

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

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## **Part A - Order Form**

|  |  |
| --- | --- |
| **Digital Marketplace service ID number:** | 195856166377116 |
| **Call-Off Contract reference:** | SR194014244 |
| **Call-Off Contract title:** | Online Learning Technology Licences |
| **Call-Off Contract description:** | Access Skillsoft’s ‘Percipio’ learning platform for an Authorized Audience of 400 over a 2 year period. |
| **Start date:** | 30/07/2019 |
| **Expiry date:** | 29/07/2021 |
| **Call-Off Contract value:** | £150,000 |
| **Charging method:** | BACS |
| **Purchase order number:** | Awaiting |

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.

|  |  |
| --- | --- |
| **From: the Buyer** | HMRC  REDACTED  Buyer’s main address:  HMRC Commercial Directorate  5th Floor West, Ralli Quays  3 Stanley Street  Salford  Greater Manchester  M60 9LA |
| **To: the Supplier** | Skillsoft UK Limited  REDACTED  Supplier’s registered address:  35 Great St Helen’s  London  EC3A 6AP  United Kingdom  Supplier’s principal office address:  5 Arlington Square  Bracknell  RG12 1WA  United Kingdom |
| **Together: the ‘Parties’** | |

### Principle contact details

|  |  |
| --- | --- |
| **For the Buyer:** | REDACTED |
| **For the Supplier:** | REDACTED |

### Call-Off Contract term

|  |  |
| --- | --- |
| **Start date:** | This Call-Off Contract Starts on 30/07/2019 and is valid for 24 months. |
| **Ending (termination):** | The notice period needed for Ending the Call-Off Contract is at least 30 Working Days from the date of written notice for undisputed sums or at least 90 days from the date of written notice for Ending without cause. |
| **Extension period:** | Not applicable |

### 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.

|  |  |
| --- | --- |
| **G-Cloud lot:** | This Call-Off Contract is for the provision of Services under:  Lot 2 - Cloud software |
| **G-Cloud services required:** | The Services to be provided by the Supplier under the above Lot are listed in Schedule 1 - Services and outlined below:   * Access to the ‘Percipio Technology & Developer Expert’ product package for an Authorized Audience of 400 as described at <https://www.digitalmarketplace.service.gov.uk/g-cloud/services/195856166377116> |
| **Location:** | The Services will be delivered via the world wide web to any sites of the Buyer from which the Buyer wishes to access the Services, including the Buyer’s main premises (address given above), which will be deemed the delivery address. |
| **Quality standards:** | The quality standards required for this Call-Off Contract are as per published Service Definition document. |
| **Technical standards:** | The technical standards required for this Call-Off Contract are as per published Service Definition document. |
| **Service level agreement:** | The service level and availability criteria required for this Call-Off Contract are located in the Service Definition document and Terms and Conditions.  Skillsoft T&Cs |
| **Limit on Parties’ liability:** | The annual total liability of either party for all Property defaults will not exceed the charges payable by the Buyer to the supplier during the call-off contract term.  The annual total liability for Buyer Data defaults will not exceed the charges payable by the buyer to the supplier during the Call off contract term.  The annual total liability for all other defaults will not exceed 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater). |
| **Insurance:** | The insurance(s) required will be:   * a minimum insurance period of 6 years following the expiration or Ending of this Call-Off Contract * professional indemnity insurance cover to be held by the Supplier and by any agent, Subcontractor or consultant involved in the supply of the G-Cloud Services. This professional indemnity insurance cover will have a minimum limit of indemnity of £1,000,000 for each individual claim or any higher limit the Buyer requires (and as required by Law) * employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by Law |
| **Force majeure:** | A Party may End this Call-Off Contract if the Other Party is affected by a Force Majeure Event that lasts for more than 60 consecutive days. |
| **Audit:** | The following Framework Agreement audit provisions will be incorporated under clause 2.1 of this Call-Off Contract to enable the Buyer to carry out audits as detailed in clauses 7.4 to 7.13 of the Framework Agreement. |
| **Buyer’s responsibilities:** | The Buyer is responsible for ensuring:  All personnel involved in the use of the service act in line with HMRC values and behaviours. |
| **Buyer’s equipment:** | The Buyer’s equipment to be used with this Call-Off Contract includes Buyer provisioned laptop, desktop and mobile computers to access the instance of the Supplier’s Service. The Service instance will be hosted by the supplier separately. |

### 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.

|  |  |
| --- | --- |
| **Payment method:** | The payment method for this Call-Off Contract is BACS. |
| **Payment profile:** | The payment profile for this Call-Off Contract is annually in advance. |
| **Invoice details:** | The Supplier will issue electronic invoices annually in advance. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice. |
| **Who and where to send invoices to:** | Invoices will be sent to:  [Payments.team@hmrc.gsi.gov.uk](mailto:Payments.team@hmrc.gsi.gov.uk)  Should hard copy invoices be required these will be sent to:  Financial Shared Services  Account Payable  B Spur South Block  Barrington Road  Worthing  West Sussex  BN12 4XH |
| **Invoice information required** – for example purchase order, project reference: | All invoices must include:  • PO Reference Number  • Call off Contract Title and Reference  • Date issued  • Date that the amount on the invoice covers (i.e. duration of licenses)  • Itemised list of what the invoice is for (i.e. licenses, etc.) supplied. |
| **Invoice frequency:** | Invoices will be sent to the Buyer annually in advance. |
| **Call-Off Contract value:** | The total value of this Call-Off Contract is £150,000 exclusive of VAT. |
| **Call-Off Contract charges:** | The breakdown of the Charges is a licence for the ‘Percipio Technology & Developer Expert’ product package for an Authorized Audience of 400 at a price of £187.50 per member of the Authorized Audience per annum, as shown in the pricing document. |

