



# Crown Commercial Service

## G-Cloud 11 Call-Off Contract (version 4)

### Contents

G-Cloud 11 Call-Off Contract (version 4) .....	1
<b>Part A - Order Form</b> .....	<b>3</b>
Principle contact details .....	4
Call-Off Contract term .....	4
Buyer contractual details.....	4
Additional Buyer terms.....	9
<b>HMRC additional clauses</b> .....	<b>9</b>
<b>1 - Charges, Payment and Recovery of Sums Due</b> .....	<b>9</b>
<b>2 - Expenses</b> .....	<b>11</b>
<b>3 - Warranties</b> .....	<b>11</b>
<b>4. Promoting Tax Compliance</b> .....	<b>12</b>
<b>5. Use of Off-shore Tax Structures</b> .....	<b>13</b>
<b>6. N/A</b> .....	<b>14</b>
<b>7 - Data Protection and off-shoring (<i>Not applicable to this call off order</i>)</b> .....	<b>14</b>
<b>8 - Official Secrets Acts, Commissioners for Revenue and Customs Act 2005 and related Legislation</b> .....	<b>15</b>
<b>9 - Confidentiality, Transparency and Publicity</b> .....	<b>17</b>
<b>10 - Compliance</b> .....	<b>17</b>
<b>Schedule 1 – Services</b> .....	<b>20</b>
<b>Schedule 2 - Call-Off Contract charges</b> .....	<b>29</b>
<b>Part B - Terms and conditions</b> .....	<b>30</b>
1. Call-Off Contract start date and length.....	30
2. Incorporation of terms .....	30

3. Supply of services .....	31
4. Supplier staff .....	31
5. Due diligence .....	32
6. Business continuity and disaster recovery .....	32
7. Payment, VAT and Call-Off Contract charges.....	33
8. Recovery of sums due and right of set-off.....	34
9. Insurance .....	34
10. Confidentiality .....	35
11. Intellectual Property Rights .....	35
12. Protection of information .....	36
13. Buyer data.....	37
14. Standards and quality .....	38
15. Open source .....	39
16. Security .....	39
17. Guarantee .....	40
18. Ending the Call-Off Contract .....	40
19. Consequences of suspension, ending and expiry .....	41
20. Notices .....	42
21. Exit plan .....	43
22. Handover to replacement supplier .....	44
23. Force majeure .....	44
24. Liability .....	44
25. Premises .....	45
26. Equipment.....	45
27. The Contracts (Rights of Third Parties) Act 1999.....	46
28. Environmental requirements .....	46
29. The Employment Regulations (TUPE) .....	46
30. Additional G-Cloud services.....	48
31. Collaboration.....	48
32. Variation process .....	48
33. Data Protection Legislation (GDPR).....	48
<b>Schedule 3 - Collaboration agreement .....</b>	<b>50</b>
<b>Schedule 4 - Alternative clauses .....</b>	<b>50</b>
<b>Schedule 5 - Guarantee.....</b>	<b>50</b>
<b>Schedule 6 - Glossary and interpretations.....</b>	<b>50</b>

Schedule 7 - GDPR Information .....	58
Appendix .....	59

## Part A - Order Form

<b>Digital Marketplace service ID number:</b>	IBM IT Portfolio Migration and Modernisation Services (G Cloud 11). Service ID: 254812908802432
<b>Call-Off Contract reference:</b>	HMRC SOTF Plan and Control 11 month service (January 2020)
<b>Call-Off Contract title:</b>	Migration Planning and Control
<b>Call-Off Contract description:</b>	Plan and Control support services for the Securing our Technical Future (SOTF) cloud migration programme.
<b>Start date:</b>	6 <sup>th</sup> January 2020
<b>Expiry date:</b>	5 <sup>th</sup> November 2020
<b>Call-Off Contract value:</b>	Up to a maximum value of £2,000,000
<b>Charging method:</b>	Fixed price
<b>Purchase order number:</b>	TBC by Buyer

This Order Form is issued under the G-Cloud 11 Framework Agreement (RM1557.11).

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>	Buyer's main address: HMRC 100 Parliament Street London SW1 2BQ
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<b>To: the Supplier</b>	Supplier's address: IBM United Kingdom 76-78 Upper Ground London SE1 9PZ Company number: 00741598
<b>Together: the 'Parties'</b>	

### Principle contact details

<b>For the Buyer:</b>	Title: IT Commercial Lead Name: <b>Redacted</b> Email: <b>Redacted</b> Phone: <b>Redacted</b>
<b>For the Supplier:</b>	Title: Partner Name: <b>Redacted</b> Email: <b>Redacted</b> Phone: <b>Redacted</b>

### Call-Off Contract term

<b>Start date:</b>	This Call-Off Contract Starts on 6 <sup>th</sup> January 2020 and is valid for 11 months to 5th November 2020.
<b>Ending (termination):</b>	The notice period needed for Ending the Call-Off Contract is at least 30 Working Days from the date of written notice for disputed sums or at least 30 days from the date of written notice for Ending without cause.
<b>Extension period:</b>	This Call-Off Contract can be extended by the Buyer for 1 period, allowing for a duration of up to 24 months in total, by giving the Supplier 30 days written notice before its expiry. 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.

### Buyer contractual details

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

<b>G-Cloud lot:</b>	This Call-Off Contract is for the provision of Services under: Lot 3 - Cloud support
<b>G-Cloud services required:</b>	The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined below:

	Lot 3 – Cloud support. IBM IT Portfolio Migration and Modernisation Services (G Cloud 11). See Schedule 1 – Services.
<b>Additional Services:</b>	N/A
<b>Location:</b>	The Services will be delivered to the Buyer's offices in Telford.
<b>Quality standards:</b>	The quality standards required for this Call-Off Contract are as per the G Cloud framework standards.
<b>Technical standards:</b>	<p>The technical standards required for this Call-Off Contract are</p> <ul style="list-style-type: none"> <li>● Weekly receipt of work products and provision of supplier reporting</li> <li>● Work products issued and stored within the Buyer repository. These will provide clear details of the work undertaken by the Supplier in respect to the 5 areas of Plan and Control services, with summary information and links to the location of work products produced during the course of each delivery cycle</li> <li>● The backlog will be maintained and demonstrate that Plan and Control teams are working to agreed priority areas, where these are separate to the standard governance products</li> <li>● Quality of delivery - as measured by periodic Buyer completion of Supplier Net Promoter Score surveys</li> </ul>
<b>Service level agreement:</b>	<p>Acceptance Criteria:</p> <p>A Contract Checkpoint Document will be used to outline deliverables to be provided by the supplier within the services in "Schedule 1 – Services" and allow HMRC to monitor service levels against the call off.</p> <p>Project progress will be discussed at regular meetings with between HMRC and the Supplier.</p>
<b>Onboarding:</b>	<p>The on-boarding plan for this Call-Off Contract to include the following:</p> <ul style="list-style-type: none"> <li>● Supplier and Client will meet to discuss services required, expected deliverables and ways of working.</li> <li>● The supplier will select suitably qualified and experienced staff to deliver the service and will ensure the relevant security checks</li> <li>● The supplier may substitute staff at any point providing the replacement staff are equally qualified/experienced.</li> </ul>
<b>Offboarding:</b>	<p>The off-boarding plan for this Call-Off Contract to include the following:</p> <ul style="list-style-type: none"> <li>● Supplier to provide appropriate documentation for all deliverables.</li> <li>● Supplier to provide knowledge/skills transfer to existing staff prior to expiry of the Contract.</li> </ul>
<b>Collaboration agreement:</b>	N/A
<b>Limit on Parties' liability:</b>	<p>The annual total liability of either Party for all Property defaults will not exceed £10,000,000.</p> <p>The annual total liability for Buyer Data defaults will not exceed</p>

