



Crown  
Commercial  
Service

## G-Cloud 12 Call-Off Contract

This Call-Off Contract for the G-Cloud 12 Framework Agreement (RM1557.12) includes:

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## Part A: Order Form

Buyers must use this template order form as the basis for all call-off contracts and must refrain from accepting a supplier's prepopulated version unless it has been carefully checked against template drafting.

<b>Digital Marketplace service ID number</b>	6479 2426 6689 084
<b>Call-Off Contract reference</b>	Digital Delivery Partner
<b>Call-Off Contract title</b>	CQC I&D 028
<b>Call-Off Contract description</b>	<p>To be a BAU partner to potentially provide the following:</p> <p>3<sup>rd</sup> and 4<sup>th</sup> line systems support, in and out of hours.</p> <p>Delivery of changes to specific CQC systems and platforms</p> <p>Provide bodies of work with specific outcomes, based on agreed work package documents.</p> <p>Burst capacity to help with increased demand.</p>
<b>Start date</b>	21 September 2022
<b>Expiry date</b>	20 September 2024 (option to extend for further 2 x 12 months)
<b>Call-Off Contract value</b>	<p>£4,000,000.00 Inc. VAT (£3,333,333.66 Exc.xc VAT).</p> <p><b>Note: this is a zero value commitment contract.</b></p>

<b>Charging method</b>	Invoice - BACS
<b>Purchase order number</b>	Please see individual work package documents as a separate PO is raised against each work package documents.

This Order Form is issued under the G-Cloud 12 Framework Agreement (RM1557.12).

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>	<b>Care Quality Commission</b>  Buyer's Main Address:  Citygate Gallowgate Newcastle upon Tyne  NE1 4PA
<b>To the Supplier</b>	KPMG LLP ("KPMG")  Supplier's phone: <span style="background-color: black; color: black;">XXXXXXXXXX</span>  Supplier's address: 15 Canada Square, Canary Wharf, London E14 5GL  Company number: OC301540
<b>Together the 'Parties'</b>	

## Principal contact details

### For the Buyer:

Title: Head of Commercial

Name: [REDACTED]

Email: [REDACTED]

Phone: [REDACTED]

### For the Supplier:

Title: Director

Name: [REDACTED]

Email: [REDACTED]

Phone: [REDACTED]

## Call-Off Contract term

<b>Start date</b>	This Call-Off Contract Starts on 21 September 2022 and is valid for 24 months with an option to extend for a further 2 x 12 months.
<b>Ending (termination)</b>	<p>The notice period for the Supplier needed for Ending the Call-Off Contract is at least <b>90</b> Working Days from the date of written notice for undisputed sums (as per clause 18.6).</p> <p>The notice period for the Buyer is a maximum of <b>30</b> days from the date of written notice for Ending without cause (as per clause 18.1).</p>

<b>Extension period</b>	<p>This Call-off Contract can be extended by the Buyer for 2 periods of up to 12 months each, by giving the Supplier 3 months' written notice before its expiry. The extension periods are subject to clauses 1.3 and 1.4 in Part B below.</p> <p>Extensions which extend the Term beyond 24 months are only permitted if the Supplier complies with the additional exit plan requirements at clauses 21.3 to 21.8.</p>
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## 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>	<p>This Call-Off Contract is for the provision of Services under:</p> <ul style="list-style-type: none"> <li>• Lot 3: Cloud support</li> </ul>
<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>Provision of services as follows but not limited to:</p> <p>Planning</p> <p>Setup and migration</p> <p>Security services</p> <p>Quality assurance and performance testing</p> <p>Training</p> <p>Ongoing Support</p> <p>Potential required capabilities include but are not limited to the following:</p> <p>Solutions Architecture</p> <p>Requirement analysis/ systems functionality</p> <p>Software &amp; platform development &amp; configuration</p>

	<p>DevOPs</p> <p>Manual software testing &amp; automated test product development</p> <p>Delivery management</p> <p>Testing management</p> <p>Service transition</p> <p>Platform management</p> <p>Security management.</p> <p>The Services shall be performed in accordance with the terms of each work package documents entered into between Supplier and the Buyer. Following the development and agreement of the requirements and principles which will be set out in the agreed and fully signed work package documents executed by the Parties, all subsequent Work Packages shall be created and agreed in accordance with these requirements and principles.</p> <p>The Buyer's acceptance criteria for all Deliverables and Milestones shall be set out in the relevant work package documents.</p> <p>The Parties acknowledge that the governance and service performance monitoring requirements are set out in Schedule 1.</p>
<b>Additional Services</b>	Not Applicable
<b>Location</b>	<p>The Services will be delivered to</p> <ul style="list-style-type: none"> <li>• London office – 2<sup>nd</sup> Floor, 2 Redman Place, Stratford, London, E20 1JQ.</li> <li>• Leeds office – 1st floor St Paul's House, Park square south, Leeds, LS1 2ND.</li> <li>• Newcastle office – Citygate, Gallowgate, Newcastle Upon Tyne, NE1 4PA.</li> </ul>

	<ul style="list-style-type: none"> <li>• Remotely (KPMG staff will access systems from home) and/or</li> <li>• Workshops will be conducted either in person or virtually via Microsoft Teams or Skype (or similar)</li> </ul>
<b>Quality standards</b>	The Supplier will comply with any standards in the Call-Off Contract and (How Services will be delivered) section of the Framework Agreement, and with Good Industry Practice.
<b>Technical standards:</b>	The Supplier is to comply with all reference technical standards provided by the Buyer in Schedule 1.
<b>Service level agreement:</b>	<p>The service level and availability criteria required for this Call-Off Contract shall be set out in the work package documents, if relevant.</p> <p>The Supplier shall in delivery of the Service comply with the key performance indicators which are referenced in Schedule 1.</p>
<b>Onboarding</b>	Delivery will be as per each work package documents.
<b>Offboarding</b>	<p>The offboarding plan for this Call-Off Contract is:</p> <p>The Supplier is required to work together with the Buyer to agree the terms (including any reasonable costs) of orderly transition of the service from the Supplier to the Buyer and/or Replacement Supplier in the event of termination or expiry of this Call-Off Contract.</p> <p>This section sets out the principles of the exit and service transfer arrangements that are intended to achieve an orderly transition which shall form the basis of the Exit Plan.</p>

	<p>The Supplier will, within three months after the award of the first work package document, deliver to the Buyer an Exit Plan which sets out the Suppliers proposed methodology for achieving an orderly transition of Services from the Supplier to the Buyer and/or its Replacement Supplier on the expiry or termination of this Call-Off Contract.</p> <p>The Plan will comply with the requirements set out below;</p> <p>Within 30 days after the submission of the Exit Plan, the Parties will user their respective reasonable endeavours to agree the contents of the Exit Plan.</p> <p>The Exit Plan should contain as a minimum:</p> <ul style="list-style-type: none"> <li>• The management structure to be employed during both the transfer and cessation of the services.</li> <li>• A detailed description of both the transfer and cessation process, including a timetable for transition of the Service to the Buyer and/or a Replacement Supplier.</li> </ul>
<b>Collaboration agreement</b>	Not applicable
<b>Limit on Parties' liability</b>	<p>The annual total liability of either Party for all Property Defaults will not exceed <b>125%</b> of the total spend commitment via Work Packages against the Call Off Contract Charges payable by the Buyer to the Supplier during the Call-Off Contract Term.</p> <p>The annual total liability for Buyer Data Defaults will not exceed <b>125%</b> of the total spend commitment via Work Packages against the Call Off Contract 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 <b>125%</b> of the total spend commitment via Work Packages against the Call Off Contract Charges payable by the Buyer to the Supplier during the Call-Off Contract Term.</p>



<b>Insurance</b>	<p>The insurance(s) required will be:</p> <ul style="list-style-type: none"> <li>• A minimum insurance period of 6 years following the expiration or Ending of this Call-Off Contract</li> <li>• 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 required by Law</li> <li>• Employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by Law</li> <li>• Public Liability Insurance with a minimum limit of indemnity of £1,000.000 for each individual claim,</li> </ul>
<b>Force majeure</b>	<p>A Party may End this Call-Off Contract if the Other Party is affected by a Force Majeure Event that lasts for more than 30 consecutive days.</p>
<b>Audit</b>	<p>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</p> <p>The required audit provisions from clauses 7.4 to 7.13 of the Framework Agreement.</p>
<b>Buyer's responsibilities</b>	<p>Where applicable, Buyer Responsibilities are as set out in Schedule 1.</p>
<b>Buyer's equipment</b>	<p>The Buyer will not supply Buyer's equipment to the Supplier for this Call-Off contract unless and in the event there is a specific requirement for this.</p>

## Supplier's information

<b>Subcontractors or partners</b>	Not Applicable
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## 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>	<p>The Buyer agrees to pay the Supplier for the Services performed under this Call Off Contract on a fixed price basis, payable following achievement of the relevant Milestone or where the Buyer has agreed to pay the Supplier for Services performed on a time and materials basis in relation to a particular work package document then such payments shall be in line with the fee agreed in the relevant work package document, payable monthly in arrears, subject always to the maximum price cap as set out in the work package document.</p> <p>The parties acknowledge and agree that:</p> <ul style="list-style-type: none"> <li>i. The Buyer shall not be required to pay any amounts that exceed the price for Services agreed under a work package document;</li> <li>ii. Where the total price set out in a work package document is described as being 'estimate' or 'indicative' of the Charges, this shall be interpreted as the maximum amount that the Buyer shall be required to pay the Supplier for Services and/or time spent by the Core Team under relevant work package document; and</li> <li>iii. A work package document and accompanying change request shall not be valid unless signed by either [REDACTED] (Director of Technology) or [REDACTED] (Head of Operational Business Services) acting on behalf of the buyer and [REDACTED]</li> </ul>

	<p>██████ – Associate Partner acting on behalf of the Supplier.</p>
<b>Invoice details</b>	<p>The Supplier will issue electronic invoices monthly in arrears. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice.</p>
<b>Who and where to send invoices to</b>	<p>Invoices will be sent to:</p> <p>Care Quality Commission T70 Payables F175 Phoenix House Topcliffe Lane Wakefield West Yorkshire WF3 1WE.</p>
<b>Invoice information required</b>	<p>All invoices must include relevant Purchase Order number (allocated by the Commercial Team) and work package document reference (if applicable).</p> <p>Please note Invoices will be declined if they do not state the following address detail:</p> <p>Care Quality Commission T70 Payables F175 Phoenix House Topcliffe Lane Wakefield West Yorkshire WF3 1WE</p>
<b>Invoice frequency</b>	<p>Invoice will be sent to the Buyer monthly.</p>
<b>Call-Off Contract value</b>	<p>The total value of this Call-Off Contract is £4,000,000.00 Inc. VAT (£3,333,333.66 Exc. VAT).</p> <p><b><u>Please note: this is a zero value commitment.</u></b></p>
<b>Call-Off Contract charges</b>	<p>The breakdown of the Charges is as per each work package document raised. Rate card also included.</p>