### Additional Buyer terms

|  |  |
| --- | --- |
| **Performance of the service and deliverables:** | Within the scope of the Call-Off Contract, the Supplier will adhere to the following additional terms:  **Charges, Payment and Recovery of Sums Due**  1.1 The Supplier shall invoice the Buyer as specified in “Call-Off Contract charges and payment”. Each invoice shall include such supporting information required by the Buyer to verify the accuracy of the invoice (“Supporting Documentation”), including the relevant Purchase Order Number (and CD Reference) and a breakdown of the Services supplied in the invoice period.  1.2 To facilitate payment, the Supplier shall use an electronic transaction system chosen by the Buyer (acting reasonably) and shall:  1.2.1 register for the electronic transaction system in accordance with the reasonable instructions of the Buyer;  1.2.2 allow the electronic transmission of purchase orders and submitting of electronic invoices via the electronic transaction system;  1.2.3 designate a Supplier representative as the first point of contact with the Buyer for system issues; and  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.  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:  1.3.1 via the Buyer’s electronic transaction system; or  1.3.2 to the [payments.team@hmrc.gsi.gov.uk](mailto:payments.team@hmrc.gsi.gov.uk) email address (or such other person notified to the 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 this Call-Off Contract (including any sum which the Supplier is liable to pay to the Buyer in respect of any breach of this Call-Off Contract), that sum may be deducted unilaterally by the Buyer from any sum then due, or which may come due, to the Supplier under this Call-Off Contract 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.  **Promoting Tax Compliance**  2.1 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.  2.2 The Supplier shall at all times comply with all other Laws and regulations relating to Tax.  2.3 The Supplier shall upon request provide to the Customer 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 sub-contractor located in the UK of the Supplier engaged to perform work specifically in connection with this Call-Off Contract prior to the commencement of any work under this Call-Off Contract by that agent, supplier or sub-contractor. Upon a request by the Buyer, the Supplier shall not employ any such agent, supplier or sub-contractor or sub-contractor. Further, upon a request by the Buyer, the Supplier will cease to employ any such agent, supplier or sub-contractor which has committed or Buyer has reasonable grounds to believe has committed an Occasion of Tax Non Compliance.  2.4 Where an amount of Tax, including any assessed amount, is due from the Supplier an equivalent amount may be deducted by the Buyer from the amount of any sum due to the Supplier under this Call-Off Contract.  2.5 If, at any point during the Term, an Occasion of Tax Non Compliance occurs and or any litigation, enquiry or investigation in which it or its sub-contractors engaged to perform work specifically in connection with this Call-Off Contract is/are (as appropriate) involved that is in connection with, or which may lead to, any Occasion of Tax Non-Compliance, the Supplier shall:  2.5.1 notify the Buyer in writing of such fact without undue delay after Supplier becoming aware of its occurrence; and  2.5.2 promptly provide to the Buyer:  (a) details of the steps which the Supplier is taking to address the Occasion of 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 Occasion of Tax Non Compliance as the Buyer may reasonably require.  2.6 The Supplier shall indemnify the Buyer on a continuing basis against any interest or penalties incurred, that is levied, demanded or assessed on the Buyer 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 Call-Off Contract. Any amounts due under this Clause 2.6 shall be paid in cleared funds by the Supplier to the Buyer upon receipt of documentation evidencing the payment of interest and/or penalties by the Buyer.  2.7 The Supplier shall provide (as soon as commercially practicable) information which demonstrates how the Supplier complies with its Tax obligations.  2.8 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 Clauses 2.2 to 2.7 (inclusive) then this shall allow the Buyer to terminate this Call-Off Contract pursuant to Clause 10 in Schedule 3.  2.9 The Buyer may internally share any information which it receives under Clauses 2.3 to 2.5 (inclusive) and 2.7.  **Use of Off-shore Tax Structures**  3.1 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 Sub-contractors engaged to perform work specifically in connection with this Call-Off Contract (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Buyer) 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 Buyer under or pursuant to this Call-Off Contract or (in the case of any such Key Sub-contractor 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 Sub-contract (“Prohibited Transactions”). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Sub-contractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties’ business.  3.2 The Supplier shall notify the Buyer in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Sub-contractor engaged to perform work specifically in connection with this Call-Off Contract (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Buyer within a reasonable time to allow the Buyer to consider the proposed Prohibited Transaction before it is due to be put in place.  3.3 In the event of a Prohibited Transaction being entered into in breach of Clause 3.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Sub-contractor (as applicable) shall discuss the situation with the Buyer and, in order to ensure future compliance with the requirements of Clauses 3.1 and 3.2, the Parties (and the Supplier shall procure that the Key Sub-contractor, where applicable) shall agree (at no cost to the Buyer) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the Escalation Process.  3.4 Failure by the Supplier (or a Key Sub-contractor) to comply with the obligations set out in Clauses 3.2 and 3.3 shall allow the Buyer to terminate this Call-Off Contract pursuant to Clause 10 of Schedule 3.  **Income Tax and National Insurance Contributions**  4.1 Where the Supplier or any Supplier Personnel are liable to Tax in the UK or to pay national insurance contributions in respect of consideration received under this Call-Off Contract, the Supplier shall:  4.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other Laws and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws and regulations relating to national insurance contributions, in respect of that consideration;  4.1.2 indemnify the Buyer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel for which the Supplier is not primarily liable to account to the Buyer under the relevant Laws and regulations; and  4.1.3 provide as soon as commercially practicable after Buyer’s request information which demonstrates how the Supplier complies with Clause 4.1.1 or why Clause 4.1.1 does not apply to the Supplier (including such specific information as the Buyer may request),  and 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 above in this Clause 4.1 then this shall allow the Buyer to terminate this Call-Off Contract pursuant to Clause 10 of Schedule 3.  4.2. The Buyer may internally share any information which it receives under Clause 4.1.3.  **Data Protection and off-shoring**  5.1 The Processor (Supplier)shall, in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract:  5.1.1 not transfer Personal Data outside of the UK unless the prior written consent of the Controller (Buyer) 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 endeavours 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;  5.2. “Model Clauses” as used in this Clause 5 shall mean the standard contractual clauses for the transfer of Personal Data from Controllers to Processors established in third countries, as adopted by the European Commission by its Decision C(2010) 593 of 5 February 2010 (as amended or replaced from time to time) and set out in the European Commission’s relevant website (as amended or replaced from time to time) available at: <http://ec.europa.eu/justice/data-protection/international-transfers/transfer/index_en.htm>.  The terms of the Model Clauses, together with Appendices 1 and 2 thereto (Schedule 7 to this Call-Off Contract contains the details required by Appendix 1, and the Supplier’s Cloud Operations Services documentation referenced in Supplier’s G-Cloud 11 Service Definition Document available at the Digital Marketplace contains the details required by Appendix 2) are incorporated in this Call-off contract by reference. Execution of this Call-off contract includes execution of the Model Clauses between (a) Buyer (as data exporter) and (b) Skillsoft Corporation and Skillsoft Software Services India Private Limited, each an affiliated company of Supplier and Subprocessor as detailed below, (together as data importer) with respect to the processing of Personal Data.  5.3 Controller hereby gives its consent to the following, each of which constitutes a transfer of Personal Data outside of the UK: (i) Processing of Persona Data on computer equipment located in a data center located in Germany by personnel of Supplier and its affiliated companies identified as Subprocessors below.(ii) Processing of Personal Data by the following affiliated company of Supplier, which will act as a Subprocessor - Skillsoft Canada Limited (CA) - activities include participation in the maintenance and operation of servers, participation in the set-up of web-sites and delivery of customer support services, all utilitsed for the performance of this Call-off Contract.  Location: 20 Knowledge Park Drive, New Brunswick E3C 2P5, Canada  The Parties acknowledge that Canada is subject to an adequacy decision by the European Commission in accordance with GDPR Article 45 (3).  (iii) Processing of Personal Data by the following affiliated company of Supplier, which may act as a Subprocessor –  Skillsoft Corporation (US) - activities include participation in the maintenance and operation of servers and participation in the set-up of web-sites, all utilitsed for the performance of this Call-off Contract.Skillsoft Corporation has self-certified pursuant to the EU-US Privacy Shield framework. Location: 300 Innovative Way, Nashua, NH 03062, USA (iv) Processing of Personal Data by the following affiliated company of Supplier, which may act as a Subprocessor -  Skillsoft Software Services India Private Limited (IN) - activities include participation in the maintenance and operation of servers and participation in the set-up of web-sites, all utilitsed for the performance of this Call-off Contract .  Location: #20, 2nd Floor, Uniworth Plaza, Sankey Road, Bangalore, 560 066, India  (v) Processing of Personal Data by the following third party, which may act as a Subprocessor:  Salesforce.com, Inc. (US) – activities include provision of Live Agent chat functionality used where “mentoring” is enabled and in delivery of customer support services, all utilitsed for the performance of this Call-off Contract . Salesforce.com, inclusive of this service, has self-certified pursuant to the EU-US Privacy Shield framework. Location: Salesforce Tower, 415 Mission Street, 3rd Floor, San Francisco, California 94105, U.S.A. **Official Secrets Acts, Commissioners for Revenue and Customs Act 2005 and related Legislation**  6.1 The Supplier shall comply with, and shall ensure that it’s Supplier Personnel comply with:  6.1.1 the provisions of the Official Secrets Acts 1911 to 1989;  6.1.2 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  6.1.3 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.  6.2 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 6.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.  6.3 In the event that the Supplier or the Supplier Personnel fail to comply with this clause, the Buyer reserves the right to terminate this Call-Off Contract under Clause 10 of Schedule 3 with immediate effect.  **Confidentiality, Transparency and Publicity**  7.1 The Supplier shall not, and shall take reasonable steps to ensure that the Supplier Personnel shall not:  7.1.1 make any press announcement or publicise this Call-Off Contract or any part of this Call-Off Contract in any way; or  7.1.2 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.  7.2 Each Party acknowledges to the other that nothing in this Call-Off Contract 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.  7.3 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 Call-Off Contract is not Confidential Information. The Buyer shall be responsible for determining in its absolute discretion whether any of the content of this Call-Off Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Call-Off Contract, the Supplier hereby gives his consent for the Buyer to publish this Call-Off Contract 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 this Call-Off Contract, 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.  7.4 The Supplier shall assist and cooperate with the Buyer to enable the Buyer to publish this Call-Off Contract.  **Compliance**  8.1 The Supplier shall:  8.1.1 perform its obligations under this Call-Off Contract 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  8.1.2 take all reasonable steps to secure the observance of Clause 8.1.1 by all Supplier Personnel.  8.2 In performing its obligations under this Call-Off Contract, the Supplier shall;  (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;  (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  (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 8.3(a) and/ or (b) including details of the breach and the mitigation action it has taken or intends to take in order to:  (i) remedy the breach; and  (ii) ensure future compliance with Clause 8.3(a) and (b).  8.3 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 8.3 then this shall allow the Buyer to terminate this Call-Off Contract pursuant to Clause 10 of Schedule 3.  **Expenses**  9.1 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.  9.2 The Buyer shall provide a copy of its current expenses policy to the Supplier upon request. |