	<p>£1,000,000 or 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater).</p> <p>The annual total liability for all other defaults will not exceed £1,000,000 or 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater).</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 the Buyer requires (and as 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> </ul>
<b>Force majeure:</b>	A Party may End this Call-Off Contract if the Other Party is affected by a Force Majeure Event that lasts for more than 90 consecutive days.
<b>Audit:</b>	N/A
<b>Buyer's responsibilities:</b>	<p>The Buyer is responsible for the following dependencies for Schedule 1:</p> <p>(01) Plan Management - The Buyer will provide copies of all individual migration workstream project and plans and reports on a weekly basis (or as agreed through governance process), confirming receipt from Buyer third-parties, such that these may form part of overall migration planning provided by Plan and Control.</p> <p>(02) Plan Management - The Buyer will provide PMO governance and supporting project/programme control processes.</p> <p>(03) Plan Management - The Buyer will enforce planning and governance standards agreed within Plan and Control with stakeholders, including third parties. The Buyer and third parties will be responsible for providing quality planning information for their respective workstream, prepared with input from knowledgeable specialists in their respective planning areas.</p> <p>(04) Risk Management - The Buyer will provide the Supplier with access to risk and issue logs and repositories including mitigation and treatment plans for each migration workstream and project, such that individual workstream risks may be considered by Plan and Control as part of the overall reporting for migration. The Buyer will provide a standard risk assessment framework (or will agree risk-level definitions with the Supplier) which will be applied to migration risks.</p> <p>(05) Risk Management - The Buyer will share any risks and issues declared by external stakeholders and/or delivery partners and the Buyer</p>

will support risk and issue resolution steps required. All parties including the Buyer and Supplier will be responsible for the identification of migration risks. Where risk and issues are identified, the Buyer will providing escalation support to Plan and Control, including decision making and support to enforce stakeholder and third party responses.

(06) Dependency Management - The Buyer will be responsible for the commercial management of third party contractual dependencies and will provide details of key dependencies and advise the Supplier of any misalignment between delivery dependency requirements and contractual obligations on Buyer third parties.

(07) Delivery Assurance - The Buyer will provide access to systems and repositories such that Plan and Control has access to programme materials and technical documentation including designs and architectural decision logs.

(08) Delivery Assurance - The Buyer will manage the Test Strategy definition output and test assurance activities; testing assurance has not been planned within the scope of Plan and Control.

(09) Delivery Assurance - The Buyer will include the Supplier in active programme and technical governance forums, including the Programme Board and Technical Design Forum. The Buyer will be responsible for final decisions in relation to migration that are presented to the associated governance forum.

(10) Change Control - The Buyer will include the Supplier in the change governance process, providing access to change information and will provide coordination of change assessment input and tracking across Buyer and third parties workstreams, holding the master record of change information submitted through PMO.

(11) Reporting - The Buyer will maintain a PMO programme reporting governance cycle and provide a reporting template for Plan and Control input. This reporting template is to be reviewed and agreed. The Buyer will share reporting from other workstreams with Plan and Control.

(12) L3 Preparation Management - The Buyer will provide support for any commercial resolution, third party management and to support recommendations of the L3 Preparation Team to stabilise delivery activities

(13) Leadership - The Buyer will provide a Senior Responsible Owner (SRO) to provide escalation support and advise the Plan and Control team on priorities, providing clear direction and leading programme-level decision making with business and other Buyer stakeholders.

(14) Change Control – Management of business and technical changes to be managed by the Buyer Programme Management Office (PMO), including chairing of the Change Control Board and maintaining of the programme scope baseline.

(15) Migration Assurance – The assurance of migration methods, services, architecture and design will be undertaken by the Buyer.

(16) Migration Planning and Discovery – The Buyer will provide the Supplier with access to migration planning and discovery tooling to

	support Plan and Control activities.
<b>Buyer's equipment:</b>	The Buyer's equipment to be used with this Call-Off Contract includes: <ul style="list-style-type: none"> <li>• Wifi access</li> <li>• Desk space and access for 8 people at the HMRC Telford office</li> <li>• HMRC laptops and system access, as required for each role</li> </ul>

## Supplier's information

<b>Subcontractors or partners:</b>	N/A
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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 by BACS transfer (details to be provided by the supplier) based on receipt of an invoice following each milestone as specified in the Call-Off Contract charges.
<b>Payment profile:</b>	The payment profile for this Call-Off Contract is as per milestones set out in the Call-Off Contract charges.
<b>Invoice details:</b>	The Supplier will issue an electronic invoice. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice.
<b>Who and where to send invoices to:</b>	Invoices will be sent to Buyer via the Ariba Network
<b>Invoice information required</b> – for example purchase order, project reference:	All invoices must include all appropriate references including a PO number and a detailed breakdown of the G-cloud services supplied.
<b>Invoice frequency:</b>	Invoices will be sent to the Buyer at the completion of each milestone as set out in Schedule 2.
<b>Call-Off Contract value:</b>	The maximum total value of this contract is £2,000,000
<b>Call-Off Contract charges:</b>	The breakdown of the Charges is set out in Schedule 2.

## Additional Buyer terms

<b>Performance of the service and deliverables:</b>	As outlined in "Schedule 1 – Services"
<b>Guarantee:</b>	N/A
<b>Warranties, representations:</b>	See incorporated Framework Agreement clause 4.1
<b>Supplemental requirements in addition to the Call-Off terms:</b>	Not used
<b>Alternative clauses:</b>	Not used
<b>Buyer specific amendments to/refinements of the Call-Off Contract terms:</b>	<p><b>HMRC additional clauses</b></p> <p><b>1 - Charges, Payment and Recovery of Sums Due</b></p> <p>1.1 The Supplier shall invoice the Buyer as per the Call-Off order form. Each invoice shall include such supporting information required by the Buyer to verify the accuracy of the invoice ("<b>Supporting Documentation</b>"), including the relevant Purchase Order Number (and CD Reference) and a breakdown of the Services supplied in the invoice period.</p> <p>1.2 To facilitate payment, the Supplier shall use an electronic transaction system chosen by the Buyer and shall:</p> <p>1.2.1 register for the electronic transaction system in accordance with the instructions of the Buyer;</p> <p>1.2.2 allow the electronic transmission of purchase orders and submitting of electronic invoices via the electronic transaction system;</p> <p>1.2.3 designate a Supplier representative as the first point of contact with the Buyer for system issues; and</p> <p>1.2.4 provide such data to the Buyer as the Buyer reasonably deems necessary for the operation of the system including, but not limited to, electronic catalogue information.</p> <p>1.3 The Buyer is in the process of implementing its electronic transaction system. Each invoice and any Supporting Documentation required to be submitted in accordance with this Clause 1 shall be submitted by the Supplier, as directed by the Buyer from time to time, either:</p> <p>1.3.1 via the Buyer's electronic transaction system; or</p> <p>1.3.2 to the Buyer's contact (or such other person notified to the</p>

Supplier in writing by the Buyer) by email in pdf format or, if agreed with the Buyer, in hard copy by post.