## Additional Buyer terms

<b>Performance of the Service and Deliverables</b>	<p>This Call-Off Contract will include the, exit and offboarding plans, these are to be provided within 3 months of the date of signature of the first work package document.</p> <p>The performance of tasks to be completed will be contained within each individual work package document documenting the Deliverable description and associated acceptance criteria, workstream detail and Milestone due date as well as any additional GDPR requirements (inc Data Protection Impact Assessments) if required.</p>
<b>Guarantee</b>	Not Applicable

<b>Warranties, representations</b>	<p>In addition to the incorporated Framework Agreement clause 4.1, the Supplier warrants and represents to the Buyer that:</p> <p>The Supplier will use applicable and available techniques and standards and will perform the Call-Off Contract with all reasonable care, skill and diligence, and according to Good Industry Practice;</p> <p>The Supplier warrants that all Supplier Staff assigned to the performance of the Services have the necessary qualifications, skills and experience for the proper performance of the Services; and</p> <p>The Supplier represents and undertakes to the Buyer that each Deliverable will meet the Buyer's acceptance criteria, as defined in the Work Package Document Form; Subject to a support work package document being agreed and signed between the parties, the Supplier undertakes to maintain any interface and interoperability between third-party software or Services and software or Services developed by the Supplier; and</p> <p>The Supplier warrants that it has full capacity and authority and all necessary authorisations, consents, licenses and permissions to perform the Call-Off Contract.</p>
<b>Supplemental requirements in addition to the Call-Off terms</b>	<p>1. The Parties agree that the following definitions shall apply to the Call Off Contract and the Supplier Terms (to the extended used in the Supplier Terms or alternative clauses section described in the Order Form): Supplier Terms can be located here: <a href="https://digitalmarketplace.service.gov.uk/647924266689084-terms-and-conditions-2020-07-17-1611.pdf">647924266689084-terms-and-conditions-2020-07-17-1611.pdf</a> (digitalmarketplace.service.gov.uk)):</p> <p><b>Core Team</b> means the individuals specified to carry out the Roles required to deliver the Service and/or Deliverable in each work package document</p> <p><b>Implementation Code</b> means any software developed and updated from time to time by the Supplier specifically for purpose of achieving the Deliverables unique to the Buyer and this Call-Off Contract and to enable the Buyer to deploy and manage the Deliverables in accordance with the purposes set out in the relevant work package document.</p>

	<p>This does not include any Supplier's Background IPRs or any third party IPRs including the Platform.</p> <p><b>Milestone</b> means any milestones agreed in a work package document, which must be completed by the relevant Milestone Date; <b>Milestone Date</b> means the target date set out against the relevant Milestone in the relevant work package document by which the Milestone must be met.</p> <p><b>Rectification Plan</b> means the plan produced to rectify a material default or issue in connection with delivery of the Services.</p> <p><b>Roles</b> means the roles and expertise of the Supplier Staff required to perform the Services and supply the Deliverables to achieve the Services in each work package document.</p> <p><b>Source Code</b> means the source code of the software to which it relates, in the language in which the software was written, together with all related flowcharts and technical documents, all of a level sufficient to enable the Buyer's development personnel to understand, develop and maintain that software.</p> <p><b>Ways of Working</b> means a document which shall be agreed and developed between the parties setting out rules for ways of working in a collaborative way between the Parties.</p> <p><b>work package document</b> means any agreement executed by the Parties under the terms of the Call Off Contract, under which the Supplier shall supply Services to the Buyer. Each work package document shall include without limitation details of all relevant Milestones, Milestone Dates, acceptance criteria, test plans, user acceptance testing, a project plan, and any additional GDPR requirements if applicable .</p> <p>2. The Parties acknowledge and agree that the following provisions shall apply to this Call Off Contract;</p> <ul style="list-style-type: none"> <li>(a) the Parties acknowledge and agree that the Services shall be delivered by the Supplier in a series of work package documents.</li> <li>(b) Once the Ways of Working has been agreed and approved, this shall apply for the duration of the Term.</li> <li>(c) Each Party shall comply with their respective obligations set out in Ways of Working in respect of delivery of the Services.</li> </ul>
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	<p>(d) A work package document shall not be valid unless signed by either [REDACTED], Director of technology or [REDACTED] (Head of Operational Business Services) – Programme SRO's acting on behalf of the Buyer and [REDACTED] – Associate Partner acting on behalf of the Supplier (or such other nominated authorised representative).</p> <p>(e) Once a Work Package has been executed by the Parties,</p> <ul style="list-style-type: none"> <li>(i) Each party shall comply with their respective obligations under the Work Package; and</li> <li>(ii) The Supplier shall perform the Service and supply the Deliverable in accordance with the Work Package.</li> </ul> <p>3. If delay payments have been included in the work package document and a Milestone has not been met by the relevant Milestone Date, the Supplier shall pay to the Buyer such delay payments (calculated as set out by the Buyer in the work package document) and the following provisions shall apply:</p> <ul style="list-style-type: none"> <li>(a) The Supplier acknowledges and agrees that any delay payment is a price adjustment and not an estimate of the loss that may be suffered by the Buyer as a result of the Supplier's failure to meet the corresponding Milestone;</li> <li>(b) Delay payments shall be the Buyers exclusive financial remedy for the Suppliers failure to meet a corresponding Milestone by its Milestone Date except where the Buyer is otherwise entitled to in the Call Off Contract; and</li> <li>(c) The delay payments will accrue on a daily basis from one Working Day after the relevant Milestone Date until when the Milestone is met.</li> </ul> <p>4. In the event that the Supplier fails to meet the services level set out in the relevant work package document, the Supplier shall pay the service credits as detailed in the relevant work package document.</p> <p>5. Without prejudice to any other right or remedy of the Buyer howsoever arising, if the Supplier commits any</p>
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	<p>default of the Call Off Contract and the default is a material default that is capable of remedy (and for these purposes a material default may be a single material default or a number of defaults or repeated defaults which taken together constitutes a material default) the Buyer may instruct the Supplier to provide a Rectification Plan;</p> <p>6. There the Buyer has instructed the Supplier to produce a Rectification Plan, the Supplier shall within ten (10) Working Days (or such other period as may be agreed between the Parties) from the date of Buyer's instructions submit a draft Rectification Plan to the Buyer for it to review.</p> <p>7. The draft Rectification Plan shall set out:</p> <ul style="list-style-type: none"> <li>(a) Full details of the default that has occurred;</li> <li>(b) The actual or anticipated effect of the default; and</li> <li>(c) The steps which the Supplier proposes to take to rectify the default (if rectifiable) and to prevent such default from recurring, including timescales for such steps and for the rectification of the default (where applicable).</li> </ul> <p>8. The Supplier shall then immediately start work on the actions set out in the Rectification Plan.</p> <p>9. In addition any other rights available to the Buyer under this Call Off Contract, if the Supplier fails to deliver the Services in accordance with this Call Off Contract, the Buyer shall be entitled to seek any remedies set out in the relevant Work Package which may include without limitation re-testing, further remediation planning, termination rights for the Buyer, service credits and delay payments.</p> <p>10. The Supplier shall be responsible for identifying and notifying the Buyer of any change of requirements to the Services. Any such changes shall only be made as a variation agreed in writing between the parties, unless a different process is agreed in accordance with the change procedure and terms agreed with the Ways of Working.</p> <p>11. Each party shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such</p>
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	acts as many reasonably be require for the purpose of giving full effect to this Call Off Contract.
<b>Alternative clauses</b>	<p>In this Call-Off Contract the following alterations to the terms in <b>G-Cloud Supplier Terms</b> will apply:</p> <ol style="list-style-type: none"> <li>1. The Parties agree that the following definition should be added:   <p><b>“Buyer Material</b> means all materials and documents belonging to the Customer, which are provided to the Supplier specifically for the use in delivery of Service.”</p> </li> <li>2. The Parties agree that clause 2.3 shall be deleted and replaced with:   <p><i>“The description of any key Deliverables will be set out in or referenced in the Order Form and/or any Work Packages (including any key documentary deliverables and/or implementation deliverables). We shall ensure that each Deliverable shall comply in all material respects with the features and functionality set or referenced in the Order Form and relevant Work Package. We shall perform the Services in accordance with the agreed timescales, which are set out in the Order Form or relevant Work Package (unless otherwise agreed with the Customer in writing or we are relieved from such timescales).”</i></p> </li> <li>3. Clause 6.4 of the Supplier Terms shall be deleted and replaced with:   <p><i>“We may rely on any instructions, requests or information supplied orally or in writing, by any person whom is listed on the Order Form as having your authority to communicate with us for the purposes of the Call-Off Contract. We may at your request send documents to an electronic storage facility hosted or controlled by you or at your direction, in which event you shall be responsible for security and confidentiality at such facility”.</i></p> </li> <li>4. Clause 10.5 of the Supplier Terms shall be deleted and replaced with:   <p><i>“You will soon as soon as reasonably practical tell us about any security breach of our Confidential Information and will keep a record of those breaches. You will take the necessary steps to recover this information. You will co-operate with us in any investigation into the breach that we consider is necessary.”</i></p> </li> </ol>

	<p>5. Clause 10.9 of the Supplier Terms shall be deleted and replaced with:</p> <p><i>“You will as soon as reasonably practical notify us of any breach of security of our Confidential Information and you will, where the breach occurred because of your default, recover our Confidential Information however it may be recorded.”</i></p> <p>6. Clause 10.7 and 10.8 of the Supplier Terms shall be interpreted by the Parties to relate only to the list of systems which have been agreed by Customer in writing as being required to perform the Services.</p> <p>7. Clause 12.2 shall be deleted and replaced with the following:</p> <p><i>“The Supplier acknowledges and agrees that the Customer will own all tangible Deliverables produced by the Supplier.”</i></p> <p>8. Clauses 13.3 and 13.5 shall be deleted and replaced with the following:</p> <p><i>“13.3 Subject to clause 13.5, the Customer shall indemnify the Supplier from and against all Losses incurred from any claim of infringement or alleged infringement of a third party’s IPRs because of;</i></p> <p><i>(i) The third party software listed on the Order Form which is licensed by the Customer to the Supplier infringes a third party’s IPRs.</i></p> <p><i>(ii) The Buyer Materials, which are used by the Supplier, in accordance with the terms of the Call-Off Contracts infringe a third party’s IPRs.”</i></p> <p>9. Clause 19.1(b) of the Supplier Terms shall be deleted and replaced with;</p> <p><i>“a sum for any Service performed prior to the effective date of termination which have not previously been invoiced by Buyer and that the Supplier is entitled to raise an invoice in accordance with the terms of this Call Off Contract. This sum shall be calculated using the applicable rate card and shall be subject to production of reasonable evidence of the work done (provided that this shall not exceed any relevant Charges which have been agreed for the work in question);</i></p> <p>10. Clause 19.1(b) (iii) of the Supplier Terms shall be deleted and replaced with;</p>
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	<p><i>“where this Call Off Contract has been terminated by the Buyer for convenience in accordance with clause 18.1 of the Call Off terms and conditions, a sum in respect of demobilisation of those Supplier Staff engaged in providing the Services; and”</i></p> <p>11. Clause 19.1 (b)(iv) of the Supplier Terms shall be deleted and replaced with;</p> <p><i>“where this Call Off Contract has been terminated by the Buyer for convenience in accordance with clause 18.1 of the Call Off terms and conditions, the Buyer shall pay the Supplier costs which relate to amounts that the Supplier has committed to pay (or have paid) to other third party suppliers in connection with the delivery of Service under a work package document which would not have been incurred had the Call-Off Contract and/or the Service continued until its natural expiry and the Supplier can show that the costs are not reasonable avoidable and not reasonably capable of recovery.”</i></p>
<p><b>Buyer specific amendments to/refinements of the Call-Off Contract terms</b></p>	<p>1. The parties agree that the definition of Deliverable shall be deleted and replaced with the following:</p> <p><b><i>Deliverable(s)</i></b> means any feature or item in the supply of Services which is to be delivered by the Supplier at or before a Milestone date, which includes object code and Source Code versions. The parties agree that Key Deliverables shall be identified in each work package document.</p> <p>2. The parties agree that the following shall apply to the Call Off Contract;</p> <p>3. The parties agree that Clause 11.2 of the Call Off terms and conditions shall be deleted and replaced with;</p> <p><i>“The Supplier hereby grants the Buyer a non-exclusive, transferable, perpetual, irrevocable, royalty-free license to use any third-party IPRs, Background IPRs embedded within the Project Specific IPRs and Deliverables.”</i></p> <p>4. A new clause 11.9 shall be added to the Call Off terms and conditions, as follows;</p> <p><i>“The Supplier hereby irrevocable, unconditionally and absolutely assigns to the Buyer with full title guarantee all rights, interest and title in and to Intellectual Property Rights (including future copyright and design right) subsisting in or relating the Deliverable and Project</i></p>