**1. Formation of contract**

1. By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Call-Off Contract with the Buyer.
2. The Parties agree that they have read the Order Form (Part A) and the Call-Off Contract terms and by signing below agree to be bound by this Call-Off Contract.
3. This Call-Off Contract will be formed when the Buyer acknowledges receipt of the signed copy of the Order Form from the Supplier.
4. In cases of any ambiguity or conflict the terms and conditions of the Call-Off Contract and Order Form will supersede those of the Supplier Terms and Conditions.

**2. Background to the agreement**

1. The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.11.
2. The Buyer provided an Order Form for Services to the Supplier.

|  |  |  |
| --- | --- | --- |
| **Signed:** | Supplier | Buyer |
| **Name:** |  |  |
| **Title:** |  |  |
| **Signature:** |  |  |
| **Date:** |  |  |

## **Schedule 1 - Services**

The Supplier must provide access to a variety of online training courses through the Percipio learning platform.

Available courses must include (but not limited to);

* DevOps tools and techniques
* Risk Management
* Agile
* Agile Testing
* Agile Project Management
* Selenium
* Test Automation
* Scrum Master Training
* Mysql
* Test Automation
* Virtualisation
* Java (Beginner to advance)
* Security
* Linux
* HTML5
* Javascript

In addition to the training course provision, the Buyer will also require;

* The capacity for individuals to gain IT certification to validate skills learnt and evidence personal development
* Individual skill measurement to benchmark existing knowledge and map future learning requirements
* Technical assistance providing technical help within 2 working days

**Accessibility**

Access to the on-line training should be accessible via a browser, mobile and tablet

The Buyer requires the online training system to be accessible to 400 concurrent users/logins.

**Volumes**

The initial requirement is for 400 licences for 2 years.

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

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

* Access to the ‘Percipio Technology & Developer Expert’ product package for an audience of 400 users, priced at £187.50 per user, totalling £75,000 per annum.

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

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

1. The Supplier must start providing the Services on the date specified in the Order Form.
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.
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.
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

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. 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
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.
4. The Framework Agreement incorporated clauses will be referred to as ‘incorporated Framework clause XX’, where ‘XX’ is the Framework Agreement clause number.
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

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.
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

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
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.
3. The Supplier may substitute any Supplier Staff as long as they have the equivalent experience and qualifications to the substituted staff member.
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.
5. The Buyer may End this Call-Off Contract for Material Breach if the Supplier is delivering the Services Inside IR35.
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.
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.
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

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

1. The Supplier will have a clear business continuity and disaster recovery plan in their service descriptions.
2. The Supplier’s business continuity and disaster recovery services are part of the Services and will be performed by the Supplier when required.
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

1. The Buyer must pay the Charges following clauses 7.2 to 7.11 for the Supplier’s delivery of the Services.
2. The Buyer will pay the Supplier within the number of days specified in the Order Form on receipt of a valid invoice.
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.
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.
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.
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. All Charges payable by the Buyer to the Supplier will include VAT at the appropriate rate.
8. The Supplier must add VAT to the Charges at the appropriate rate with visibility of the amount as a separate line item.
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.
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.
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.
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

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

### 9. Insurance

1. The Supplier will maintain the insurances required by the Buyer including those in this clause.
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
3. If requested by the Buyer, the Supplier will obtain additional insurance policies, or extend existing policies bought under the Framework Agreement.
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
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
6. The Supplier will not do or omit to do anything, which would destroy or impair the legal validity of the insurance.
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.
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

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

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.
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.
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.
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.
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
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
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
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

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
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
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.

1. The Supplier will not store or use Buyer Data except if necessary to fulfil its obligations.
2. If Buyer Data is processed by the Supplier, the Supplier will supply the data to the Buyer as requested.
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.
4. The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent its corruption and loss.
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 practicei[n](https://www.cesg.gov.uk/risk-management-collection) [t](https://www.cesg.gov.uk/risk-management-collection)he 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>
6. The Buyer will specify any security requirements for this project in the Order Form.
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.
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.
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

1. The Supplier will comply with any standards in this Call-Off Contract, the Order Form and the Framework Agreement.
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/cyber-risk-management-a-board-level-responsibility/10-steps-summary) <https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>
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.
4. If any PSN Services are Subcontracted by the Supplier, the Supplier must ensure that the services have the relevant PSN compliance certification.
5. The Supplier must immediately disconnect its G-Cloud Services from the PSN if the PSN Authority considers there is a risk to the PSN’s security and the Supplier agrees that the Buyer and the PSN Authority will not be liable for any actions, damages, costs, and any other Supplier liabilities which may arise[.](https://www.gov.uk/government/publications/cyber-risk-management-a-board-level-responsibility/10-steps-summary)

### 15. Open source

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

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.
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.
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.
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
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.
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>
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

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

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.
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
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.
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
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
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.
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

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.
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.
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.
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
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
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.
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

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

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

1. 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

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

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
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.
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

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

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

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.
2. The Supplier will use the Buyer’s premises solely for the performance of its obligations under this Call-Off Contract.
3. The Supplier will vacate the Buyer’s premises when the Call-Off Contract Ends or expires.
4. This clause does not create a tenancy or exclusive right of occupation.
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
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

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

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

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

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

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.
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

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.
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

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.
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.
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**

This agreement is made on [enter date]

between:

1. [Buyer name] of [Buyer address] (the Buyer)
2. [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]
3. [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]
4. [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]
5. [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]
6. [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]

together (the Collaboration Suppliers and each of them a Collaboration Supplier).