1.4 The Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:

1.4.1 the Supplier does so at its own risk; and

1.4.2 the Buyer shall not be obliged to pay the Charges without a valid Purchase Order Number having been provided to the Supplier.

1.5 The Buyer shall regard an invoice as valid only if it complies with the provisions of this Clause 1. The Buyer shall promptly return any non-compliant invoice to the Supplier and the Supplier shall promptly issue a replacement, compliant invoice.

1.6 In consideration of the supply of the Services by the Supplier, the Buyer shall pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Purchase Order Number.

1.7 If a payment of an undisputed amount is not made by the Buyer by the due date, then the Buyer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

1.8 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Buyer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Buyer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Buyer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Buyer in order to justify withholding payment of any such amount in whole or in part.

**“Agreement”** the contract between (i) the Buyer acting as part of the Crown and (ii) the Supplier;

**“Purchase Order Number”** the Buyer’s unique number relating to the supply of the Services;

**“Services”** the services to be supplied by the Supplier to the Buyer under the Agreement, including the provision of any Goods;

**“Charges”** the charges for the Services as specified in the call off order form.

## 2 - Expenses

2.1 Where the Buyer expressly agrees in writing, the Supplier shall be entitled to be reimbursed by the Buyer for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

2.2 The Buyer shall provide a copy of its current expenses policy to the Supplier upon request.

**“Reimbursable Expenses”** reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:

- a) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work.

**“Supporting Documentation”** Each invoice shall include such supporting information required by the Buyer to verify the accuracy of the invoice), including the relevant Purchase Order Number (and CD Reference) and a breakdown of the Services supplied in the invoice period.

## 3 - Warranties

3.1. The Supplier represents and warrants that:

- 3.1.1 in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established;
- 3.1.2 it has notified the Authority in writing of any Tax Non-Compliance it is involved in; and
- 3.1.3 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue and the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the Effective Date.

3.2. If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 0, 3.1.1 and/or 0 has been breached, is untrue, or is misleading, it shall immediately notify the

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

3.3. In the event that the warranty given by the Supplier pursuant to Clause 3.1.1 is materially untrue, the Authority shall be entitled to terminate the Agreement pursuant to the Call-Off clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

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

4.1 All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

4.2 To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.

4.3. The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Authority, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.

4.4. If, at any point during the Term, there is Tax Non-Compliance, the Supplier shall:

4.4.1. notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

4.4.2. promptly provide to the Authority:

**(a)** details of the steps which the Supplier is taking to resolve the Tax Non Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

**(b)** such other information in relation to the Tax Non Compliance as the Authority may reasonably require.

4.5. The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5)

Working Days before the date upon which the Tax or other liability is payable by the Authority.

4.6. Upon the Authority's request, the Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.

4.7. If the Supplier:

4.7.1. fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this may be a material breach of the Agreement;

4.7.2. fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Authority that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or

4.7.3. fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Authority are acceptable this shall be a material breach of the Agreement;

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

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

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

**5.1** Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor

and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract (“**Prohibited Transactions**”). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties’ business.

- 5.2** The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
  
- 5.3** In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.
  
- 5.4** Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause

**6. N/A**

**7 - Data Protection and off-shoring (*Not applicable to this call off order*)**

7.1 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

7.1.1 not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

(a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;

(b) the Data Subject has enforceable rights and effective legal remedies;

(c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavors to assist the Controller in meeting its obligations); and

(d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

**“Data Protection Legislation”** (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;

**“Controller”, “Processor”, “Data Subject”,** take the meaning given in the GDPR;

**“GDPR”** the General Data Protection Regulation (Regulation (EU) 2016/679);

**“Personal Data”** has the meaning given in the GDPR;

### **Security Requirements**

7.1 The Supplier shall comply with the security management plan set out at (“Security Management Plan”) and the security policy identified as such within the Security Management Plan (“Security Policy”).

7.2 The Buyer shall notify the Supplier of any changes or proposed changes to the Security Policy.

### **8 - Official Secrets Acts, Commissioners for Revenue and Customs Act 2005 and related Legislation**

8.1 The Supplier shall comply with, and shall ensure that it’s Supplier Personnel comply with:

8.1.1 the provisions of the Official Secrets Acts 1911 to 1989;

8.1.2 the obligations set out in Section 182 of the Finance Act 1989 and Section 18 of the Commissioners for Revenue and Customs Act 2005 to maintain the confidentiality of Buyer Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Buyer) a breach of the aforesaid obligations may lead to a prosecution under Section 182 of the Finance Act 1989 and/or Section 19 of the Commissioners for Revenue and Customs Act 2005; and

8.1.3 Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Buyer) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

8.2 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel in writing of the obligations upon Supplier Personnel set out in Clause 8.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.

8.3 The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Buyer Data sign (or have previously signed) a declaration, in a form acceptable to the Buyer, acknowledging that they understand and have been informed about the application and effect of Section 18 and 19 of the Commissioners for Revenue and Customs Act 2005. The Supplier shall provide a copy of each such signed declaration to the Buyer upon demand.

8.4 In the event that the Supplier or the Supplier Personnel fail to comply with this clause, the Buyer reserves the right to terminate the Agreement.

**“Buyer Data”**

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
  - i. supplied to the Supplier by or on behalf of the Buyer; and/or
  - ii. which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Buyer is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified.

**“Personal Data”** has the meaning given in the General Data Protection Regulation (Regulation (EU) 2016/679).

### **9 - Confidentiality, Transparency and Publicity**

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

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

9.1.2 use the Buyer’s name or brand in any promotion or marketing or announcement of orders,

except with the prior written consent of the Buyer.

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

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

9.4 The Supplier shall assist and cooperate with the Buyer to enable the Buyer to publish this Agreement.

### **10 - Compliance**

10.1 The Supplier shall:

10.1.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Buyer’s equality and diversity policy as provided to the Supplier from time to time; and

10.1.2 take all reasonable steps to secure the observance of Clause 10.1.1 by all Supplier Personnel.

	<p>10.2 The Supplier shall supply the Services in accordance with the Buyer’s environmental policy as provided to the Supplier from time to time.</p> <p>10.3 In performing its obligations under the Agreement, the Supplier shall;</p> <p>(a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015;</p> <p>(b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015; and</p> <p>(c) notify the Buyer as soon as it becomes aware, and in any event within five (5) working days, of any actual or suspected breach of its obligations under Clause 10.3(a) and/ or (b) including details of the breach and the mitigation action it has taken or intends to take in order to:</p> <p>(i) remedy the breach; and</p> <p>(ii) ensure future compliance with Clause 10.3(a) and (b).</p> <p>10.4 If the Supplier fails to comply (or if the Buyer receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clause 10.3 then this shall allow the Buyer to terminate the Agreement.</p>
<b>Public Services Network (PSN):</b>	N/A
<b>Personal Data and Data Subjects:</b>	N/A



## Schedule 1 – Services

This section provides background information as part of an initial introduction, an overview of the services to be provided, scope information for each service, details of the delivery management approach, service capacity, and the schedule, milestones and deliverables.

A high level overview has been added as Appendix.