	<p><i>Specific IPR (other than in respect of any third-party IPRs and Supplier Background IPRs)”</i></p> <p>5. A new clause 11.10 shall be added to the Call Off terms and conditions, as follows:</p> <p><i>“The Supplier may also develop Implementation Code during the Term. The Buyer shall retain all right, title and interest in and to Intellectual Property Rights in Implementation Code together with all improvements, modification, and/or enhancements to any Implementation Code created by Supplier while the Supplier is performing work in the course of and specific to the Call Off Contract.”</i></p> <p>6. A new clause 11.11 shall be added to the Call Off terms and conditions as follows:</p> <p><i>“The Buyer hereby grants to the Supplier a royalty-free irrevocable, non-exclusive, right to copy, install, maintain, use, enhance and modify the Implementation Code to the extent necessary and/or desirable for the Supplier to be able to provide the Services and the Deliverable during the Term.”</i></p> <p>7. A new clause 11.12 shall be added to the Call Off terms and conditions, as follows:</p> <p><i>“The Supplier shall procure that its Personnel, subcontractors and its subcontracts personnel shall unconditionally and irrevocably waive all of their moral rights described in Chapter 4 of Part 1 of the Copyright Designs and Patents Act 1988 (or any similar or equivalent legislation anywhere in the world) in respect of the Deliverable. The Supplier shall provide copies of any waivers to the Buyer, on request.”</i></p> <p>8. A new clause 2.4 shall be added to the terms and conditions within the G-Cloud 12 KPMG Supplier Terms, as follows:</p> <p><i>“We will without charge and for a period of 30 days commencing from the corresponding go-live date (being the date when the relevant implementation Deliverables under this Call-Off Contract are first available for use in a production environment by your end users (other than for the purpose of testing) diagnose and correct Defects</i></p>
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	<p>(each a <b>“Warranty Period”</b>). This is your only remedy for Defects and you agree that on-going support and maintenance services in respect of the Services and any Deliverable will not be provided after the end of the relevant Warranty Period unless agreed and documented on the Or</p> <p>der Form (or agreed pursuant in a separate Call-Off Contract). <b>“Defects”</b> manes an error in a Deliverable which causes it to fail to comply substantially with an agreed specification or requirement detailed in the Order Form.”</p>
<b>Public Services Network (PSN)</b>	Not Applicable
<b>Personal Data and Data Subjects</b>	Annex 1 of Schedule 7 applies.

## 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 (Part B) and Order Form (Part A) will supersede those of the Supplier Terms and Conditions as per the order of precedence set out in clause 8.3 of the Framework Agreement.

## 2. Background to the agreement

- 2.1 The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.12.
- 2.2 The Buyer provided an Order Form for Services to the Supplier.

**SIGNED** for and on behalf of **CARE QUALITY COMMISSION**

Authorised Signatory:

**SIGNED** for and on behalf of **KPMG LLP**

Authorised Signatory 1:

Authorised Signatory 2:

## Schedule 1: Services

The Schedule 1 section contains the Digital Delivery Partner Statement of Requirements detail that was issued to the shortlisted suppliers in order to obtain the G Cloud clarification response.

### **CQC Clarification Document title – G Cloud 12 Statement of Requirements**

**For the Provision of Digital Delivery Partner under Crown Commercial Service Framework – G-Cloud 12 (RM1557.12) – CQC Reference: ICTC 028**

#### **1. Requirement Overview**

CQC is transforming so we can keep pace with the changing health and care landscape and deliver our purpose effectively. In May 2021 we implemented a new strategy which builds on our successes and values to keep delivering our purpose, making sure people receive high quality care by becoming more relevant and responsive.

Having more modern, agile and innovative technology platforms in place was recognised as a critical component to making our strategy a reality. We need a smarter way of regulating, one that works for today but is also flexible, allowing us to easily pivot to new things, respond to risk and uncertainty, and adapt to demand. Bringing all of our data, information and knowledge together onto a core set of operational, regulatory platforms will drive our view of quality, underpin our regulatory decision-making, strengthen our independent voice, and ultimately ensure people receive safe, effective care, will be essential.

There are several transformation programmes underway at CQC currently and these programmes are already delivering new technology platforms into the organisation. The Technology team is heavily involved in these programmes and is gradually taking on responsibility for ongoing change and support for the new technology platforms and digital products.

The ambition is for the Technology team to become self-sufficient however support will be needed from a delivery partner as we build the team, adopt new ways of working and get to grips with the new technology. We plan to outsource specific activities and deliveries to the delivery partner, and this will be pre-defined as Statements of Work, for example

delivery of a new business solution, change to an existing solution and to cover out of hours support and platform monitoring.

The CQC Technology team is seeking a partner to provide:

1. Delivery of changes to specific CQC systems and platforms on a statement of work basis.
2. 3rd and 4th line systems support, in hours and out of hours on a statement of work basis.

It is anticipated that the partner will require the following capabilities:

- Solutions architecture
- Requirements analysis / systems functional consultancy
- Software & platform development & configuration
- DevOps
- Manual software testing & automated test product development
- Delivery management
- Testing management
- Service transition
- Platform management
- Security management

It is expected that the partner will provide an Account Lead as part of the ongoing engagement and this resource will be on-shore working closely with CQC Technology Heads of Function and wider Technology team as required. The main interaction will be managed via the Account Lead.

The work will be facilitated through the agreement of pre-defined, fixed price Statements of Work with payment based on key deliverables with change control if and when required.

The partner will be responsible for determining the number and types of resources required meet performance targets/deliverables, CQC will have no involvements in the recruitment of any resources/staff. It is also the partner's responsibility to provide all equipment etc to enable delivery of the service.

It will be the sole responsibility of the Partner to ensure understanding your obligations of the Intermediaries Legislation (IR35). CQC may request evidence that the partner is fully compliant with this legislation.

It is anticipated that the delivery resource will have an off-shore contingent for cost-effectiveness. It is required that the partner can demonstrate appropriate processes to manage the security and compliance of any data that may be provided in the scope of this activity.

The technology coverage for this agreement is...

- Microsoft Dynamics 365 Customer Engagement
- Microsoft Dynamics 365 Finance & Operations
- Microsoft Dynamics Portals
- Microsoft Power Platform
- Microsoft Azure Data Platform
- Microsoft Azure Integration Services
- C# .NET, .NET Core, ASP, Java, HTML



## 2. Security requirements

Please find below the Digital Delivery Partner security requirements:

**Security Checks & Accreditation** - Validation of security checks are required to be completed for all of the Digital Delivery Partner programme employees. The appointed Delivery Partner must be an ISO27001 and Cyber Essentials accredited organisation and shall also be demonstrably capable of holding data up to and including OFFICIAL SENSITIVE.

The partner will need to adhere to relevant legislation and associated standards e.g. ISO27001, GDPR, etc. to be further detailed at the next stage of procurement. Our preference is that the partner has off-shore capabilities in EEA countries or in countries recognised by the European Commission as providing adequate protection.

The partner will be required to support CQC in conducting a risk assessment prior to contract. Where off-shore capabilities outside of the EEA or countries with adequacy decisions will be used, the partner will be required to enter into standard contractual clauses, or to demonstrate to CQC's satisfaction that another appropriate safeguard under Article 46 of GDPR is engaged.

**Data Transfer** - All data should ideally be processed and stored within a data centre based within the United Kingdom. Any CQC data transferred outside of the organisation shall be transferred using secure file transfer (SFTP or similar).

## 3. Contract Management

In the event that CQC decides to appoint a supplier as a Digital Delivery Partner CQC will:

- Appoint a contract manager to oversee the performance and liaise with / report to the appointed supplier contract manager on all matters relating to the contract;
- Appoint a project lead to work and liaise with / report to the account manager on all day to day activities relating to the contract;
- Provide clear briefs to the appointed supplier on requests in a timely manner;
- Pay accurate and valid invoices in a timely manner; and
- To hold performance reviews and contract management meetings on a regular basis as agreed with the appointed Supplier.

In parallel to the above, the appointed supplier will be required to:

- Appoint a Contract Manager (or equivalent) to oversee the performance and liaise with / report to CQC's Contract Manager;
- Appoint a dedicated Project Manager, to act as key point of contact, to work and liaise with / report to CQC's Delivery Lead on all day to day activities relating to the contract.

- Attend any project meetings and problem-solving sessions regularly as agreed and required by CQC's Contract Manager / Project Lead.
- Provide regular updates / progress reports of delivery (the format and frequency of reporting will be agreed at the outset of the contract between the appointed supplier and CQC, but it should cover overall progress against all project deliverables, risks to plan and mitigating actions, issues and escalations and project budget tracking); and
- Provide monthly in arrears accurate and timely invoicing upon satisfactory delivery of required output.

If appointed as a Digital Delivery Partner, the supplier also will be required to:

- Meet all the project requirements of CQC as detailed in the clarification response;
- Perform quality assurance on all aspects of the programme to meet agreed service levels.
- Ensure that there is sufficient personnel and other resources to deliver the work packages on time to the quality standards required and to budget;
- Identify opportunities for continuous improvement to the quality and efficiency of the delivery of the service.

Key Performance Indicators (KPI's), a clear set of KPIs will be developed along with a detailed outline of required works, with agreed deadlines and quality standards to enable clear and robust management of the awarded contract.

The Delivery Partner will be expected to attend a post contract review to consider whether the objectives of the contract were met; to review the benefits achieved; and to identify any lessons learnt for future developments of the project and training sessions for users for knowledge transfer.