Whereas the:

* Buyer and the Collaboration Suppliers have entered into the Call-Off Contracts (defined below) for the provision of various IT and telecommunications (ICT) services
* Collaboration Suppliers now wish to provide for the ongoing cooperation of the Collaboration Suppliers in the provision of services under their respective Call-Off Contract to the Buyer

In consideration of the mutual covenants contained in the Call-Off Contracts and this Agreement and intending to be legally bound, the parties agree as follows:

## **1. Definitions and interpretation**

1. As used in this Agreement, the capitalised expressions will have the following meanings unless the context requires otherwise:
   * “Agreement” means this collaboration agreement, containing the Clauses and Schedules
   * “Call-Off Contract” means each contract that is let by the Buyer to one of the Collaboration Suppliers
   * “Contractor’s Confidential Information” has the meaning set out in the Call-Off Contracts
   * “Confidential Information” means the Buyer Confidential Information or any Collaboration Supplier's Confidential Information
   * “Collaboration Activities” means the activities set out in this Agreement
   * “Buyer Confidential Information” has the meaning set out in the Call-Off Contract
   * “Default” means any breach of the obligations of any Collaboration Supplier or any default, act, omission, negligence or statement of any Collaboration Supplier, its employees, servants, agents or subcontractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Collaboration Supplier is liable (by way of indemnity or otherwise) to the other parties
   * “Detailed Collaboration Plan” has the meaning given in clause 3.2
   * “Dispute Resolution Process” means the process described in clause 9
   * “Effective Date” means 15/07/2019
   * “Force Majeure Event” has the meaning given in clause 11.1.1
   * “Mediator” has the meaning given to it in clause 9.3.1
   * “Outline Collaboration Plan” has the meaning given to it in clause 3.1
   * “Term” has the meaning given to it in clause 2.1
   * "Working Day" means any day other than a Saturday, Sunday or public holiday in England and Wales
2. General
   1. As used in this Agreement the:
      1. masculine includes the feminine and the neuter
      2. singular includes the plural and the other way round
      3. A reference to any statute, enactment, order, regulation or other similar instrument will be viewed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment.
   2. Headings are included in this Agreement for ease of reference only and will not affect the interpretation or construction of this Agreement.
   3. References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Agreement.
   4. Except as otherwise expressly provided in this Agreement, all remedies available to any party under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy will not exclude the exercise of any other remedy.
   5. The party receiving the benefit of an indemnity under this Agreement will use its reasonable endeavours to mitigate its loss covered by the indemnity.

## **2. Term of the agreement**

* 1. This Agreement will come into force on the Effective Date and, unless earlier terminated in accordance with clause 10, will expire 6 months after the expiry or termination (however arising) of the exit period of the last Call-Off Contract (the “Term”).
  2. A Collaboration Supplier’s duty to perform the Collaboration Activities will continue until the end of the exit period of its last relevant Call-Off Contract.

## **3. Provision of the collaboration plan**

* 1. The Collaboration Suppliers will, within 2 weeks (or any longer period as notified by the Buyer in writing) of the Effective Date, provide to the Buyer detailed proposals for the Collaboration Activities they require from each other (the “Outline Collaboration Plan”).
  2. Within 10 Working Days (or any other period as agreed in writing by the Buyer and the Collaboration Suppliers) of [receipt of the proposals] or [the Effective Date], the Buyer will prepare a plan for the Collaboration Activities (the “Detailed Collaboration Plan”). The Detailed Collaboration Plan will include full details of the activities and interfaces that involve all of the Collaboration Suppliers to ensure the receipt of the services under each Collaboration Supplier’s respective [contract] [Call-Off Contract], by the Buyer. The Detailed Collaboration Plan will be based on the Outline Collaboration Plan and will be submitted to the Collaboration Suppliers for approval.
  3. The Collaboration Suppliers will provide the help the Buyer needs to prepare the Detailed Collaboration Plan.
  4. The Collaboration Suppliers will, within 10 Working Days of receipt of the Detailed Collaboration Plan, either:
  5. approve the Detailed Collaboration Plan
  6. reject the Detailed Collaboration Plan, giving reasons for the rejection
  7. The Collaboration Suppliers may reject the Detailed Collaboration Plan under clause 3.4.2 only if it is not consistent with their Outline Collaboration Plan in that it imposes additional, more onerous, obligations on them.
  8. If the parties fail to agree the Detailed Collaboration Plan under clause 3.4, the dispute will be resolved using the Dispute Resolution Process.

## **4. Collaboration activities**

* 1. The Collaboration Suppliers will perform the Collaboration Activities and all other obligations of this Agreement in accordance with the Detailed Collaboration Plan.
  2. The Collaboration Suppliers will provide all additional cooperation and assistance as is reasonably required by the Buyer to ensure the continuous delivery of the services under the Call-Off Contract.
  3. The Collaboration Suppliers will ensure that their respective subcontractors provide all co-operation and assistance as set out in the Detailed Collaboration Plan.

## **5. Invoicing**

* 1. If any sums are due under this Agreement, the Collaboration Supplier responsible for paying the sum will pay within 30 Working Days of receipt of a valid invoice.
  2. Interest will be payable on any late payments under this Agreement under the Late Payment of Commercial Debts (Interest) Act 1998, as amended.

## **6. Confidentiality**

* 1. Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Collaboration Suppliers acknowledge that any Confidential Information obtained from or relating to the Crown, its servants or agents is the property of the Crown.
  2. Each Collaboration Supplier warrants that:
  3. any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) will only use Confidential Information for the purposes of this Agreement
  4. any person employed or engaged by it (in connection with this Agreement) will not disclose any Confidential Information to any third party without the prior written consent of the other party
  5. it will take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (except as agreed) or used other than for the purposes of this Agreement by its employees, servants, agents or subcontractors
  6. neither it nor any person engaged by it, whether as a servant or a consultant or otherwise, will use the Confidential Information for the solicitation of business from the other or from the other party's servants or consultants or otherwise
  7. The provisions of clauses 6.1 and 6.2 will not apply to any information which is:
  8. or becomes public knowledge other than by breach of this clause 6
  9. in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party
  10. received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure
  11. independently developed without access to the Confidential Information
  12. required to be disclosed by law or by any judicial, arbitral, regulatory or other authority of competent jurisdiction
  13. The Buyer’s right, obligations and liabilities in relation to using and disclosing any Collaboration Supplier’s Confidential Information provided under this Agreement and the Collaboration Supplier’s right, obligations and liabilities in relation to using and disclosing any of the Buyer’s Confidential Information provided under this Agreement, will be as set out in the [relevant contract] [Call-Off Contract].

## **7. Warranties**

* 1. Each Collaboration Supplier warrant and represent that:
  2. it has full capacity and authority and all necessary consents (including but not limited to, if its processes require, the consent of its parent company) to enter into and to perform this Agreement and that this Agreement is executed by an authorised representative of the Collaboration Supplier
  3. its obligations will be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this clause 7) in accordance with its own established internal processes
  4. Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are excluded to the extent permitted by law.