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### **1.1 Introduction**

The HMRC Securing Our Technical Future (SoTF) Programme will address technical debt in the existing technology landscape, drive cloud adoption and the migration of services hosted in current data centres to a cloud platform and undertake the data centre build and migration of remaining services to Crown Hosting to support exit of existing data centres by June 2022. The programme offers an opportunity for HMRC to modernise hosting services, address legacy supportability issues and deliver the operational and cost efficiencies associated with cloud services.

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### **1.2 Overview of Services**

The Plan and Control Service will provide programme leadership support, management controls and governance services required to deliver the objectives of the Securing our Technical Future programme.

Plan and Control services will comprise the following:

1. Integrated Plan Management
2. Risk and Issue Management
3. Dependency Management
4. Reporting
5. L3 Preparation Team Support

Plan and Control operates alongside PMO and other programme services, which are separate to Plan and Control including benefits management, resourcing, communications, technical design, test strategy, service transition and programme stakeholder management.

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### **1.3 Scope of Services**

The following section outlines the purpose, scope, inputs, work products, roles and support requirements for each of the Plan and Control services.

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#### **1.3.1 Integrated Plan Management**

Integrated Plan Management is the overarching planning across migration workstreams. It includes the coordination and reporting of overall migration planning status to support programme leadership and governance. It is based upon individual migration execution and delivery plans provided by each respective workstream.

The Supplier will provide Integrated Plan Management support in respect to the following:

- Providing central control and management of programme plan
- Integrating schedules across the programme to identify critical programme dependencies
- Building and maintaining a visual High-Level Programme Plan (Level 1, Plan on a Page or POAP) for key stakeholders that reflect the rolled up detailed plans, key external dependencies/restrictions, etc.
- Building and maintaining an integrated Programme Plan (Level 2) to support day-to-day programme management
- Facilitating dependency mapping between separate projects within the programme (eg dependencies from migration projects onto cloud services)

The Buyer will be responsible for providing the following inputs:

- Individual detailed project plans (level 3)

The Supplier will prepare the following outputs:

- Programme Plan on a Page (level 1)
- Integrated level 2 plan
- Programme interdependency map and tracker

To support the above activities the Buyer will be required to:

- Provide copies of all individual migration workstream project and plans and reports on a weekly basis (or as agreed through governance process), confirming receipt from Buyer third-parties, such that these may form part of overall migration planning provided by Plan and Control.
- Provide PMO governance and supporting project/programme control processes.
  - Enforce planning and governance standards agreed within Plan and Control with stakeholders, including third parties. The Buyer and third parties will be responsible for providing quality planning information for their respective workstream, prepared with

input from knowledgeable specialists in their respective planning areas and enforcing plan standards across the programme

- Performing regular reviews of level 3 plans to confirm accurate status recorded
- Updated level 3 plans (by workstreams) with embedded risks and issues
- Migration assurance review information (Project Maturity Assessments)

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### **1.3.2 Risk and Issue Management**

Risk and Issue Management is the overarching summary of key programme risks, enabling response to risks and issues that could impact the outcome of the programme and to support programme leadership and governance through escalation. It is based upon project risk information provided by each project, combined with an assessment of risk areas as determined by Plan and Control.

The Supplier will provide Risk and Issue Management leadership support in respect to the following:

- Providing central control for management and tracking of programme risks and issues
- Performing regular reviews with project/programme managers to confirm accurate updates and/or status recorded against programme risks and issues
- Actively reviewing and tracking open programme issues, and risks that are rated Red with High Priority
- Review programme risk and issue mitigation plans with the appropriate programme/project manager and regular progress updates sought to validate appropriate actions are being undertaken
- Implement standard approach to risk and issue management across the programme, enforcing a proactive approach

The Buyer will be responsible for providing the following inputs:

- Risk and Issue log; associated mitigation plans

The Supplier will provide leadership support to the Buyer PMO in preparing the following work products:

- Programme Risk and Issue log
- Summary report of priority items that require treatment plan/decisions
- List of risks and issues that require additional mitigation (identifying where this requires additional resource or funding)
- List of risks and issues that require to be added to level project 3 plans
- Risks and Issues updated to map against project deliverables
- Risks and issues updated so that descriptions are coherent, accurate and related to relevant programme

The Supplier will work within the capacity of the resource available and the Buyer will remain responsible for risk and dependency process management within the PMO.

To support the above activities the Buyer will be required to:

- Provide the Supplier with access to risk and issue logs and repositories including mitigation and treatment plans for each project, such that individual project risks may be considered by Plan and Control as part of the overall reporting. The Buyer will provide a standard risk assessment framework (or will agree risk-level definitions with the Supplier) which will be applied to project and programme risks.
- Share any risks and issues declared by external stakeholders and/or delivery partners and the Buyer will support risk and issue resolution steps required. All parties including the Buyer and Supplier will be responsible for the identification of project and programme risks. Where risk and issues are identified, the Buyer will provide escalation support to Plan and Control, including decision making and support to enforce stakeholder and third party responses.
- Perform regular reviews with project/programme managers to confirm accurate updates and/or status recorded for project risks and issues and verifying that high rated project risks and issues are taken into consideration within each plan. This should also include ensuring a list of risks and issues are added to level project 3 plans, mapped against project deliverables and updated so that descriptions are coherent, accurate and related to relevant programme.
- Liaise with finance planners to confirm appropriate funding is set aside and/or allocated to mitigating issues and risks.

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### **1.3.3 Dependency Management**

Dependency Management is the tracking and management of dependencies across projects and for the programme, where these dependencies relate to delivery of the programme plan. It is based upon individual project dependency information provided by each respective workstream and SoTF stakeholders that will form the basis of a common dependency log.

The Supplier will support Integrated Plan Management (see 1.3.1) which will include facilitating programme level dependency mapping of plans and generate dependency map. Additional detailed activities for dependency management are to be undertaken by the Buyer and there is no resource provisioned for supporting dependencies.

The Buyer will be required to:

- Engage project managers to review and collate detailed project level dependency information, maintaining the dependency tracker and chasing dependencies to avert issues and/or delays.
- Provide project level dependency information for plan management and reporting.
- Maintain responsibility for the commercial management of third party contractual dependencies and provide details of key dependencies and advise the Supplier of any

misalignment between delivery dependency requirements and contractual obligations on Buyer third parties.

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#### ***1.3.4 Migration Assurance Support (to be carried out by the Buyer)***

The services for migration and delivery assurance support are excluded from this Call-Off Contract and are to be provided by the Buyer. This includes the Buyer undertaking necessary activities to provide overall assurance assessment of architecture, design, migration methods, services and execution.

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#### ***1.3.5 Change Management (to be carried out by the Buyer)***

Change Management considers the impact of change events on migration planning at the overall programme level. It enables a wider assessment of change impact across the migration workstreams, each of which will be responsible for their individual change assessment. PMO will execute and manage the change process governance, coordinate change in respect to the overall programme delivery plan and risk and maintain the scope baseline. Plan and Control will participate in change processes and governance, but will not be responsible for Change Management within the scope of this Call-Off Contract.

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### **1.3.6 Reporting**

1.3.6.1 Reporting support covers providing migration and SOTF planning, dependency, risk and other summary reporting relating to Plan and Control activities as input to the wider programme reporting governance provided by PMO. It will support programme management and leadership with key information summarised from the execution of Plan and Control services including escalations, where required.