#### **4. Award of Contract & Duration**

In the event that CQC seeks to appoint a supplier as a Digital Delivery Partner and award a contract, the initial contract term is anticipated to be a period of 24 months.

It is envisaged that work packages (in the form of Statements of Works (SOWs) or similar) will be issued against this Contract to call off requirements, which will include outputs and deliverables for each instance.

A Change Control Notice will be created if any changes to outputs and deliverables are required. This will be agreed by both parties and facilitated by CQC Commercial Team. In addition, the contract is anticipated to include an option for extension by a further 2 x 12-month period, giving an anticipated maximum term of 48 months (24 months initial term + 24 months optional extension term).

Please note that the appointed delivery partner must provide a robust exit plan prior to the CQC placing any order or SOW under this contract. The exit plan is required to contain

details for offboarding including plans for the transfer of knowledge, skills and any appropriate material from this activity back to CQC or a new Supplier during and at the end of the contract. The exit plan should also cover the arrangements for the transfer and/or deletion of data as appropriate.

## **5. Contract cost Envelope**

The anticipated cost envelope for the full contract term (48 month's) is up to maximum of £3.2 - £4.2 million.

Note: - this is a zero commitment contract, and any spend will be committed by completed work packages (in the form of Statements of Works (SOWs) or similar)

## **6. Knowledge Transfer**

The appointed Delivery Partner is required to upskill and undertake a knowledge transfer period of a minimum of one month before rolling off the contract.

Any changes to the appointed Suppliers service delivery core team must be agreed with the CQC and in advance of such changes taking place, and a full knowledge transfer must be completed where required.

## **7. Location**

The services will be delivered to CQC staff primarily based in the CQC London, Leeds and Newcastle offices, please find below relevant location address detail:

**London office** –Stratford East London within the International Quarter S9 Building.

**Leeds office** – 1st floor St Paul's House, Park square south, Leeds, LS1 2ND.

**Newcastle office** – Citygate, Gallowgate, Newcastle Upon Tyne, NE1 4PA.

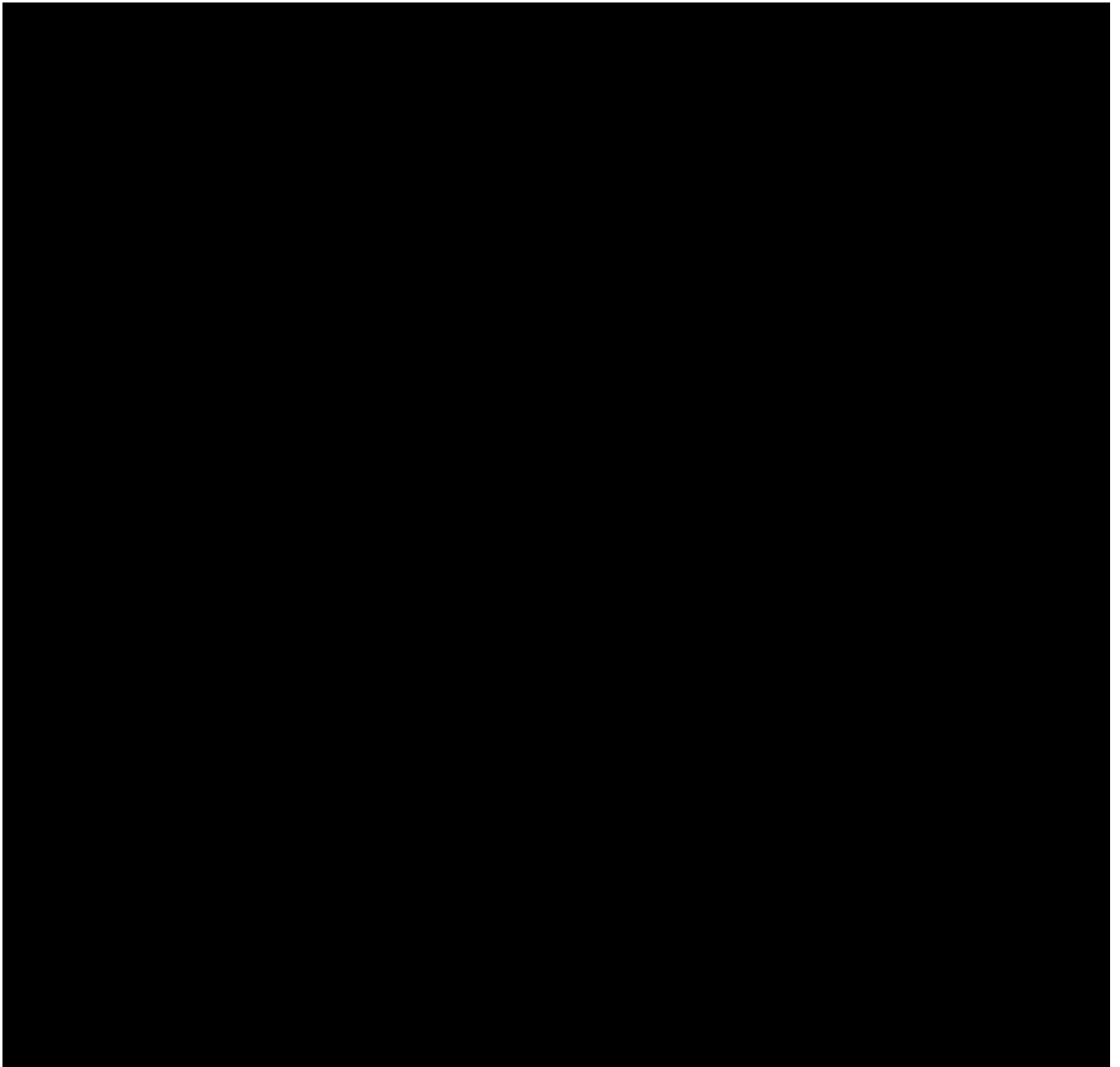
Given ongoing COVID guidance CQC is envisaging that the programme will begin in a fully remote manner. However, given the timescales for the programme it is anticipated that during the lifetime of the programme there will be a return to offices. The supplier will be expected to identify what activity it is beneficial to do “onsite”.

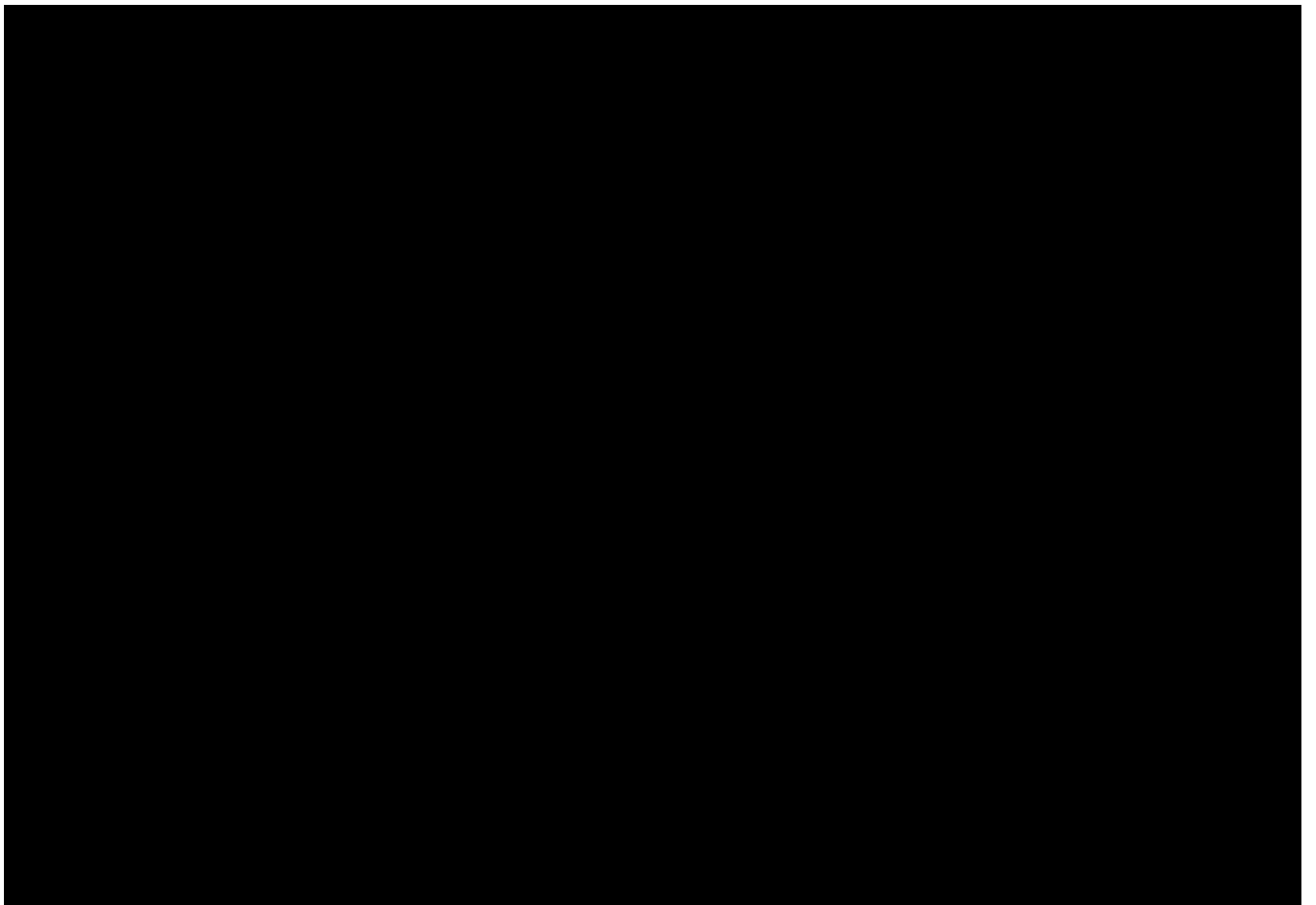
Please note that travel and expenses cannot be claimed for any activity undertaken at the primary locations detailed above or for remote working. Where there is a demand for activity at other locations not specified, travel and expenses will be claimed separately and in line with CQC policy.