## **8. Limitation of liability**

* 1. None of the parties exclude or limit their liability for death or personal injury resulting from negligence, or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
  2. Nothing in this Agreement will exclude or limit the liability of any party for fraud or fraudulent misrepresentation.
  3. Subject always to clauses 8.1 and 8.2, the liability of the Buyer to any Collaboration Suppliers for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than if made fraudulently), breach of statutory duty or otherwise under this Agreement (excluding Clause 6.4, which will be subject to the limitations of liability set out in the relevant Contract) will be limited to (£75,000).
  4. Subject always to clauses 8.1 and 8.2, the liability of each Collaboration Supplier for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than if made fraudulently), breach of statutory duty or otherwise under this Agreement will be limited to [Buyer to specify].
  5. Subject always to clauses 8.1, 8.2 and 8.6 and except in respect of liability under clause 6 (excluding clause 6.4, which will be subject to the limitations of liability set out in the [relevant contract] [Call-Off Contract]), in no event will any party be liable to any other for:
  6. indirect loss or damage
  7. special loss or damage
  8. consequential loss or damage
  9. loss of profits (whether direct or indirect)
  10. loss of turnover (whether direct or indirect)
  11. loss of business opportunities (whether direct or indirect)
  12. damage to goodwill (whether direct or indirect)
  13. Subject always to clauses 8.1 and 8.2, the provisions of clause 8.5 will not be taken as limiting the right of the Buyer to among other things, recover as a direct loss any:
  14. additional operational or administrative costs and expenses arising from a Collaboration Supplier’s Default
  15. wasted expenditure or charges rendered unnecessary or incurred by the Buyer arising from a Collaboration Supplier's Default

## **9. Dispute resolution process**

* 1. All disputes between any of the parties arising out of or relating to this Agreement will be referred, by any party involved in the dispute, to the representatives of the parties specified in the Detailed Collaboration Plan.
  2. If the dispute cannot be resolved by the parties' representatives nominated under clause 9.1 within a maximum of 5 Working Days (or any other time agreed in writing by the parties) after it has been referred to them under clause 9.1, then except if a party seeks urgent injunctive relief, the parties will refer it to mediation under the process set out in clause 9.3 unless the Buyer considers (acting reasonably and considering any objections to mediation raised by the other parties) that the dispute is not suitable for resolution by mediation.
  3. The process for mediation and consequential provisions for mediation are:
  4. a neutral adviser or mediator will be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one party to the other parties to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, any party will within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to the parties that he is unable or unwilling to act, apply to the Chairman of the Law Society to appoint a Mediator
  5. the parties will within 10 Working Days of the appointment of the Mediator meet to agree a programme for the exchange of all relevant information and the structure of the negotiations
  6. unless otherwise agreed by the parties in writing, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the parties in any future proceedings
  7. if the parties reach agreement on the resolution of the dispute, the agreement will be put in writing and will be binding on the parties once it is signed by their authorised representatives
  8. failing agreement, any of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. The opinion will be provided on a without prejudice basis and will not be used in evidence in any proceedings relating to this Agreement without the prior written consent of all the parties
  9. if the parties fail to reach agreement in the structured negotiations within 20 Working Days of the Mediator being appointed, or any longer period the parties agree on, then any dispute or difference between them may be referred to the courts
  10. The parties must continue to perform their respective obligations under this Agreement and under their respective Contracts pending the resolution of a dispute.

## **10. Termination and consequences of termination**

### Termination

* 1. The Buyer has the right to terminate this Agreement at any time by notice in writing to the Collaboration Suppliers whenever the Buyer has the right to terminate a Collaboration Supplier’s [respective contract] [Call-Off Contract].
  2. Failure by any of the Collaboration Suppliers to comply with their obligations under this Agreement will constitute a Default under their [relevant contract] [Call-Off Contract]. In this case, the Buyer also has the right to terminate by notice in writing the participation of any Collaboration Supplier to this Agreement and sever its name from the list of Collaboration Suppliers, so that this Agreement will continue to operate between the Buyer and the remaining Collaboration Suppliers.

### Consequences of termination

* 1. Subject to any other right or remedy of the parties, the Collaboration Suppliers and the Buyer will continue to comply with their respective obligations under the [contracts] [Call-Off Contracts] following the termination (however arising) of this Agreement.
  2. Except as expressly provided in this Agreement, termination of this Agreement will be without prejudice to any accrued rights and obligations under this Agreement.

## **11. General provisions**

### Force majeure

* 1. For the purposes of this Agreement, the expression “Force Majeure Event” will mean any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to any party, the party's personnel or any other failure of a Subcontractor.
  2. Subject to the remaining provisions of this clause 11.1, any party to this Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
  3. A party cannot claim relief if the Force Majeure Event or its level of exposure to the event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
  4. The affected party will immediately give the other parties written notice of the Force Majeure Event. The notification will include details of the Force Majeure Event together with evidence of its effect on the obligations of the affected party, and any action the affected party proposes to take to mitigate its effect.
  5. The affected party will notify the other parties in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following the notification, this Agreement will continue to be performed on the terms existing immediately before the Force Majeure Event unless agreed otherwise in writing by the parties.

### Assignment and subcontracting

* 1. Subject to clause 11.2.2, the Collaboration Suppliers will not assign, transfer, novate, sub- license or declare a trust in respect of its rights under all or a part of this Agreement or the benefit or advantage without the prior written consent of the Buyer.
  2. Any subcontractors identified in the Detailed Collaboration Plan can perform those elements identified in the Detailed Collaboration Plan to be performed by the subcontractors.

### Notices

* 1. Any notices given under or in relation to this Agreement will be deemed to have been properly delivered if sent by recorded or registered post or by fax and will be deemed for the purposes of this Agreement to have been given or made at the time the letter would, in the ordinary course of post, be delivered or at the time shown on the sender's fax transmission report.
  2. For the purposes of clause 11.3.1, the address of each of the parties are those in the Detailed Collaboration Plan.

### Entire agreement

* 1. This Agreement, together with the documents and agreements referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the Parties about this.
  2. Each of the parties agrees that in entering into this Agreement and the documents and agreements referred to in it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to each party in respect of any statements, representation, warranty or understanding will be for breach of contract under the terms of this Agreement.
  3. Nothing in this clause 11.4 will exclude any liability for fraud.

### Rights of third parties

* 1. Nothing in this Agreement will grant any right or benefit to any person other than the parties or their respective successors in title or assignees, or entitle a third party to enforce any provision and the parties do not intend that any term of this Agreement should be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

### Severability

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, that provision will be severed without effect to the remaining provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the parties will immediately commence good faith negotiations to remedy that invalidity.

### Variations

No purported amendment or variation of this Agreement or any provision of this Agreement will be effective unless it is made in writing by the parties.

### No waiver

The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law will not constitute a waiver of that right, power or remedy. If a party waives a breach of any provision of this Agreement this will not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

### Governing law and jurisdiction

This Agreement will be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Process, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Executed and delivered as an agreement by the parties or their duly authorised attorneys the day and year first above written.

