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

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## **Part A - Order Form**

|  |  |
| --- | --- |
| **Digital Marketplace service ID numbers:** | 367612370450440  354547418515860  829851906244310 |
| **Call-Off Contract reference:** | SIMRS 3 |
| **Call-Off Contract title:** | SIMRS hosting, maintenance & support and application development. |
| **Call-Off Contract description:c** | Provision of hosting, maintenance & support and application development services for the Nuclear Safeguards Information Management and Reporting System (SIMRS) to support the UK State System of Accountancy for and control of nuclear material (SSAC). |
| **Start date:** | 1st September 2020 |
| **Expiry date:** | 31st August 2022 |
| **Call-Off Contract value:** | £737,613.91 including VAT at 20%. |
| **Charging method:** | Fixed price monthly charges for hosting and maintenance & support.  OCRs (as defined in clause 34) may also be agreed on a fixed price basis. |
| **Purchase order number:** | To be assigned by ONR. |

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** | Office for Nuclear Regulation  Building 4 Redgrave Court  Merton Road  Bootle  L20 7HS  **“ONR” or “Buyer”** |
| **To: the Supplier** | Axis 12 Ltd  Supplier’s phone:  0203 397 8514  Supplier’s address:  Unit 14, The Ivories  6-18 Northampton St  London  N1 2HY  United Kingdom.  Company number:  07215135  **“Supplier”** |
| **Together: the ‘Parties’** | |

### Principal contact details

|  |  |
| --- | --- |
| **For the Buyer:** | Title: ██████████  Name: ██████████  Email: ██████████  Phone: ██████████ |
| **For the Supplier:** | Title: ██████████  Name: ██████████  Email: ██████████  Phone: ██████████ |

### Call-Off Contract term

|  |  |
| --- | --- |
| **Start date:** | This Call-Off Contract Starts on 1st September 2020 and is valid for 24 months. |
| **Ending (termination):** | The notice period needed for Ending the Call-Off Contract is 90 Working Days from the date of written notice for undisputed sums or 30 days from the date of written notice for Ending without cause. |
| **Extension period:** | This Call-Off Contract can be extended by the Buyer for two periods of up to 12 months each, by giving the Supplier one month’s written notice before its Ending.  Extensions which extend the Term beyond 24 months are only permitted if the Supplier complies with the additional exit plan requirements at clauses 21.3 to 21.8 of Part B Terms and Conditions of this Call-Off Contract. |