1.3.6.2 The Supplier will provide Reporting support in respect to the following:

- a. Creating and maintaining a programme dashboard to provide an accurate status of the programme completion and performance.
- b. Compiling a weekly Plan and Control report detailing progress on all active project areas.
- c. Run weekly Plan and Control checkpoints to review L3 project reports.
- d. Compile and submit monthly Portfolio Management Board reports.
- e. Run monthly Portfolio Board meetings.
- f. Compile and submit monthly Programme and External Programme Board reports.
- g. Provide executive summary information of key programme risks, issues, blockers and escalations requiring programme leadership support as determined from Plan and Control activities.

1.3.6.3 The Buyer will be responsible for providing the following inputs:

- a. L3 weekly project reports to be submitted in the required format which have been assured and cross checked in respect of project plans and RAID. RAG status per all in scope services should accompany the weekly reports.
- b. Monthly Portfolio Board and Programme Board reports.

1.3.6.6 To support the above activities the Buyer will be required to:

- Maintain a PMO programme reporting governance cycle and provide a reporting template for Plan and Control input. This reporting template is to be reviewed and agreed.
- Share reporting from other workstreams with Plan and Control.

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### **1.3.7 L3 Preparation Team**

1.3.7.1 As a proactive means to support individual workstreams in complying with the planning, risk and other service requirements of Plan and Control and to drive quality across migration teams, a L3 Preparation Lead will advise and engage directly with owners of the L3 plans to provide support. This is a restricted capacity and support capability to accelerate compliance, responsibilities for plans and other products will remain with the respective workstream owners.

1.3.7.2 The Supplier will provide L3 Preparation Support in respect to the following:

- Providing a dedicated support contact to engage in areas of delivery where there have been identified gaps or additional support is required to strengthen planning and delivery to support the programme. This individual will work with the project delivery team, within the available capacity of the role, to stabilise and structure the project to support the wider migration programme. The individual will advise and take an active participative role in helping the delivery teams in addressing issues.

1.3.7.3 To support the above activities the Buyer will be required to:

- Provide support for any commercial resolution, third party management and to support recommendations of the L3 Preparation Team to stabilise delivery activities.

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### **1.4 Service Capacity**

1.4.1 The work undertaken by Plan and Control will be on a Fixed Price Fixed Capacity basis and comprise of 7 FTE for over the total duration of 11 months.

1.4.2 The estimates for migration Plan and Control support are provided based on the scope of the SoTF programme at the time of preparation (as defined in the business case "SoTF business\_case\_v1.3"). In the event that the scope of migration varies from the originating programme scope to the extent that this increases the range of support or demand on Plan and Control then this may require review of support requirements and capacity.

1.4.3 Work undertaken by Plan and Control will be managed through prioritisation and agreement with the Buyer through governance reviews and within the fixed capacity team model. Any change requiring additional resource beyond the Supplier's fixed capacity, will be treated as per the Variation process as defined in clause 32 under this Call-Off Contract.

## 1.5 Schedule, Milestones and Deliverables

1.5.1 Plan and Control services are to be provided for a total of 11 months.

1.5.2 These services will be delivered on the basis of eight (8) cycles providing a regular joint governance model that will allow for the frequent review of activities and prioritisation of work.

1.5.3 Each cycle and end of cycle milestone will comprise production of the following deliverables:

- An End of Cycle Report (Contract Checkpoint Document) comprising the work undertaken by Plan and Control during the cycle
- A Backlog of Plan and Control activities completed and prioritised for the next cycle
- A consolidated Summary of Plan and Control Work Products completed as per each scope area

1.5.4 There will be a joint governance review session held at the end of each cycle. This will confirm agreement of the Report and Backlog priorities for the next cycle. The acceptance criteria for the deliverables provided is as follows:

- The Supplier will have issued and stored within the Buyer repository (as agreed as part of delivery governance) the products as set out in 1.5.3.
- These will provide clear details of the work undertaken by the Supplier in respect to the 5 areas of Plan and Control services, with summary information and links to the location of work products produced during the course of the cycle.
- The backlog will be maintained and demonstrate that Plan and Control teams are working to agreed priority areas, where these are separate to the standard governance products.

1.5.5 There will be 8 delivery and payment milestones which occur at the end of each 6-week cycle for Cycles 1-7 (with Cycle 8 based on a reduced 2-week cycle). As a result of the duration of the work, all governance at conclusion of each milestone are required to be minimal in order to allow the team sufficient focus on work activities being undertaken. As such, the deliverables provided at each milestone will include summary level information and may reference, but will not duplicate, information otherwise provided through regular weekly and work area delivery.

1.5.6 The dates for cycles are shown in the diagram below.

Cycle	Cycle 1						Cycle 2						Cycle 3						Cycle 4						Cycle 5						Cycle 6						Cycle 7						Cycle 8			
Week No.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44		
w/c	06/01	13/01	20/01	27/01	03/02	10/02	17/02	24/02	02/03	09/03	16/03	23/03	30/03	06/04	13/04	20/04	27/04	04/05	11/05	18/05	25/05	01/06	08/06	15/06	22/06	29/06	06/07	13/07	20/07	27/07	03/08	10/08	17/08	24/08	31/08	07/09	14/09	21/09	28/09	05/10	12/10	19/10	26/10	02/11		
							M1						M2						M3						M4						M5						M6						M7		M8	
							14/02						27/03						08/05						19/06						31/07						11/09						23/10		05/11	

1.5.7 In the course of weekly governance and Plan and Control activities, the Buyer will receive work products in each of the specified areas and the Supplier will provide reporting. If the Buyer has reason to identify concerns with any activities being undertaken within the scope of this service these should be raised to the Buyer Principal Contact at the earliest opportunity such that these can be addressed. The Supplier is to escalate through the reporting governance cycle any issues that would preclude delivery of the above services to the anticipated level of quality or completeness.

1.5.8 Milestones will be approved based on the following process: For each Milestone, the Supplier will submit a Contract Checkpoint Document outlining the details of the Milestone completion and evidence with request for approval, for the Buyer to respond within 3 days of submission. Where the Milestone is agreed to be complete, the Buyer will confirm by means of approving the Contract Checkpoint Document. If a Milestone is not agreed, the Buyer will provide a reason for rejection and both parties will work to determine a resolution approach within 7 days. Should this not be concluded to the satisfaction of both parties, this will be escalated to the Principal Contacts for the Buyer and Supplier.

