for return or destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data:**

Data retained for the duration of the contract or three years from creation, whichever is shorter. Pseudonymised data held by IBM will be Irrevocably anonymised to remove the connection to an ID and retained permanently by IBM.

## **Schedule 8 Supplier Standard Terms and Conditions**

These Cloud Services are governed by the terms in the referenced Transaction Document.  
Transaction Document

Service Description for ordered Cloud Services:

IBM KENEXA ASSESSMENTS

<https://assets.digitalmarketplace.service.gov.uk/g-cloud-10/documents/92284/430868984606890terms-and-conditions-2019-02-21-1513.pdf>