**For and on behalf of the Buyer**

Signed by:

Full name (capitals):

Position: Senior

Date:

**For and on behalf of Skillsoft**

Signed by:

Full name (capitals):

Position:

Date:

## **Schedule 4 - Alternative clauses**

## **1. Introduction**

1. This Schedule specifies the alternative clauses that may be requested in the Order Form and, if requested in the Order Form, will apply to this Call-Off Contract.

## **2. Clauses selected**

1. The Customer may, in the Order Form, request the following alternative clauses:
   1. Scots Law (see paragraph 2.1.2 of this Schedule)
   2. Scots Law

Law and Jurisdiction

References to England and Wales in incorporated Framework Agreement clause 8.10 (Law and Jurisdiction) of this Call-Off Contract will be replaced with Scotland and the wording of the Framework Agreement and Call-Off Contract will be interpreted as closely as possible to the original English and Welsh Law intention despite Scots Law applying.

Reference to England and Wales in Working Days definition within the Glossary and interpretations section will be replaced with Scotland.

References to the Contracts (Rights of Third Parties) Act 1999 will be removed in clause 27.1

Reference to the Freedom of Information Act 2000 within the defined terms for ‘FoIA/Freedom of Information Act’ to be replaced with Freedom of Information (Scotland) Act 2002.

Reference to the Supply of Goods and Services Act 1982 will be removed in incorporated Framework Agreement clause 4.2.

References to “tort” will be replaced with “delict” throughout.

1. The Customer may, in the Order Form, request the following Alternative Clauses:
   1. Northern Ireland Law (see paragraph 2.3, 2.4, 2.5, 2.6 and 2.7 of this Schedule)

### Discrimination

* 1. The Supplier will comply with all applicable fair employment, equality of treatment and anti- discrimination legislation, including, in particular, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment  (Northern Ireland) ) Order 1998, the Sex Discrimination (Northern Ireland) Order 1976 and 1988, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the Equal Pay Act (Northern Ireland) 1970, the Disability Discrimination Act 1995, the Race Relations (Northern Ireland) Order 1997, the Employment Relations (Northern Ireland) Order 1999 and Employment Rights (Northern Ireland ) Order 1996 Employment Equality (Age) Regulations (Northern Ireland) 2006; Part-time Workers (Prevention of less Favourable Treatment) Regulation 2000; Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, The Disability Discrimination (Northern Ireland) Order 2006, The Employment Relations (Northern Ireland) Order 2004, The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006, The Employment Relations (Northern Ireland) Order 2004 and The Work and Families (Northern Ireland) Order 2006; and will use his best endeavours to ensure that in his employment policies and practices and in the delivery of the services required of the Supplier under this Call-Off Contract he promotes equality of treatment and opportunity between:
     1. persons of different religious beliefs or political opinions
     2. men and women or married and unmarried persons
     3. persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave)
     4. persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997)
     5. persons with and without a disability (within the meaning of the Disability Discrimination Act 1995)
     6. persons of different ages
     7. persons of differing sexual orientation
  2. The Supplier will take all reasonable steps to secure the observance of clause 2.3.1 of this Schedule by all Supplier Staff.

### Equality policies and practices

* 1. The Supplier will introduce and will procure that any Subcontractor will also introduce and implement an equal opportunities policy in accordance with guidance from and to the satisfaction of the Equality Commission. The Supplier will review these policies on a regular basis (and will procure that its Subcontractors do likewise) and the Customer will be entitled to receive upon request a copy of the policy.
  2. The Supplier will take all reasonable steps to ensure that all of the Supplier Staff comply with its equal opportunities policies (referred to in clause 2.3 above). These steps will include:
     1. the issue of written instructions to staff and other relevant persons
     2. the appointment or designation of a senior manager with responsibility for equal opportunities
     3. training of all staff and other relevant persons in equal opportunities and harassment matters
     4. the inclusion of the topic of equality as an agenda item at team, management  and staff meetings

The Supplier will procure that its Subcontractors do likewise with their equal opportunities policies.

* 1. The Supplier will inform the Customer as soon as possible in the event of:
     1. the Equality Commission notifying the Supplier of an alleged breach by it or any Subcontractor (or any of their shareholders or directors) of the Fair Employment and Treatment (Northern Ireland) Order 1998 or
     2. any finding of unlawful discrimination (or any offence under the Legislation mentioned in clause 2.3 above) being made against the Supplier or its Subcontractors during the Call-Off Contract Period by any Industrial or Fair Employment Tribunal or Court,

The Supplier will take any necessary steps (including the dismissal or replacement of any relevant staff or Subcontractor(s)) as the Customer directs and will seek the advice of the Equality Commission in order to prevent any offence or repetition of the unlawful discrimination as the case may be.

* 1. The Supplier will monitor (in accordance with guidance issued by the Equality Commission) the composition of its workforce and applicants for employment and will provide an annual report on the composition of the workforce and applicants to the Customer. If the monitoring reveals under-representation or lack of fair participation of particular groups, the Supplier will review the operation of its relevant policies and take positive action if appropriate. The Supplier will impose on its Subcontractors obligations similar to those undertaken by it in this clause 2.4 and will procure that those Subcontractors comply with their obligations.
  2. The Supplier will provide any information the Customer requests (including information requested to be provided by any Subcontractors) for the purpose of assessing the Supplier’s compliance with its obligations under clauses 2.4.1 to 2.4.5 of this Schedule.

### Equality

* 1. The Supplier will, and will procure that each Subcontractor will, in performing its/their obligations under this Call-Off Contract (and other relevant agreements), comply with the provisions of Section 75 of the Northern Ireland Act 1998, as if they were a public authority within the meaning of that section.
  2. The Supplier acknowledges that the Customer must, in carrying out its functions, have due regard to the need to promote equality of opportunity as contemplated by the Northern Ireland Act 1998 and the Supplier will use all reasonable endeavours to assist (and to ensure that relevant Subcontractor helps) the Customer in relation to same.

### Health and safety

* 1. The Supplier will promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Call-Off Contract. The Customer will promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer premises and which may affect the Supplier in the performance of its obligations under the Call-Off Contract.
  2. While on the Customer premises, the Supplier will comply with any health and safety measures implemented by the Customer in respect of Supplier Staff and other persons working there.
  3. The Supplier will notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Call-Off Contract on the Customer premises if that incident causes any personal injury or damage to property which could give rise to personal injury.
  4. The Supplier will comply with the requirements of the Health and Safety at Work (Northern Ireland) Order 1978 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Supplier Staff and other persons working on the Customer premises in the performance of its obligations under the Call-Off Contract.
  5. The Supplier will ensure that its health and safety policy statement (as required by the Health and Safety at Work (Northern Ireland) Order 1978) is made available to the Customer on request.

### Criminal damage

* 1. The Supplier will maintain standards of vigilance and will take all precautions as advised by the Criminal Damage (Compensation) (Northern Ireland) Order 1977 or as may be recommended by the police or the Northern Ireland Office (or, if replaced, their successors) and will compensate the Customer for any loss arising directly from a breach of this obligation (including any diminution of monies received by the Customer under any insurance policy).
  2. If during the Call-Off Contract Period any assets (or any part thereof) is or are damaged or destroyed by any circumstance giving rise to a claim for compensation under the provisions of the Compensation Order the following provisions of this clause 2.7 will apply.
  3. The Supplier will make (or will procure that the appropriate organisation make) all appropriate claims under the Compensation Order as soon as possible after the CDO Event and will pursue any claim diligently and at its cost. If appropriate, the Customer will also make and pursue a claim diligently under the Compensation Order. Any appeal against a refusal to meet any claim or against the amount of the award will be at the Customer’s cost and the Supplier will (at no additional cost to the Customer) provide any help the Customer reasonably requires with the appeal.
  4. The Supplier will apply any compensation paid under the Compensation Order in respect of damage to the relevant assets towards the repair, reinstatement or replacement of the assets affected.