### 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 1 - Cloud hosting and  Lot 3 - Cloud support. |
| **G-Cloud services required:** | The service requirements are set out in Annex A - Requirements to this Order Form.  The Services to be provided by the Supplier to meet the service requirements under the above G-Cloud lots are listed in Framework Section 2 and described below:   * Service ID 367612370450440   as outlined in the attached document  and described in the Axis12 SIMRS Application  & Hosting Support Service Delivery Guide Version 2.43.   * Service ID 354547418515860   as outlined in the attached document  and described in the Axis12 SIMRS Application  & Hosting Support Service Delivery Guide Version 2.43.   * Service ID 829851906244310   as outlined in the attached document    The Axis12 SIMRS Application & Hosting Support Service Delivery Guide Version 2.43 is included in Annex A to this Order Form. The maximum anticipated volumes of SIMRS Hosting and SIMRS maintenance and support services to be provided each month under this Call-Off Contract are as specified therein.  There are no guarantees to the Supplier of minimum volume of any of these Services.  The Supplier shall supply the Services in respect of the software solution known as the Nuclear Safeguards Information Management and Reporting System (SIMRS) to support a UK State System of Accountancy (SSAC) for and control of nuclear material (the “**SIMRS Solution**”). The SIMRS Solution includes the NAC Reporter software along with any and all updates, developments, versions and releases of such software along with all intellectual property rights related to and used in connection with the SIMRS Solution. The SIMRS Solution is licenced to the Buyer under a perpetual licence previously granted to the Buyer which enables the Supplier to host, maintain and develop the SIMRS Solution through the provision of the Services under this Call-Off Contract to the Buyer.  The Supplier acknowledges and agrees that the Intellectual Property Rights arising in respect of any and all developments to the SIMRS Solution carried out in the course of the provision of the Services shall constitute Project Specific IPRs for the purposes of this Call-Off Contract and shall be subject to the licence provisions set out in clause 11 of Part B of this Call Off Contract as amended by this Order Form.  The parties agree to review the scope and delivery of the maintenance and support Services during Service Reviews (as defined in Annex B) and in any case shall carry out a more detailed review quarterly throughout the Term. |
| **Additional Services:** | A Project Definition is required to be provided by the Supplier as set out in Annex A - Requirements to this Order Form. |
| **Location:** | The Services will be delivered at the ONR offices in Bootle, as required, and remotely in support of ONR personnel throughout the United Kingdom and while travelling on ONR business. ONR data may be stored only within the United Kingdom unless otherwise authorised in writing by ONR. |
| **Quality standards:** | The quality standards required for this Call-Off Contract are those specified in clause 14 of Part B of this Call-Off Contract together with any specified in Annex A - Requirements to this Order Form. |
| **Technical standards:** | The technical standards required for this Call-Off Contract are as specified in Annex A - Requirements to this Order Form. |
| **Service level agreement:** | The service level and availability criteria required for this Call-Off Contract are as set out in Annex B - Service Level Agreement to this Order Form. The Parties service level agreement is set out in the Axis12 SIMRS Application & Hosting Support Service Delivery Guide Version 2.43. |
| **Onboarding:** | The onboarding plan for this Call-Off Contract is as set out in the Supplier’s Implementation Plan included below. The Implementation Plan may be updated from time to time as agreed between the Buyer and the Supplier. |
| **Offboarding:** | The Buyer and the Supplier will agree an exit plan during the Call-Off Contract period to enable the Supplier Deliverables to be transferred to the Buyer ensuring that the Buyer has all the code and documentation required to support and continuously develop the Service with Buyer resource or any third party as the Buyer requires. The Supplier will update this plan whenever there are material changes to the Services. A statement of work may be agreed between the Buyer and the Supplier specifically to cover the exit plan and the cost of completion of the exit plan under such statement of work shall, subject to the terms of clause 21.2, be agreed in the applicable statement of work and on a time and materials basis calculated in accordance with the Supplier’s rate card. |
| **Collaboration agreement:** | Not used. |
| **Limit on Parties’ liability:** | The annual total liability of either Party for all Property defaults will not exceed £1,000,000.00.  The annual total liability for all other defaults will not exceed £2,000,000.00. |
| **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. The professional indemnity insurance cover held by the Supplier will have a minimum limit of indemnity of £5,000,000 for each individual claim (and as required by Law) * employers' liability insurance with a minimum limit of £10,000,000 or any higher minimum limit required by Law * public liability insurance with a minimum limit of £5,000,000 per claim. |
| **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 fifteen 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.  Clauses 7.4 to 7.13 inclusive of the Framework Agreement. |
| **Buyer’s equipment:** | The Buyer’s equipment to be used with this Call-Off Contract includes:   * the Buyer’s licence to use the SIMRS Solution, for the sole reason of providing the Call-Off Contract services to the Buyer and for no other purpose, and; * the Buyer’s licences for Microsoft SQL Enterprise Server software, for the sole reason of providing the Call-Off Contract services to the Buyer and for no other purpose. |

### Supplier’s information

|  |  |
| --- | --- |
| **Subcontractors or partners:** | The following is a list of the Supplier’s Subcontractors or Partners:  The Supplier shall subcontract to NAC International to deliver part of the SIMRS Maintenance & Support services:  NAC International Inc.  3930 E. Jones Bridge Road, Suite 200  Norcross, GA 30092  Unites States of America. |