## Schedule 1A: Supplier Response

The Schedule 1A Supplier Response section consists of the following KPMG LLP responses to 'Clarification of Understanding Questions' and other completed clarification documents as detailed below:

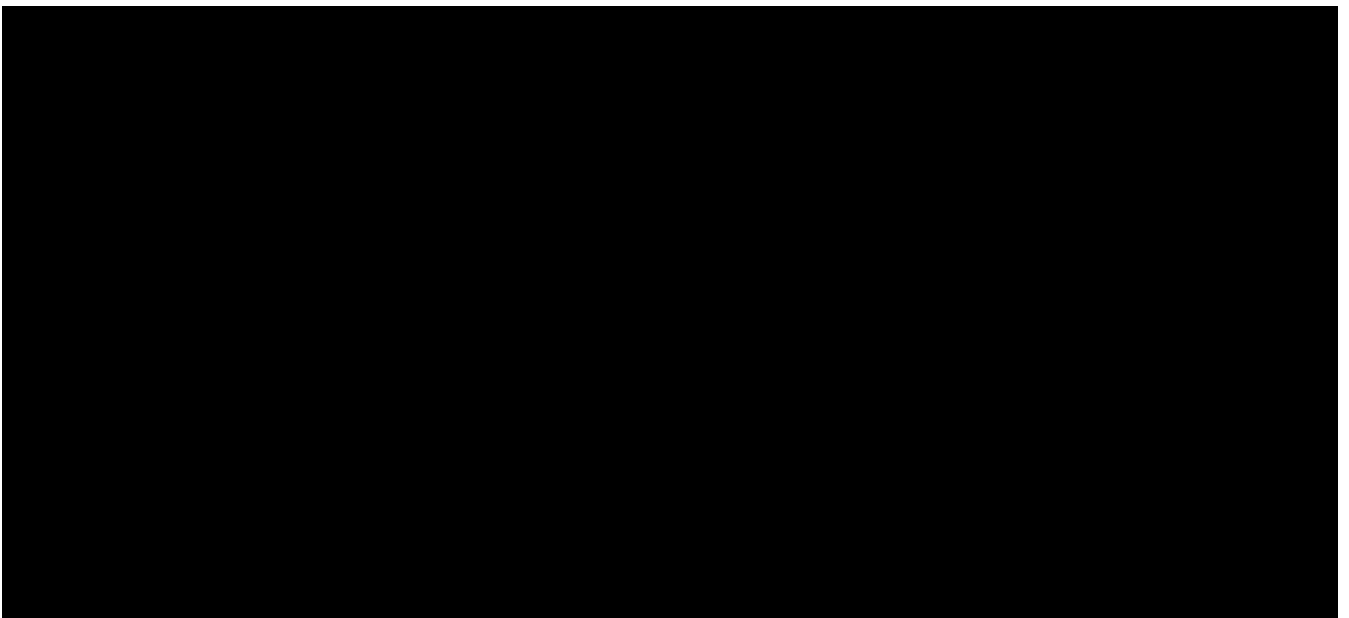
### **Appendix 2 – Pricing Schedule (Rate card) cost estimate**

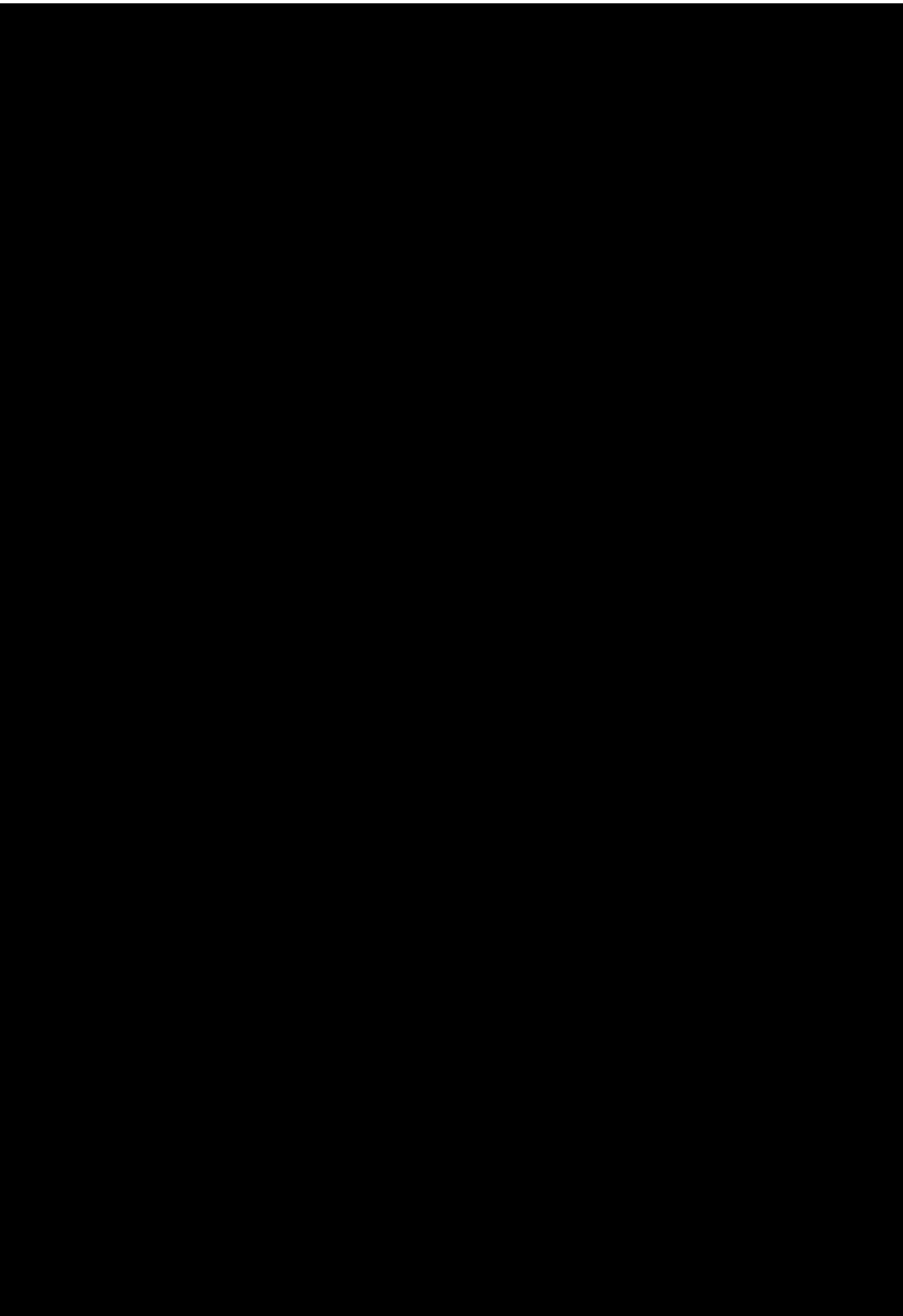


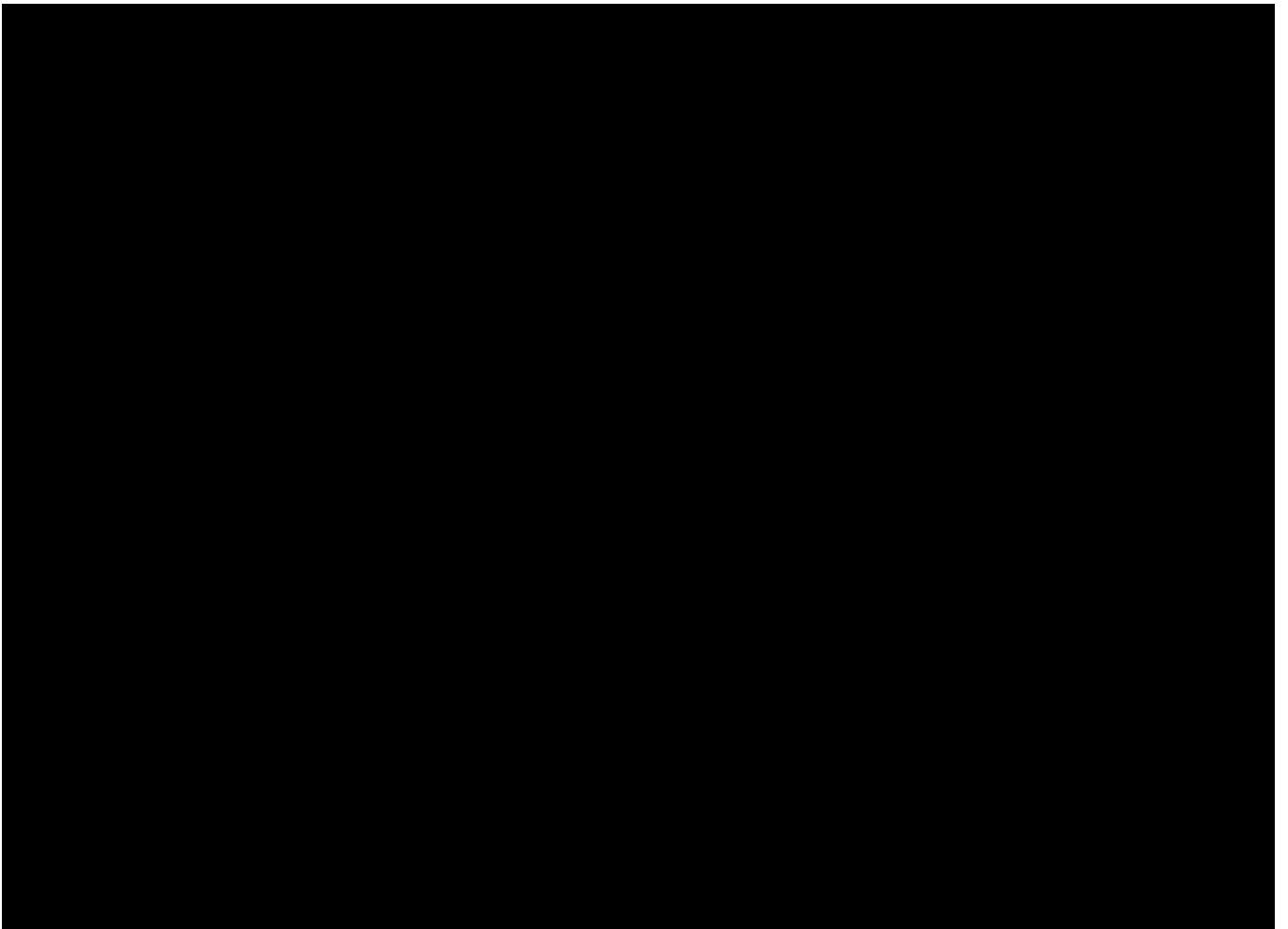


## Response to Skills and Capabilities

Can you please explain how your organisation will provide the required skills and capabilities to deliver fit for purpose new business solutions, changes to existing solutions and support services for CQC systems built on the technologies described in the Statement of Requirements document.