## **Schedule 6 - Glossary and interpretations**

In this Call-Off Contract the following expressions mean:

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| Expression | Meaning |
| **Additional Services** | 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. |
| **Admission Agreement** | The agreement to be entered into to enable the Supplier to participate in the relevant Civil Service pension scheme(s). |
| **Agreement** | the contract between (i) the Buyer acting as part of the Crown and (ii) the Supplier |
| **Application** | The response submitted by the Buyer to the Invitation to Tender (known as the Invitation to Apply on the Digital Marketplace). |
| **Audit** | An audit carried out under the incorporated Framework Agreement clauses specified by the Buyer in the Order (if any). |
| **Background IPRs** | For each Party, IPRs:   * 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 * created by the Party independently of this Call-Off Contract, or   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. |
| **Buyer** | The contracting authority ordering services as set out in the Order Form. |
| **Buyer Data** | All data supplied by the Buyer to the Supplier including Personal Data and Service Data that is owned and managed by the Buyer. |
| **Buyer Personal Data** | The personal data supplied by the Buyer to the Supplier for purposes of, or in connection with, this Call-Off Contract. |
| **Buyer Representative** | The representative appointed by the Buyer under this Call-Off Contract. |
| **Buyer Software** | 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. |
| **Call-Off Contract** | 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. |
| **Charges** | The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under this Call-Off Contract. |
| **Collaboration Agreement** | 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. |
| **Commercially Sensitive Information** | 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. |
| **Confidential Information** | Data, personal data and any information, which may include (but isn’t limited to) any:   * 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 * other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential'). |
| **Connected Company** | Means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person |
| **Control** | ‘Control’ as defined in section 1124 and 450 of the Corporation Tax  Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly. |
| **Controller** | Takes the meaning given in the GDPR. |
| **Crown** | 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. |
| **Data Loss Event** | 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 |
| **Data Protection Impact Assessment** | An assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data. |
| **Data Protection Legislation (DPL)** | Data Protection Legislation means:   1. (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time 2. (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to Processing of personal data and privacy; 3. (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 . |
| **Data Subject** | Takes the meaning given in the GDPR |
| **Default** | Default is any:   * breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) * 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   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. |
| **Deliverable(s)** | The G-Cloud Services the Buyer contracts the Supplier to provide under this Call-Off Contract. |
| **Digital Marketplace** | The government marketplace where Services are available for Buyers to buy. (<https://www.digitalmarketplace.service.gov.uk>/) |
| **DOTAS** | the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes or those who use them to tell HMRC of any notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992 and in Schedule 11A to the Value Added Tax Act 1994 (as amended by Schedule 1 to the Finance (no. 2) Act 2005. |
| **DPA 2018** | Data Protection Act 2018. |
| **Employment Regulations** | The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (‘TUPE’) which implements the Acquired Rights Directive. |
| **End** | Means to terminate; and Ended and Ending are construed accordingly. |
| **Environmental Information Regulations or EIR** | 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. |
| **Equipment** | 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. |
| **ESI Reference Number** | The 14 digit ESI reference number from the summary of outcome screen of the ESI tool. |
| **Employment Status Indicator test tool or ESI tool** | 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:  <http://tools.hmrc.gov.uk/esi> |
| **Expiry Date** | The expiry date of this Call-Off Contract in the Order Form. |
| **Force Majeure** | A Force Majeure event means anything affecting either Party's performance of their obligations arising from any:   * acts, events or omissions beyond the reasonable control of the affected Party * riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare * acts of government, local government or Regulatory Bodies * fire, flood or disaster and any failure or shortage of power or fuel * industrial dispute affecting a third party for which a substitute third party isn’t reasonably available   The following do not constitute a Force Majeure event:   * any industrial dispute about the Supplier, its staff, or failure in the Supplier’s (or a Subcontractor's) supply chain * 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 * the event was foreseeable by the Party seeking to rely on Force Majeure at the time this Call-Off Contract was entered into * 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 |
| **Former Supplier** | 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). |
| **Framework Agreement** | The clauses of framework agreement RM1557.11 together with the Framework Schedules. |
| **Fraud** | 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. |
| **Freedom of Information Act or FoIA** | 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. |
| **G-Cloud Services** | 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. |
| **GDPR** | The General Data Protection Regulation (Regulation (EU) 2016/679). |
| **General Anti Abuse Rule** | means  (a) the legislation in Part 5 of the Finance Act 2013;  (b) the legislation in sections 10 and 11 of the National Insurance Contributions Act 2014; and  (c) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid any Tax; |
| **Good Industry Practice** | 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. |
| **Government Procurement Card** | The Government’s preferred method of purchasing and payment for low value goods or services https://www.gov.uk/government/publications/government-procurement-card--2. |
| **Guarantee** | The guarantee described in Schedule 5. |
| **Guidance** | 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. |
| **Halifax Abuse Principle** | The principle explained in the CJEU Case C 255/02 Halifax and others; |
| **Implementation Plan** | 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. |
| **Indicative Test** | ESI tool completed by contractors on their own behalf at the request of CCS or the Buyer (as applicable) under clause 4.6. |
| **Information** | Has the meaning given under section 84 of the Freedom of Information Act 2000. |
| **Information Security Management System** | The information security management system and process developed by the Supplier in accordance with clause 16.1. |
| **Inside IR35** | Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool. |
| **Insolvency Event** | Can be:   * a voluntary arrangement * a winding-up petition * the appointment of a receiver or administrator * an unresolved statutory demand * a Schedule A1 moratorium. |
| **Intellectual Property Rights or IPR** | Intellectual Property Rights are:   * 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 * 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 * all other rights having equivalent or similar effect in any country or jurisdiction |
| **Intermediary** | For the purposes of the IR35 rules an intermediary can be:   * the supplier's own limited company * a service or a personal service company * a partnership   It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example, an employment agency). |
| **IPR Claim** | As set out in clause 11.5. |
| **IR35** | 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. |
| **IR35 Assessment** | Assessment of employment status using the ESI tool to determine if engagement is Inside or Outside IR35. |
| **Key Subcontractor** | Any Subcontractor:  (a) which, in the opinion of the Buyer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or  (b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract; |
| **Know-How** | 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. |
| **Law** | Any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body. |
| **LED** | Law Enforcement Directive (EU) 2016/680. |
| **Loss** | 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 '**Losses**' will be interpreted accordingly. |
| **Lot** | Any of the 3 Lots specified in the ITT and Lots will be construed accordingly. |
| **Malicious Software** | 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. |
| **Management Charge** | 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. |
| **Management Information** | The management information specified in Framework Agreement section 6 (What you report to CCS). |
| **Material Breach** | 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. |
| **Ministry of Justice Code** | 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. |
| **New Fair Deal** | 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. |
| **Occasion of Tax Non-Compliance** | (a) any Tax return of the Supplier and/or its Subcontractor and/or any non-submission of a Tax return (whether deliberate or by omission) by the Supplier and/or its Subcontractor to the Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:  (i) a Relevant Tax Authority successfully challenging the Supplier or relevant Subcontractor under the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR or under any Tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR;  (ii) the failure of an avoidance scheme which the Supplier or relevant Subcontractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or  (b) the Tax affairs of the Supplier or any of its Subcontractors have given rise to a criminal conviction in any jurisdiction for Tax related offences within the last five (5) years which is not spent at the date the Call-Off Contract is entered into or to a civil penalty for fraud or evasion within the last three (3) years;  (c) For these purposes :  (i) a return is "submitted" when it is first submitted to the Relevant Tax Authority and any subsequent amendments or re-submissions are to be ignored; and  (ii) a Relevant Tax Authority will not be deemed to have "successfully challenged" the Supplier or a Subcontractor until an appeal against such challenge is no longer possible. |
| **Order** | An order for G-Cloud Services placed by a Contracting Body with the Supplier in accordance with the Ordering Processes. |
| **Order Form** | The order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services. |
| **Ordered G-Cloud Services** | G-Cloud Services which are the subject of an Order by the Buyer. |
| **Outside IR35** | Contractual engagements which would be determined to not be within the scope of the IR35 intermediaries legislation if assessed using the ESI tool. |
| **Party** | The Buyer or the Supplier and ‘Parties’ will be interpreted accordingly. |
| **Personal Data** | Takes the meaning given in the GDPR. |
| **Personal Data Breach** | Takes the meaning given in the GDPR. |
| **Processing** | Takes the meaning given in the GDPR |
| **Processor** | Takes the meaning given in the GDPR. |
| **Prohibited Act** | 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:   * induce that person to perform improperly a relevant function or activity * reward that person for improper performance of a relevant function or activity * commit any offence:   + under the Bribery Act 2010   + under legislation creating offences concerning Fraud   + at common Law concerning Fraud   + committing or attempting or conspiring to commit Fraud |
| **Project Specific IPRs** | 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. |
| **Property** | Assets and property including technical infrastructure, IPRs and equipment. |
| **Protective Measures** | 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. |
| **PSN or Public Services Network** | The Public Services Network (PSN) is the Government’s high-performance network which helps public sector organisations work together, reduce duplication and share resources. |
| **Purchase Order Number** | the Buyer’s unique number relating to the supply of the Services |
| **Regulatory Body or Bodies** | 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. |
| **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) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and  (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed; |
| **Relevant Person** | 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. |
| **Relevant Tax Authority** | HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established, resident or liable to any Tax; |
| **Relevant Transfer** | A transfer of employment to which the Employment Regulations applies. |
| **Replacement Services** | 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. |
| **Replacement Supplier** | 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). |
| **Security Management Plan** | The Supplier's security management plan developed by the Supplier in accordance with clause 16.1. |
| **Services** | The services ordered by the Buyer as set out in the Order Form. |
| **Service Data** | Data that is owned or managed by the Buyer and used for the G-Cloud Services, including backup data. |
| **Service Definition(s)** | 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. |
| **Service Description** | The description of the Supplier service offering as published on the Digital Marketplace. |
| **Service Personal Data** | 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. |
| **Spend Controls** | The approval process used by a central government Buyer if it needs to spend money on certain digital or technology services, see <https://www.gov.uk/service-manual/agile-delivery/spend-controls-check-if-you-need-approval-to-spend-money-on-a-service> |
| **Start Date** | The start date of this Call-Off Contract as set out in the Order Form. |
| **Subcontract** | 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. |
| **Subcontractor** | 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. |
| **Subprocessor** | Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract. |
| **Supplier** | The person, firm or company identified in the Order Form. |
| **Supplier Personnel** | All directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement; |
| **Supplier Representative** | The representative appointed by the Supplier from time to time in relation to the Call-Off Contract. |
| **Supplier Staff** | 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. |
| **Supplier Terms** | 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. |
| **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. |
| **“TAAR” or “Targeted Anti-Avoidance Rule”** | Means provision(s) in any legislation which seeks to prevent avoidance of any Tax; |
| **Tax** | Means:  (a) all forms of tax whether direct or indirect;  (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;  (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and  (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,  in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction; |
| **Term** | The term of this Call-Off Contract as set out in the Order Form. |
| **Variation** | This has the meaning given to it in clause 32 (Variation process). |
| **VAT** | Value added tax as provided for in the Value Added Tax Act 1994. |
| **Working Days** | Any day other than a Saturday, Sunday or public holiday in England and Wales. |
| **Year** | A contract year. |