## **Schedule 2 - Call-Off Contract charges**

**Redacted**

## Part B - Terms and conditions

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

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

### 2. Incorporation of terms

- 2.1 The following Framework Agreement clauses (including clauses and defined terms referenced by them) as modified under clause 2.2 are incorporated as separate Call-Off Contract obligations and apply between the Supplier and the Buyer:
  - 4.1 (Warranties and representations)
  - 4.2 to 4.7 (Liability)
  - 4.11 to 4.12 (IR35)
  - 5.4 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)
  - 8.4 (Relationship)
  - 8.7 to 8.9 (Entire agreement)
  - 8.10 (Law and jurisdiction)
  - 8.11 to 8.12 (Legislative change)
  - 8.13 to 8.17 (Bribery and corruption)
  - 8.18 to 8.27 (Freedom of Information Act)
  - 8.28 to 8.29 (Promoting tax compliance)
  - 8.30 to 8.31 (Official Secrets Act)
  - 8.32 to 8.35 (Transfer and subcontracting)
  - 8.38 to 8.41 (Complaints handling and resolution)

- 8.42 to 8.48 (Conflicts of interest and ethical walls)
- 8.49 to 8.51 (Publicity and branding)
- 8.52 to 8.54 (Equality and diversity)
- 8.57 to 8.58 (data protection)
- 8.62 to 8.63 (Severability)
- 8.64 to 8.77 (Managing disputes and Mediation)
- 8.78 to 8.86 (Confidentiality)
- 8.87 to 8.88 (Waiver and cumulative remedies)
- 8.89 to 8.99 (Corporate Social Responsibility)
- paragraphs 1 to 10 of the Framework Agreement glossary and interpretations
- any audit provisions from the Framework Agreement set out by the Buyer in the Order Form

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

- a reference to the 'Framework Agreement' will be a reference to the 'Call-Off Contract'
- a reference to 'CCS' will be a reference to 'the Buyer'
- a reference to the 'Parties' and a 'Party' will be a reference to the Buyer and Supplier as Parties under this Call-Off Contract

2.3 The 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:

- be appropriately experienced, qualified and trained to supply the Services
  - apply all due skill, care and diligence in faithfully performing those duties
  - obey all lawful instructions and reasonable directions of the Buyer and provide the Services to the reasonable satisfaction of the Buyer
  - respond to any enquiries about the Services as soon as reasonably possible
  - complete any necessary Supplier Staff vetting as specified by the Buyer
- 4.2 The Supplier must retain overall control of the Supplier Staff so that they are not considered to be employees, workers, agents or contractors of the Buyer.
- 4.3 The Supplier may substitute any Supplier Staff as long as they have the equivalent experience and qualifications to the substituted staff member.
- 4.4 The Buyer may conduct IR35 Assessments using the ESI tool to assess whether the Supplier's engagement under the Call-Off Contract is Inside or Outside IR35.
- 4.5 The Buyer may End this Call-Off Contract for Material Breach if the Supplier is delivering the Services Inside IR35.
- 4.6 The Buyer may need the Supplier to complete an Indicative Test using the ESI tool before the Start Date or at any time during the provision of Services to provide a preliminary view of whether the Services are being delivered Inside or Outside IR35. If the Supplier has completed the Indicative Test, it must download and provide a copy of the PDF with the 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:
- have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party
  - are confident that they can fulfil their obligations according to the Call-Off Contract terms
  - have raised all due diligence questions before signing the Call-Off Contract
  - have entered into the Call-Off Contract relying on its own due diligence

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

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

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

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

1998.

- 7.11 If there's an invoice dispute, the Buyer must pay the undisputed amount and return the invoice within 10 Working Days of the invoice date. The Buyer will provide a covering statement with proposed amendments and the reason for any non-payment. The Supplier must notify the Buyer within 10 Working Days of receipt of the returned invoice if it accepts the amendments. If it does then the Supplier must provide a replacement valid invoice with the response.
- 7.12 Due to the nature of G-Cloud Services it isn't possible in a static Order Form to exactly define the consumption of services over the duration of the Call-Off Contract. The Supplier agrees that the Buyer's volumes indicated in the Order Form are indicative only.

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

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

## **9. Insurance**

- 9.1 The Supplier will maintain the insurances required by the Buyer including those in this clause.
- 9.2 The Supplier will ensure that:
- during this Call-Off Contract, Subcontractors hold third-party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including the claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £1,000,000
  - the third-party public and products liability insurance contains an 'indemnity to principals' clause for the Buyer's benefit
  - all agents and professional consultants involved in the Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date
  - all agents and professional consultants involved in the Services hold employers liability insurance (except where exempt under Law) to a minimum indemnity of £5,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date
- 9.3 If requested by the Buyer, the Supplier will obtain additional insurance policies, or extend existing policies bought under the Framework Agreement.

- 9.4 If requested by the Buyer, the Supplier will provide the following to show compliance with this clause:
- a broker's verification of insurance
  - receipts for the insurance premium
  - evidence of payment of the latest premiums due
- 9.5 Insurance will not relieve the Supplier of any liabilities under the Framework Agreement or this Call-Off Contract and the Supplier will:
- take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers
  - promptly notify the insurers in writing of any relevant material fact under any insurances
  - hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of insurance
- 9.6 The Supplier will not do or omit to do anything, which would destroy or impair the legal validity of the insurance.
- 9.7 The Supplier will notify CCS and the Buyer as soon as possible if any insurance policies have been, or are due to be, cancelled, suspended, Ended or not renewed.
- 9.8 The Supplier will be liable for the payment of any:
- premiums, which it will pay promptly
  - excess or deductibles and will not be entitled to recover this from the Buyer

## **10. Confidentiality**

- 10.1 Subject to clause 24.1 the Supplier must during and after the Term keep the Buyer fully indemnified against all Losses, damages, costs or expenses and other liabilities (including legal fees) arising from any breach of the Supplier's obligations under the Data Protection Legislation or under incorporated Framework Agreement clauses 8.78 to 8.86. 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:
- rights granted to the Buyer under this Call-Off Contract
  - Supplier's performance of the Services
  - use by the Buyer of the Services
- 11.6 If an IPR Claim is made, or is likely to be made, the Supplier will immediately notify the Buyer in writing and must at its own expense after written approval from the Buyer, either:
- modify the relevant part of the Services without reducing its functionality or performance
  - substitute Services of equivalent functionality and performance, to avoid the infringement or the alleged infringement, as long as there is no additional cost or burden to the Buyer
  - buy a licence to use and supply the Services which are the subject of the alleged infringement, on terms acceptable to the Buyer
- 11.7 Clause 11.5 will not apply if the IPR Claim is from:
- the use of data supplied by the Buyer which the Supplier isn't required to verify under this Call-Off Contract
  - other material provided by the Buyer necessary for the Services
- 11.8 If the Supplier does not comply with clauses 11.2 to 11.6, the Buyer may End this Call-Off Contract for Material Breach. The Supplier will, on demand, refund the Buyer all the money paid for the affected Services.

## **12. Protection of information**

- 12.1 The Supplier must:
- comply with the Buyer's written instructions and this Call-Off Contract when Processing Buyer Personal Data

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

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

- providing the Buyer with full details of the complaint or request
- complying with a data access request within the timescales in the Data Protection Legislation and following the Buyer's instructions
- providing the Buyer with any Buyer Personal Data it holds about a Data Subject (within the timescales required by the Buyer)
- providing the Buyer with any information requested by the Data Subject

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

### 13. Buyer data

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

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

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

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

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

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

- the principles in the Security Policy Framework at <https://www.gov.uk/government/publications/security-policy-framework> and the Government Security Classification policy at <https://www.gov.uk/government/publications/government-security-classifications>
- guidance issued by the Centre for Protection of National Infrastructure on Risk Management at <https://www.cpni.gov.uk/content/adopt-risk-management-approach> and Protection of Sensitive Information and Assets at

<https://www.cpni.gov.uk/protection-sensitive-information-and-assets>

- the National Cyber Security Centre's (NCSC) information risk management guidance, available at <https://www.ncsc.gov.uk/collection/risk-management-collection>
- government best practice in the design and implementation of system components, including network principles, security design principles for digital services and the secure email blueprint, available at <https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>
- the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance at <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>

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

## **14. Standards and quality**

- 14.1 The Supplier will comply with any standards in this Call-Off Contract, the Order Form and the Framework Agreement.
- 14.2 The Supplier will deliver the Services in a way that enables the Buyer to comply with its obligations under the Technology Code of Practice, which is available at <https://www.gov.uk/government/publications/technology-code-of-practice/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

Buyer considers there is a risk to the PSN's security and the Supplier agrees that the Buyer and the PSN Buyer 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:
- Supplier's expense if the Malicious Software originates from the Supplier software or the Service Data while the Service Data was under the control of the Supplier, unless the Supplier can demonstrate that it was already present, not quarantined or identified by the Buyer when provided
  - Buyer's expense if the Malicious Software originates from the Buyer software or the Service Data, while the Service Data was under the Buyer's control
- 16.5 The Supplier will immediately notify CCS of any breach of security of CCS's Confidential Information (and the Buyer of any Buyer Confidential Information breach). Where the breach occurred because of a Supplier Default, the Supplier will recover the CCS and Buyer Confidential Information however it may be recorded.