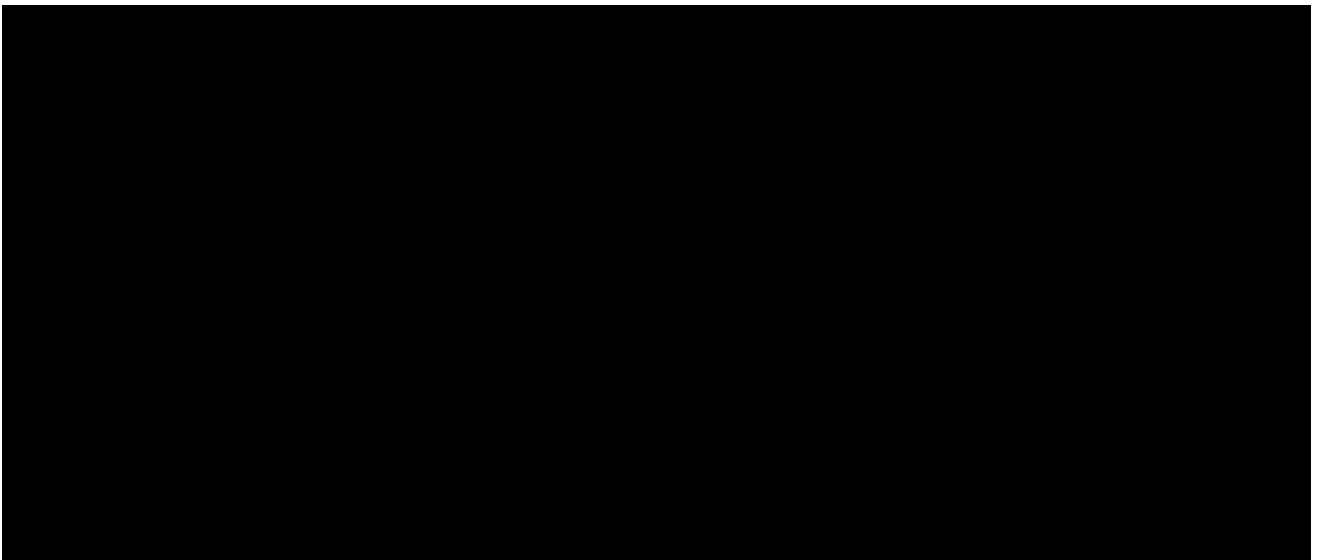






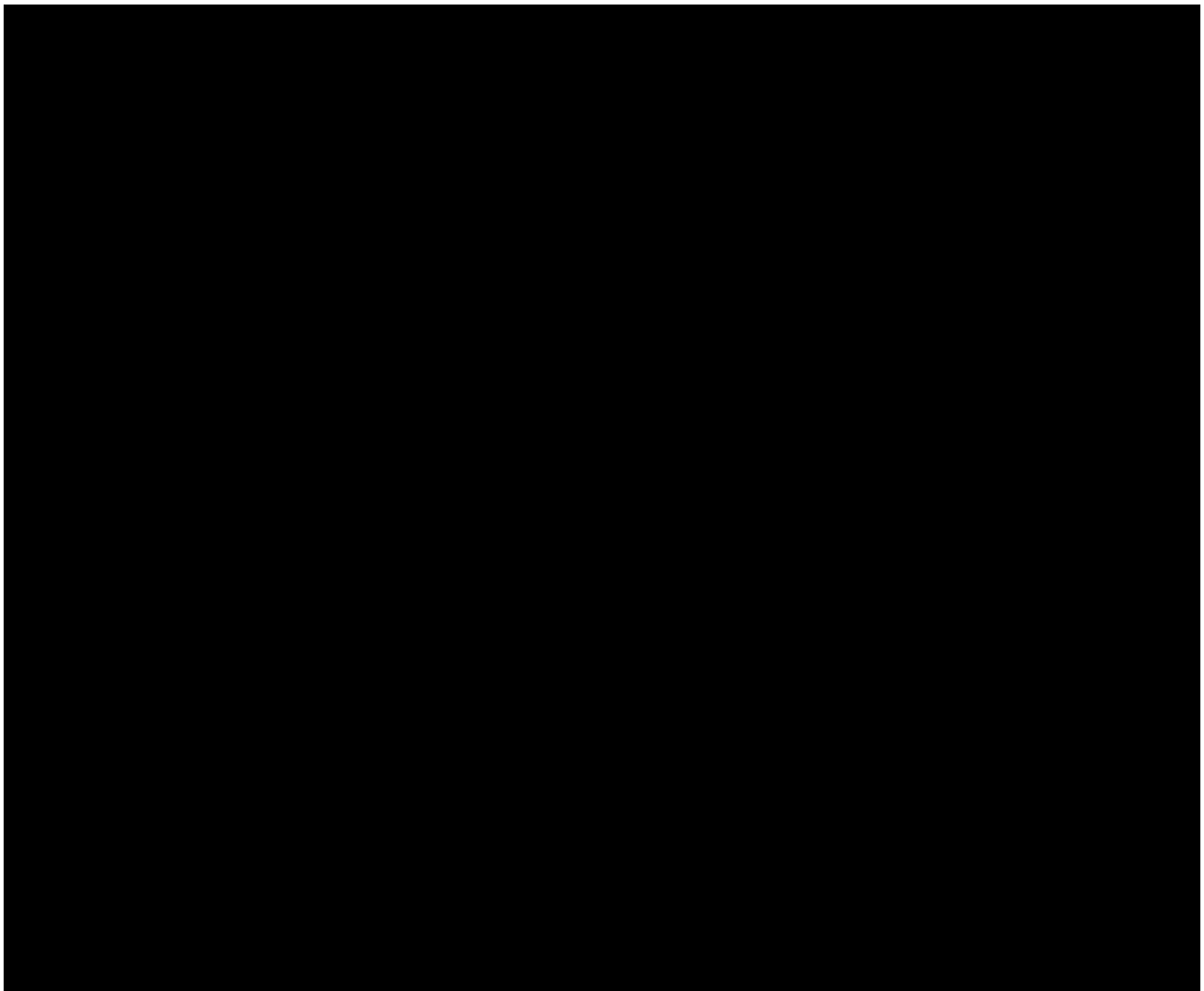
## Security Requirements

Can you please explain how your organisation would conform to the security requirements detailed in the Statement of Requirements in relation to the transfer of data processing.









## **Appendix 2 – Pricing Schedule (Rate card) cost estimate**

CQC requested a price for the below scenario ■

Background: CQC requires to perform the targeted inspections at provider locations to gather data to understand the risk levels and ensuring providers are following the appropriate guidelines to deliver better health services.

Scenario 1 : CQC requires to collect the data from care homes to ensuring all the care homes were following the appropriate guidelines to keep people safe from potential COVID-19 and other infections.

As part of this targeted inspection process, CQC will ask the following 4 key questions.

1. Are people supported to minimise the risk of catching and spreading infection?
2. Do care staff use PPE effectively to safeguard staff and people using services?
3. Are people supported to maintain safe levels of hygiene to minimise the risk of infection?

4. Do staff training, practices and deployment show the provider can prevent transmission of infection and/or manage outbreaks?

Question 1: Develop an online inspection app to capture the above data (4 key questions) and evidences to enable the next stage process including risk calculations and reporting writing capabilities.

Technology stack: Dynamics 365 Customer Engagement module and Power Platform.

Assumptions: All the required provider data already available in D365 and Power platform (Dataverse).

No Data migrations and integrations required. It is only 'Data capture' app and next stage process including risk calculations and

Reporting writing capabilities are out of the scope. CQC already acquired all the required software licenses.

Please provide outline delivery approach for the inspection app, response should include the following points.

1. Approach
2. Design
3. Build
4. Test
5. Costing

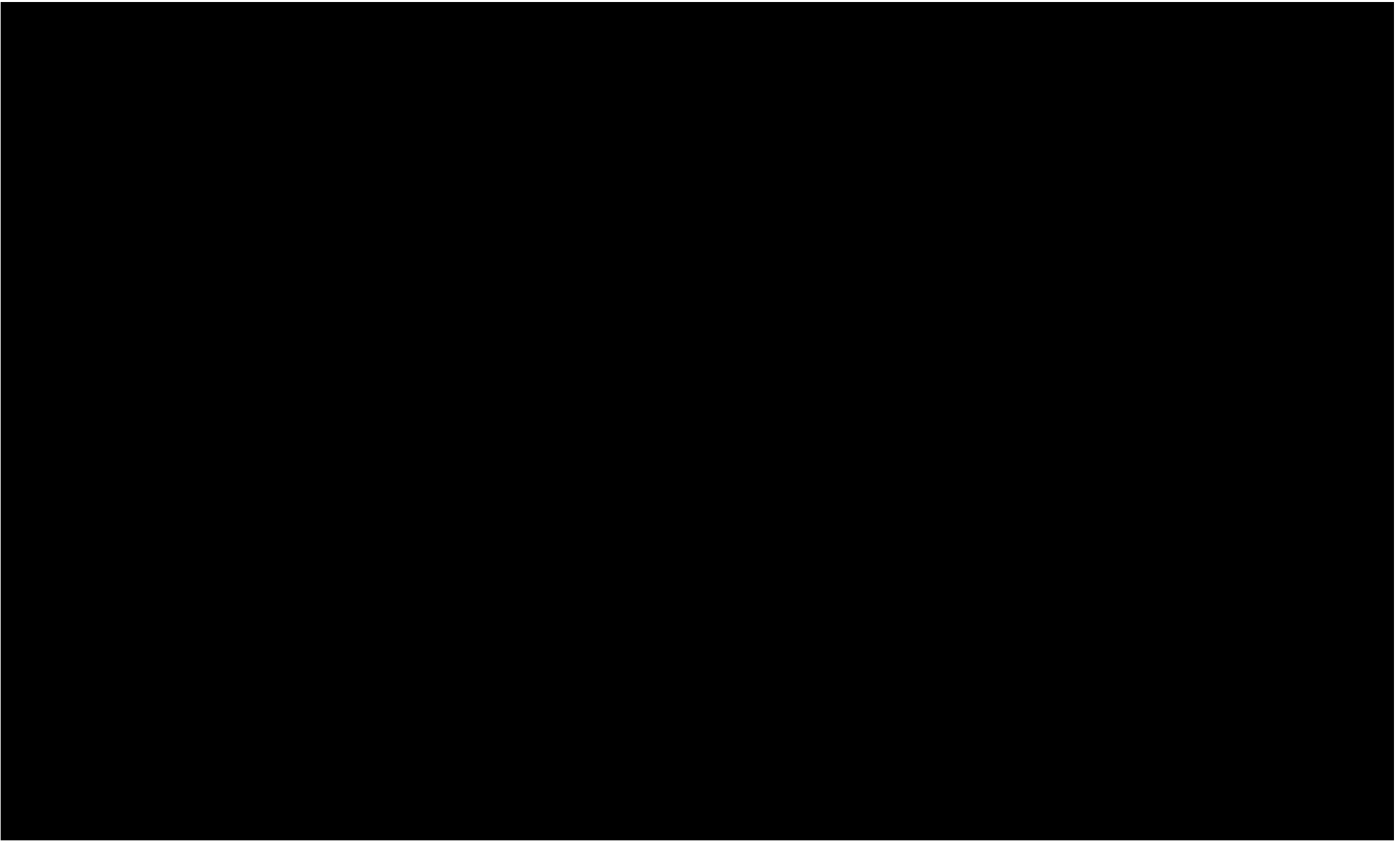
Please also note the following:

1. All prices are required to be stated in pounds sterling and exclusive of VAT
2. The resources identified and entered below are intended to reflect your standard Rate Card by resource type.
3. Please provide a Day rate based on a 7.5hr Day for each role type and rates must be fixed for the Contract period
4. Rate card pricing must be fully inclusive of all costs such as the Supplier margin.
5. Please reference the SFIA Rate Card for Consultancy Standards e.g. Working Hours. (Please note that any travel and expenses would be in accordance with CQC policy and would not be applicable for remote working or activity undertaken at the prime locations as specified in the Statement of Requirements.)
6. Please provide your Location Onshore rates, as well as Near-Shore and Off-Shore rates if applicable. Please note that your Location Onshore rates will be reviewed, whereas the Near-shore and Off-shore rates are requested for information purposes only.
7. Please include within the rates any validation of Baseline Personnel Security Standard checks costs that will be required to be completed for all programme employees. If such costs apply, please highlight this as a supplementary note.
8. Please ensure you only enter one (1) rate per line on the Worksheet.