## **Schedule 7 - GDPR Information**

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

## **Annex 1 - Processing Personal Data**

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

* + - 1. The contact details of the Buyer’s Data Protection Officer are:
         1. advice.dpa@hmrc.gsi.gov.uk or write to:
         2. The Data Protection Officer

HM Revenue and Customs

7th Floor

10 South Colonnade

Canary Wharf

London

E14 4PU

* + - 1. The contact details of the Supplier’s Data Protection Officer are:
         1. [Erik.Zilinek@skillsoft.com](mailto:Erik.Zilinek@skillsoft.com) or:
         2. ContactDPO@skillsoft.com
      2. The Processor shall comply with any further written instructions with respect to Processing by the Controller.
      3. Any such further instructions shall be incorporated into this Annex.

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| --- | --- |
| **Description** | **Details** |
| Identity of Controller for each Category of Personal Data | **The Buyer is Controller and the Supplier is Processor**  The Parties acknowledge that in accordance with paragraph 2-15 Framework Agreement Schedule 4 (Where the Party is a Controller and the other Party is Processor) and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:   * Names and associated email addresses for HMRC staff members that will require a user licence for the service.   **The Supplier is Controller and the Buyer is Processor**  *The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Buyer is the Processor in accordance with paragraph* 2 *to paragraph 15* *of the following Personal Data:*   * *Not applicable*   **The Parties are Joint Controllers**  *The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:*   * *Not applicable*     **The Parties are Independent Controllers of Personal Data**  *The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:*   * *Business contact details of Supplier Personnel for which the Supplier is the Controller,* * *Business contact details of any* *directors, officers, employees, agents, consultants and contractors of Buyer (excluding the Supplier Personnel) engaged in the performance of the Buyer’s duties under the Contract) for which the Buyer is the Controller,* |
| Duration of the Processing | For 24 months from 30/07/2019 to 29/07/2021. |
| Nature and purposes of the Processing | Email addresses and names of intended users of the service will be provided to the supplier by the buyer in order to distribute the licences.  Users of the service will use their email address to log in to the service provided by the supplier, via the web client. The supplier stores these details to enable users to benefit from the service. |
| Type of Personal Data | Email addresses  Names |
| Categories of Data Subject | HMRC staff that have been specifically allocated a user licence based on their need to access the learning material. |
| Plan for return and destruction of the data once the Processing is complete  UNLESS requirement under Union or Member State law to preserve that type of data | The data shall be kept for no longer than is needed for the fulfilment of this service. Once this contract or any renewal of this service expires it is expected that the data be erased. Upon written request by Buyer to delete or return the data, Supplier shall, after a recovery period of up to thirty (30) days following such request, comply with Buyer’s instructions as soon as reasonably practicable. Notwithstanding the foregoing, absent instructions from Buyer, Supplier shall delete all data within a hundred and eighty (180) days following the aforementioned expiry. |