- 16.6 Any system development by the Supplier should also comply with the government's '10 Steps to Cyber Security' guidance, available at <https://www.ncsc.gov.uk/guidance/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:
- an executed Guarantee in the form at Schedule 5
  - a certified copy of the passed resolution or board minutes of the guarantor approving the execution of the Guarantee

## 18. Ending the Call-Off Contract

- 18.1 The Buyer can End this Call-Off Contract at any time by giving 30 days' written notice to the Supplier, unless a shorter period is specified in the Order Form. The Supplier's obligation to provide the Services will end on the date in the notice.
- 18.2 The Parties agree that the:
- Buyer's right to End the Call-Off Contract under clause 18.1 is reasonable considering the type of cloud Service being provided
  - Call-Off Contract Charges paid during the notice period is reasonable compensation and covers all the Supplier's avoidable costs or Losses
- 18.3 Subject to clause 24 (Liability), if the Buyer Ends this Call-Off Contract under clause 18.1, it will indemnify the Supplier against any commitments, liabilities or expenditure which result in any unavoidable Loss by the Supplier, provided that the Supplier takes all reasonable steps to mitigate the Loss. If the Supplier has insurance, the Supplier will reduce its unavoidable costs by any insurance sums available. The Supplier will submit a fully itemised and costed list of the unavoidable Loss with supporting evidence.
- 18.4 The Buyer will have the right to End this Call-Off Contract at any time with immediate effect by written notice to the Supplier if either the Supplier commits:
- a Supplier Default and if the Supplier Default cannot, in the reasonable opinion of the Buyer, be remedied

- any fraud

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

- the other Party commits a Material Breach of any term of this Call-Off Contract (other than failure to pay any amounts due) and, if that breach is remediable, fails to remedy it within 15 Working Days of being notified in writing to do so
- an Insolvency Event of the other Party happens
- the other Party ceases or threatens to cease to carry on the whole or any material part of its business

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

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

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

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

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

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

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

- any rights, remedies or obligations accrued before its Ending or expiration
- the right of either Party to recover any amount outstanding at the time of Ending or expiry
- the continuing rights, remedies or obligations of the Buyer or the Supplier under clauses 7 (Payment, VAT and Call-Off Contract charges); 8 (Recovery of sums due and right of set-off); 9 (Insurance); 10 (Confidentiality); 11 (Intellectual property rights); 12 (Protection of information); 13 (Buyer data); 19 (Consequences of suspension, ending and expiry); 24 (Liability); incorporated Framework Agreement clauses: 4.2 to 4.7 (Liability); 8.42 to 8.48 (Conflicts of interest and ethical walls) and 8.87 to 8.88 (Waiver and cumulative remedies)

- any other provision of the Framework Agreement or this Call-Off Contract which expressly or by implication is in force even if it Ends or expires

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

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

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

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

## 20. Notices

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

<b>Manner of delivery</b>	<b>Deemed time of delivery</b>	<b>Proof of service</b>
Email	9am on the first Working Day after sending	Sent by pdf to the correct email address without getting an error message

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

## 21. Exit plan

- 21.1 The Supplier must provide an exit plan in its Application which ensures continuity of service and the Supplier will follow it.
- 21.2 When requested, the Supplier will help the Buyer to migrate the Services to a replacement supplier in line with the exit plan. This will be at the Supplier's own expense if the Call-Off Contract Ended before the Expiry Date due to Supplier cause.
- 21.3 If the Buyer has reserved the right in the Order Form to extend the Call-Off Contract Term beyond 24 months the Supplier must provide the Buyer with an additional exit plan for approval by the Buyer at least 8 weeks before the 18 month anniversary of the Start Date.
- 21.4 The Supplier must ensure that the additional exit plan clearly sets out the Supplier's methodology for achieving an orderly transition of the Services from the Supplier to the Buyer or its replacement Supplier at the expiry of the proposed extension period or if the contract Ends during that period.
- 21.5 Before submitting the additional exit plan to the Buyer for approval, the Supplier will work with the Buyer to ensure that the additional exit plan is aligned with the Buyer's own exit plan and strategy.
- 21.6 The Supplier acknowledges that the Buyer's right to extend the Term beyond 24 months is subject to the Buyer's own governance process. Where the Buyer is a central government department, this includes the need to obtain approval from GDS under the Spend Controls process. The approval to extend will only be given if the Buyer can clearly demonstrate that the Supplier's additional exit plan ensures that:
- the Buyer will be able to transfer the Services to a replacement supplier before the expiry or Ending of the extension period on terms that are commercially reasonable and acceptable to the Buyer
  - there will be no adverse impact on service continuity
  - there is no vendor lock-in to the Supplier's Service at exit
  - it enables the Buyer to meet its obligations under the Technology Code Of Practice
- 21.7 If approval is obtained by the Buyer to extend the Term, then the Supplier will comply with its obligations in the additional exit plan.
- 21.8 The additional exit plan must set out full details of timescales, activities and roles and responsibilities of the Parties for:
- the transfer to the Buyer of any technical information, instructions, manuals and code reasonably required by the Buyer to enable a smooth migration from the Supplier
  - the strategy for exportation and migration of Buyer Data from the Supplier system to

the Buyer or a replacement supplier, including conversion to open standards or other standards required by the Buyer

- the transfer of Project Specific IPR items and other Buyer customisations, configurations and databases to the Buyer or a replacement supplier
- the testing and assurance strategy for exported Buyer Data
- if relevant, TUPE-related activity to comply with the TUPE regulations
- any other activities and information which is reasonably required to ensure continuity of Service during the exit period and an orderly transition

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

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

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

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

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

## **23. Force majeure**

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

## **24. Liability**

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

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

## **25. Premises**

- 25.1 If either Party uses the other Party's premises, that Party is liable for all loss or damage it causes to the premises. It is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.
- 25.2 The Supplier will use the Buyer's premises solely for the performance of its obligations under this Call-Off Contract.
- 25.3 The Supplier will vacate the Buyer's premises when the Call-Off Contract Ends or expires.
- 25.4 This clause does not create a tenancy or exclusive right of occupation.
- 25.5 While on the Buyer's premises, the Supplier will:
- comply with any security requirements at the premises and not do anything to weaken the security of the premises
  - comply with Buyer requirements for the conduct of personnel
  - comply with any health and safety measures implemented by the Buyer
  - immediately notify the Buyer of any incident on the premises that causes any damage to Property which could cause personal injury
- 25.6 The Supplier will ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Buyer on request.