9. Please Include any discounts you are offering in the rate price or the overall value. State in the comments box any discounts you have applied and what, if anything, would alter these i.e. lower/higher volume/ shape of programme, timescales etc.
10. Please note that if any discount offered contains very restrictive conditions which are not in line with an indicative costing approach, CQC reserves the right to disregard the discount when reviewing the pricing.
11. Please add in the expenses for all resources and provide an explanation in the comments (see note 5 above).



Rate Card



## Schedule 2: Call-Off Contract charges

The charges and rate cards agreed will be set out in each Work Package document.

## 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, provided that 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)
- 5.4 to 5.5 (Force majeure)
- 5.8 (Continuing rights)
- 5.9 to 5.11 (Change of control)
- 5.12 (Fraud)
- 5.13 (Notice of fraud)
- 7.1 to 7.2 (Transparency)
- 8.3 (Order of precedence)
- 8.6 (Relationship)
- 8.9 to 8.11 (Entire agreement)
- 8.12 (Law and jurisdiction)
- 8.13 to 8.14 (Legislative change)
- 8.15 to 8.19 (Bribery and corruption)
- 8.20 to 8.29 (Freedom of Information Act)
- 8.30 to 8.31 (Promoting tax compliance)
- 8.32 to 8.33 (Official Secrets Act)
- 8.34 to 8.37 (Transfer and subcontracting)
- 8.40 to 8.43 (Complaints handling and resolution)
- 8.44 to 8.50 (Conflicts of interest and ethical walls)
- 8.51 to 8.53 (Publicity and branding)
- 8.54 to 8.56 (Equality and diversity)
- 8.59 to 8.60 (Data protection)

- 8.64 to 8.65 (Severability)
- 8.66 to 8.69 (Managing disputes and Mediation)
- 8.80 to 8.88 (Confidentiality)
- 8.89 to 8.90 (Waiver and cumulative remedies)
- 8.91 to 8.101 (Corporate Social Responsibility)
- paragraphs 1 to 10 of the Framework Agreement glossary and interpretation
- 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:

2.2.1 a reference to the 'Framework Agreement' will be a reference to the 'Call-Off Contract'

2.2.2 a reference to 'CCS' will be a reference to 'the Buyer'

2.2.3 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 Parties acknowledge that they are required to complete the applicable Annexes contained in Schedule 4 (Processing Data) of the Framework Agreement for the purposes of this Call-Off Contract. The applicable Annexes being reproduced at Schedule 7 of this Call-Off Contract.

2.4 The Framework Agreement incorporated clauses will be referred to as incorporated Framework clause 'XX', where 'XX' is the Framework Agreement clause number.

2.5 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:

4.1.1 be appropriately experienced, qualified and trained to supply the Services

4.1.2 apply all due skill, care and diligence in faithfully performing those duties

4.1.3 obey all lawful instructions and reasonable directions of the Buyer and provide the Services to the reasonable satisfaction of the Buyer

4.1.4 respond to any enquiries about the Services as soon as reasonably possible



- 4.1.5 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 as per clause 18.5 hereunder 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 14-digit 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:
  - 5.1.1 have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party
  - 5.1.2 are confident that they can fulfil their obligations according to the Call-Off Contract terms
  - 5.1.3 have raised all due diligence questions before signing the Call-Off Contract
  - 5.1.4 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 portion of the 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:
  - 9.2.1 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
  - 9.2.2 the third-party public and products liability insurance contains an 'indemnity to principals' clause for the Buyer's benefit
  - 9.2.3 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
  - 9.2.4 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:
  - 9.4.1 a broker's verification of insurance
  - 9.4.2 receipts for the insurance premium
  - 9.4.3 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:
  - 9.5.1 take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers

9.5.2 promptly notify the insurers in writing of any relevant material fact under any Insurances

9.5.3 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:

9.8.1 premiums, which it will pay promptly

9.8.2 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 8.80 to 8.88. 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, royalty-free 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:

11.5.1 rights granted to the Buyer under this Call-Off Contract

11.5.2 Supplier's performance of the Services

### 11.5.3 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:
  - 11.6.1 modify the relevant part of the Services without reducing its functionality or performance
  - 11.6.2 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
  - 11.6.3 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:
  - 11.7.2 the use of data supplied by the Buyer which the Supplier isn't required to verify under this Call-Off Contract
  - 11.7.3 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:
  - 12.1.1 comply with the Buyer's written instructions and this Call-Off Contract when Processing Buyer Personal Data
  - 12.1.2 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
  - 12.1.3 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:
  - 12.2.1 providing the Buyer with full details of the complaint or request
  - 12.2.2 complying with a data access request within the timescales in the Data Protection Legislation and following the Buyer's instructions

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

12.2.4 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

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

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

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

13.4 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 policies and all Buyer requirements in the Order Form.

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

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

13.6.1 the principles in the Security Policy Framework:  
<https://www.gov.uk/government/publications/security-policy-framework> and  
the Government Security Classification policy:  
<https://www.gov.uk/government/publications/government-security-classifications>

13.6.2 guidance issued by the Centre for Protection of National Infrastructure on Risk Management:  
<https://www.cpni.gov.uk/content/adopt-risk-management-approach> and  
Protection of Sensitive Information and Assets:  
<https://www.cpni.gov.uk/protection-sensitive-information-and-assets>

13.6.3 the National Cyber Security Centre's (NCSC) information risk management guidance:  
<https://www.ncsc.gov.uk/collection/risk-management-collection>

13.6.4 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:

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

13.6.5 the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance:

<https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>

13.6.6 buyer requirements in respect of AI ethical standards

13.7 The Buyer will specify any security requirements for this project in the Order Form.

13.8 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.

13.9 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.

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

## 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 all reasonable endeavours, 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:
  - 16.4.1 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
  - 16.4.2 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 the Buyer of any breach of security of Buyer'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 Buyer's 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:  
<https://www.ncsc.gov.uk/guidance/10-steps-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:

17.1.1 an executed Guarantee in the form at Schedule 5

17.1.2 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:

18.2.1 Buyer's right to End the Call-Off Contract under clause 18.1 is reasonable considering the type of cloud Service being provided

18.2.2 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:

18.4.1 a Supplier Default and if the Supplier Default cannot, in the reasonable opinion of the Buyer, be remedied

18.4.2 any fraud

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

18.5.1 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

18.5.2 an Insolvency Event of the other Party happens

18.5.3 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:

19.4.1 any rights, remedies or obligations accrued before its Ending or expiration

19.4.2 the right of either Party to recover any amount outstanding at the time of Ending or expiry

19.4.3 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)
- 8.44 to 8.50 (Conflicts of interest and ethical walls)
- 8.89 to 8.90 (Waiver and cumulative remedies)

19.4.4 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:

- 19.5.1 return all Buyer Data including all copies of Buyer software, code and any other software licensed by the Buyer to the Supplier under it
  - 19.5.2 return any materials created by the Supplier under this Call-Off Contract if the IPRs are owned by the Buyer
  - 19.5.3 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
  - 19.5.4 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
  - 19.5.5 work with the Buyer on any ongoing work
  - 19.5.6 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: email
  - Deemed time of delivery: 9am on the first Working Day after sending
  - Proof of service: Sent in an emailed letter in PDF format to the correct email address without any 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:
  - 21.6.1 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
  - 21.6.2 there will be no adverse impact on service continuity
  - 21.6.3 there is no vendor lock-in to the Supplier's Service at exit
  - 21.6.4 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:
  - 21.8.1 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

- 21.8.2 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
- 21.8.3 the transfer of Project Specific IPR items and other Buyer customisations, configurations and databases to the Buyer or a replacement supplier
- 21.8.4 the testing and assurance strategy for exported Buyer Data
- 21.8.5 if relevant, TUPE-related activity to comply with the TUPE regulations
- 21.8.6 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:
  - 22.1.1 data (including Buyer Data), Buyer Personal Data and Buyer Confidential Information in the Supplier's possession, power or control
  - 22.1.2 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:

- 24.1.1 Property: for all Defaults by either party 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
- 24.1.2 Buyer Data: for all Defaults by the Supplier resulting in direct loss, destruction, corruption, degradation or damage to any Buyer Data, will not exceed the amount in the Order Form
- 24.1.3 Other Defaults: for all other Defaults by either party, 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:
  - 25.5.1 comply with any security requirements at the premises and not do anything to weaken the security of the premises
  - 25.5.2 comply with Buyer requirements for the conduct of personnel
  - 25.5.3 comply with any health and safety measures implemented by the Buyer
  - 25.5.4 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:

- 29.2.1 the activities they perform
- 29.2.2 age
- 29.2.3 start date
- 29.2.4 place of work
- 29.2.5 notice period
- 29.2.6 redundancy payment entitlement
- 29.2.7 salary, benefits and pension entitlements
- 29.2.8 employment status
- 29.2.9 identity of employer
- 29.2.10 working arrangements
- 29.2.11 outstanding liabilities

- 29.2.12 sickness absence
- 29.2.13 copies of all relevant employment contracts and related documents
- 29.2.14 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:
  - 29.6.1 its failure to comply with the provisions of this clause
  - 29.6.2 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:

31.2.1 work proactively and in good faith with each of the Buyer's contractors

31.2.2 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 Call-Off Contract by giving 30 days notice to the Supplier.

## 33. Data Protection Legislation (GDPR)

33.1 Pursuant to clause 2.1 and for the avoidance of doubt, clauses 8.59 and 8.60 of the Framework Agreement are incorporated into this Call-Off Contract. For reference, the appropriate GDPR templates which are required to be completed in accordance with clauses 8.59 and 8.60 are reproduced in this Call-Off Contract document at schedule 7.

Schedule 3: Collaboration agreement

**NOT USED**

Schedule 4: Alternative clauses-

**NOT USED**

Schedule 5: Guarantee

NOT USED

## Schedule 6: Glossary and interpretations

In this Call-Off Contract the following expressions mean:

Expression	Meaning
<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.
<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.
<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.
<b>Controller</b>	Takes the meaning given in the GDPR.
<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>	Event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Framework Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
<b>Data Protection Impact Assessment (DPIA)</b>	An assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.
<b>Data Protection Legislation (DPL)</b>	Data Protection Legislation means: (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
<b>Data Subject</b>	Takes the meaning given in the GDPR
<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> <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(s)</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 the 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: <a href="https://www.gov.uk/guidance/check-employment-status-for-tax">https://www.gov.uk/guidance/check-employment-status-for-tax</a>
<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> <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 RM1557.12 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 Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.
<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.
<b>GDPR</b>	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>Government Procurement Card</b>	The government's preferred method of purchasing and payment for low value goods or services.
<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>Implementation Plan</b>	The plan with an outline of processes (including data standards for migration), costs (for example) of implementing the services which may be required as part of Onboarding.
<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.
<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</li> <li>• an unresolved statutory demand</li> <li>• 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> <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>	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.
<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 know-how already in the Supplier's or CCS's possession before the Start date.
<b>Law</b>	Any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply.
<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 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).
<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 GDPR.
<b>Personal Data Breach</b>	Takes the meaning given in the GDPR.
<b>Processing</b>	Takes the meaning given in the GDPR.
<b>Processor</b>	Takes the meaning given in the GDPR.

<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: pseudonymisation 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 high-performance 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>Security management plan</b>	The Supplier's security management plan developed by the Supplier in accordance with clause 16.1.
<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/spend-controls-check-if-you-need-approval-to-spend-money-on-a-service">https://www.gov.uk/service-manual/agile-delivery/spend-controls-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</b>	The person, firm or company identified in the Order Form.
<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: GDPR Information

This schedule reproduces the annexes to the GDPR schedule contained within the Framework Agreement and incorporated into this Call-off Contract.

### Annex 1: Processing Personal Data

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

- 1.1 The contact details of the Buyer's Data Protection Officer are: [REDACTED]
- 1.2 The contact details of the Supplier's Data Protection Officer are:  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.

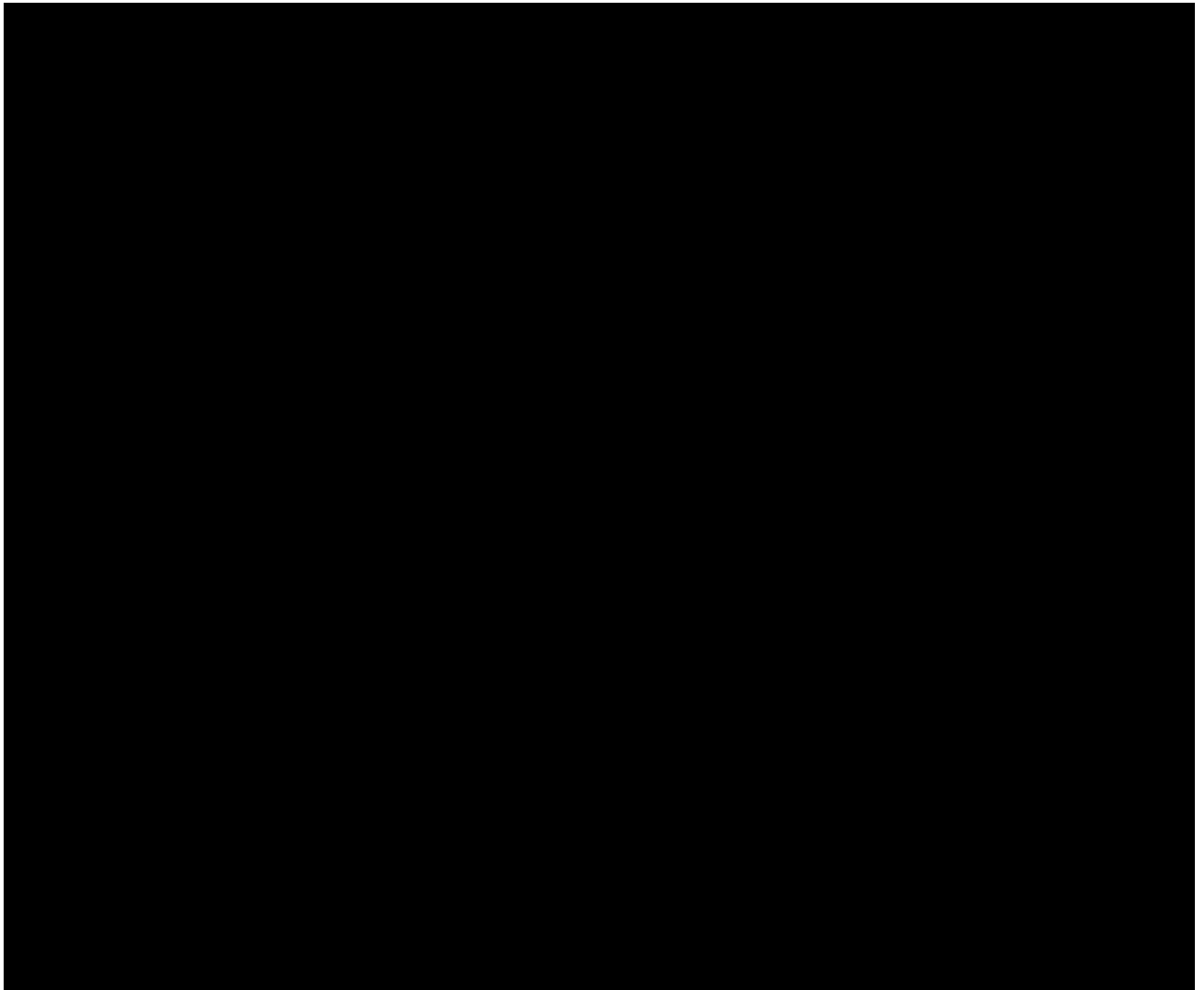
Descriptions	Details
Identity of Controller for each Category of Personal Data	<p><b>The Buyer is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 2-15 Framework Agreement Schedule 4 (Where the Party is a Controller and the other Party is Processor) and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"><li>• Provision of Support Services includes names, email addresses, locations</li></ul>
Duration of the Processing	For the duration of the agreement.
Nature and purposes of the Processing	<p>The supplier will provide the following services to CQC:</p> <ol style="list-style-type: none"><li>1. Delivery of changes to specific CQC systems and platforms.</li></ol>



	<p>2. 3<sup>rd</sup> and 4<sup>th</sup> line systems support, in and out of hours.</p> <p>These services will be delivered in accordance with specific instructions from CQC.</p> <p>In delivering these services, it is anticipated that the supplier will provide the following capabilities</p> <ul style="list-style-type: none"> <li>- Solutions architecture</li> <li>- Requirements analysis / system functional consultancy</li> <li>- Software &amp; platform development &amp; configuration</li> <li>- DevOps</li> <li>- Manual software testing &amp; automated test product development</li> <li>- Delivery management</li> <li>- Testing management</li> <li>- Service transition</li> <li>- Platform management</li> <li>- Security management</li> </ul> <p>Personal data will be processed (obtained, copied, stored, accessed, viewed, altered, analysed, shared, disclosed, erased or destroyed) only within the UK/EEA unless explicitly agreed by CQC and subject to GDPR compliant safeguards approved by CQC.</p>
Type of Personal Data	<p>Delivering the above services may require the supplier to process any personal data held by CQC on digital services. This includes:</p> <ul style="list-style-type: none"> <li>• Direct personal identifiers such as names, initials</li> <li>• Indirect personal identifiers such as NHS numbers, ID numbers, online identifiers, pseudonyms and titles.</li> <li>• Contact details</li> <li>• Financial information</li> <li>• Special category information used for equalities purposes</li> <li>• Health information</li> <li>• People's experiences of health and social Care Quality Commission information relating to criminal convictions, investigations and prosecutions</li> <li>• Statistical analysis based upon personal data.</li> </ul>
Categories of Data Subject	<ul style="list-style-type: none"> <li>• CQC employees and agents</li> <li>• Registered persons and their employees and agents</li> </ul>

	<ul style="list-style-type: none"> <li>• Employees and agents of other agencies and organisations</li> <li>• People who use care services, their families and other representatives</li> <li>• Members of the public.</li> </ul>
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under Union or Member State law to preserve that type of data	<p>Data will be processed within CQC systems unless otherwise explicitly agreed and permitted by CQC.</p> <p>CQC data process outside of CQC systems will be returned or destroyed as required by CQC, or at the end of contract.</p>

## Annex 2: KPMG International Data Transfer Statement



## Annex 2: Joint Controller Agreement

### 1. Joint Controller Status and Allocation of Responsibilities

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 2 to 15 of Schedule 4 of the Framework Agreement (Where one Party is Controller and the other Party is Processor) and paragraphs 17-27 of Schedule 4 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that the **[delete as appropriate Supplier/Buyer]**:
- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
  - (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
  - (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
  - (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
  - (e) shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the **[Supplier's/Buyer's]** privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of clause 1.2, the Parties acknowledge that a data subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

### 2. Undertakings of both Parties

- 2.1 The Supplier and the Buyer each undertake that they shall:
- (a) report to the other Party every **[enter number]** months on:

- (i) the volume of Data Subject Request (or purported Data Subject Requests) from Data Subjects (or third parties on their behalf);
  - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
  - (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
  - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
  - (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law, that it has received in relation to the subject matter of the Contract during that period;
- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- (e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- (g) take all reasonable steps to ensure the reliability and integrity of any of its personnel who have access to the Personal Data and ensure that its personnel:
- (i) are aware of and comply with their 's duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information

- (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
  - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data as required by the applicable Data Protection Legislation;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
- (i) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

### 3. Data Protection Breach

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
- (b) all reasonable assistance, including:
  - (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;

- (ii) co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
- (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;
- and/or
- (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;
- (d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (e) measures taken or proposed to be taken to address the Personal Data Breach; and
- (f) describe the likely consequences of the Personal Data Breach.

#### 4. Audit

4.1 The Supplier shall permit:

- (a) the Buyer, or a third-party auditor acting under the Buyer's direction, to conduct, at the Buyer's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or
- (b) the Buyer, or a third-party auditor acting under the Buyer's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Supplier so far as relevant to the contract, and procedures, including premises

under the control of any third party appointed by the Supplier to assist in the provision of the Services.

- 4.2 The Buyer may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection.

## 5. Impact Assessments

### 5.1 The Parties shall:

- (a) provide all reasonable assistance to the each other to prepare any data protection impact assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the contract, in accordance with the terms of Article 30 GDPR.

## 6. ICO Guidance

- 6.1 The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant central government body. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend the contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant central government body.

## 7. Liabilities for Data Protection Breach

**[Guidance:** This clause represents a risk share, you may wish to reconsider the apportionment of liability and whether recoverability of losses are likely to be hindered by the contractual limitation of liability provisions]

- 7.1 If financial penalties are imposed by the Information Commissioner on either the Buyer or the Supplier for a Personal Data Breach ("Financial Penalties") then the following shall occur:

(a) if in the view of the Information Commissioner, the Buyer is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

(b) if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or

(c) if no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any Financial Penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the procedure set out in clauses 8.66 to 8.79 of the Framework terms (Managing disputes).

7.2 If either the Buyer or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the Court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "Claim Losses"):

(a) if the Buyer is responsible for the relevant Personal Data Breach, then the Buyer shall be responsible for the Claim Losses;

(b) if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and

(c) if responsibility for the relevant Personal Data Breach is unclear, then the Buyer and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in either clause 7.2 or clause 7.3 shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Buyer.

8. Not used

9. Termination

9.1 If the Supplier is in material Default under any of its obligations under this Annex 2 (joint controller agreement), the Buyer shall be entitled to terminate the contract by issuing a termination notice to the Supplier in accordance with Clause 18.5 (Ending the contract).



## 10. Sub-Processing

10.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

- (a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
- (b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

## 11. Data Retention

11.1 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by the contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.