## **26. Equipment**

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

- 26.2 Any Equipment brought onto the premises will be at the Supplier's own risk and the Buyer will have no liability for any loss of, or damage to, any Equipment.
- 26.3 When the Call-Off Contract Ends or expires, the Supplier will remove the Equipment and any other materials leaving the premises in a safe and clean condition.

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

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

## **28. Environmental requirements**

- 28.1 The Buyer will provide a copy of its environmental policy to the Supplier on request, which the Supplier will comply with.
- 28.2 The Supplier must provide reasonable support to enable Buyers to work in an environmentally friendly way, for example by helping them recycle or lower their carbon footprint.

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

- 29.1 The Supplier agrees that if the Employment Regulations apply to this Call-Off Contract on the Start Date then it must comply with its obligations under the Employment Regulations and (if applicable) New Fair Deal (including entering into an Admission Agreement) and will indemnify the Buyer or any Former Supplier for any loss arising from any failure to comply.
- 29.2 Twelve months before this Call-Off Contract expires, or after the Buyer has given notice to End it, and within 28 days of the Buyer's request, the Supplier will fully and accurately disclose to the Buyer all staff information including, but not limited to, the total number of staff assigned for the purposes of TUPE to the Services. For each person identified the Supplier must provide details of:
- the activities they perform
  - age
  - start date
  - place of work

- notice period
- redundancy payment entitlement
- salary, benefits and pension entitlements
- employment status
- identity of employer
- working arrangements
- outstanding liabilities
- sickness absence
- copies of all relevant employment contracts and related documents
- all information required under regulation 11 of TUPE or as reasonably requested by the Buyer

29.3 The Supplier warrants the accuracy of the information provided under this TUPE clause and will notify the Buyer of any changes to the amended information as soon as reasonably possible. The Supplier will permit the Buyer to use and disclose the information to any prospective Replacement Supplier.

29.4 In the 12 months before the expiry of this Call-Off Contract, the Supplier will not change the identity and number of staff assigned to the Services (unless reasonably requested by the Buyer) or their terms and conditions, other than in the ordinary course of business.

29.5 The Supplier will co-operate with the re-tendering of this Call-Off Contract by allowing the Replacement Supplier to communicate with and meet the affected employees or their representatives.

29.6 The Supplier will indemnify the Buyer or any Replacement Supplier for all Loss arising from both:

- its failure to comply with the provisions of this clause
- any claim by any employee or person claiming to be an employee (or their employee representative) of the Supplier which arises or is alleged to arise from any act or omission by the Supplier on or before the date of the Relevant Transfer

29.7 The provisions of this clause apply during the Term of this Call-Off Contract and indefinitely after it Ends or expires.

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

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

- 30.1 The Buyer may require the Supplier to provide Additional Services. The Buyer doesn't have to buy any Additional Services from the Supplier and can buy services that are the same as or similar to the Additional Services from any third party.
- 30.2 If reasonably requested to do so by the Buyer in the Order Form, the Supplier must provide and monitor performance of the Additional Services using an Implementation Plan.

## **31. Collaboration**

- 31.1 If the Buyer has specified in the Order Form that it requires the Supplier to enter into a Collaboration Agreement, the Supplier must give the Buyer an executed Collaboration Agreement before the Start Date.
- 31.2 In addition to any obligations under the Collaboration Agreement, the Supplier must:
- work proactively and in good faith with each of the Buyer's contractors
  - co-operate and share information with the Buyer's contractors to enable the efficient operation of the Buyer's ICT services and G-Cloud Services

## **32. Variation process**

- 32.1 The Buyer can request in writing a change to this Call-Off Contract if it isn't a material change to the Framework Agreement/or this Call-Off Contract. Once implemented, it is called a Variation.
- 32.2 The Supplier must notify the Buyer immediately in writing of any proposed changes to their G-Cloud Services or their delivery by submitting a Variation request. This includes any changes in the Supplier's supply chain.
- 32.3 If Either Party can't agree to or provide the Variation, the Buyer may agree to continue performing its obligations under this Call-Off Contract without the Variation, or End this 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 8.57 and 8.58 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

8.57 and 8.58 are reproduced in this Call-Off Contract document at schedule 7

## Schedule 3 - Collaboration agreement

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

## Schedule 4 - Alternative clauses

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

## Schedule 5 - Guarantee

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

## 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>	Data, personal data and any information, which may include (but isn't limited to) any: <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</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: <ul style="list-style-type: none"> <li>i) (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time</li> <li>ii) (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to Processing of personal data and privacy;</li> <li>iii) (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 .</li> </ul>
<b>Data Subject</b>	Takes the meaning given in the GDPR
<b>Default</b>	Default is any:

	<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 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="http://tools.hmrc.gov.uk/esi">http://tools.hmrc.gov.uk/esi</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> </ul>

	<ul style="list-style-type: none"> <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 RM1557.11 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>	The General Data Protection Regulation (Regulation (EU) 2016/679).
<b>Good Industry Practice</b>	Standards, practices, methods and process conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar undertaking in the same or similar circumstances.
<b>Government Procurement Card</b>	The Government's preferred method of purchasing and payment for low value goods or services <a href="https://www.gov.uk/government/publications/government-procurement-card--2">https://www.gov.uk/government/publications/government-procurement-card--2</a> .
<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>	Can be:

	<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 applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.
<b>LED</b>	Law Enforcement Directive (EU) 2016/680.
<b>Loss</b>	All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and ' <b>Losses</b> ' will be interpreted accordingly.
<b>Lot</b>	Any of the 3 Lots specified in the ITT and Lots will be construed accordingly.
<b>Malicious Software</b>	Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software 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>	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: <ul style="list-style-type: none"> <li>● induce that person to perform improperly a relevant function or activity</li> <li>● reward that person for improper performance of a relevant function or activity</li> <li>● commit any offence: <ul style="list-style-type: none"> <li>○ under the Bribery Act 2010</li> <li>○ under legislation creating offences concerning Fraud</li> <li>○ at common Law concerning Fraud</li> <li>○ committing or attempting or conspiring to commit Fraud</li> </ul> </li> </ul>
<b>Project Specific IPRs</b>	Any intellectual property rights in items created or arising out of the performance by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call-Off Contract including databases, configurations, code, instructions, technical documentation and schema but not including the Supplier's Background IPRs.
<b>Property</b>	Assets and property including technical infrastructure, IPRs and equipment.
<b>Protective Measures</b>	Appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that

	availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
<b>PSN or Public Services Network</b>	The Public Services Network (PSN) is the Government's 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**

The Buyer agrees that no Buyer personal data that is subject to European General Data Protection Regulations (GDPR) requirements will be provided to the Supplier under this contract. In the event of a change, the Buyer will notify the Supplier in writing and a change request will be required.

The Buyer and Supplier will agree necessary contract amendments. As standard, the Buyer anticipates that the IBM Data Processing Addendum (DPA) at <http://ibm.com/dpa> will be required. Additionally, the Supplier and Buyer will need to agree on a DPA Exhibit (as described in the DPA). The DPA Exhibit and, if applicable, a custom services DPA amendment will be proposed to be added as an Appendix to this contract.

# Appendix

Redacted