### 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 monthly in arrears, or as otherwise set out in work packages for the development of SIMRS. |
| **Invoice details:** | The Supplier will issue electronic invoices monthly in arrears, or as otherwise set out in work packages. 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 as instructed on the ONR purchase order. |
| **Invoice information required:** | All invoices must include the ONR purchase order number. |
| **Invoice frequency:** | Invoices will be sent to the Buyer monthly or as otherwise set out in work packages. |
| **Call-Off Contract value:** | The total value of this Call-Off Contract is £737,613.91 including VAT at 20%. |
| **Call-Off Contract charges:** | The following Charges do not include VAT, which shall apply at the prevailing rate. The breakdown of the Charges is:  Fixed price charge for the imaging of new servers; creation of the network segments and other infrastructure components and for commissioning, deployment and testing of new environments as set out in the Implementation Plan: **██████████**  Fixed price monthly Hosting charge:  **██████████**  Fixed price monthly Maintenance and Support charge:  From 1st November 2020 to 30th April 2021: **██████████**  From 1st May 2021 onwards **██████████.**  The above fixed price monthly charges shall commence only upon signoff by the Buyer of the service in accordance with the Implementation Plan. At that point these charges shall replace the equivalent charges for SIMRS Hosting and Maintenance & Support made under the SIMRS DOS2 Call-Off Agreement between the Supplier and the Buyer.  Charges may also be made on a fixed price basis for implementing an Operational Change Request, for which the Supplier has given a fixed price quotation to implement the change and which has been approved by the Buyer’s Safeguards Delivery Lead. Such changes are limited to a price of ██████████ per Operational Change Request and are subject to a total cap during the contract term of:  **██████████**  The Supplier shall provide transparency in resource estimate and pricing in its response to Operational Change Requests. |

### Additional Buyer terms

|  |  |
| --- | --- |
| **Performance of the service and deliverables:** | This Call-Off Contract will include the following Implementation Plan, exit and offboarding plans and milestones: |
| **Guarantee:** | Not used. |
| **Warranties, representations:** | In addition to the incorporated Framework Agreement clause 4.1, the Supplier warrants and represents to the Buyer, without prejudice to any  other rights and remedies of the Buyer howsoever arising, that all components of the SIMRS Solution shall:  (a) be free from material design and programming errors;  (b) perform in all material respects in accordance with the relevant specifications contained in the Supplier SIMRS Solution and documentation; and  (c) not infringe any Intellectual Property Rights.  Acceptance criteria for Deliverables as agreed between the Parties and shall be as set out in the respective documents specifying the scope of such Deliverables and Services. |
| **Supplemental requirements in addition to the Call-Off terms:** | None. |
| **Alternative clauses:** | None. |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Buyer specific amendments to/refinements of the Call-Off Contract terms:** | Within the scope of the Call-Off Contract, the following additional terms shall apply:  **1) Clause 4 of the Part B Terms and Conditions shall be amended as follows:**  Clause 4.1 shall be amended by adding the following at the end of the final bullet point “The level of clearance Supplier Staff is SC or equivalent as agreed by the Buyer for Key Staff or as otherwise notified by the Buyer to the Supplier from time to time”.  **2) New clauses 4.9 to 4.16 shall be added as follows:**  4.9 The Parties agree that the following Supplier Staff detailed in the table below are key to this Call-Off Contract and the provision of the Services (“**Key Staff**”).  4.10 Table of Key Staff:   |  |  |  | | --- | --- | --- | | Name | Role | Details | | ██████████ | ██████████ |  | | ██████████ | ██████████ |  | | ██████████ | ██████████ |  | | ██████████ | ██████████ |  |     4.11 The Supplier will ensure that Key Staff are assigned to provide the Services for their Working Days (agreed between Supplier and Buyer) and are not removed from the Services during dates agreed between the Parties.  4.12 The Supplier will promptly replace any Key Staff that the Buyer considers unsatisfactory at no extra charge. The Supplier will promptly replace anyone who resigns with someone who is acceptable to the Buyer. If the Supplier cannot provide an acceptable replacement, the Buyer may terminate the Call-Off Contract subject to clause 18.  4.13 Supplier Staff will comply with Buyer requirements for the conduct of staff when on Buyer’s premises.  4.14 The Supplier will comply with the Buyer’s staff vetting procedures for all or part of the Supplier Staff.  4.15 The Supplier will, on request, provide a copy of the contract of employment or engagement (between the Supplier and the Supplier Staff) for every member of Supplier Staff made available to the Buyer.  **3) Clause 8.68 to clause 8.76 of the Framework Agreement as incorporated into this Call-Off Contract shall be amended as follows:**  Clause 8.68 of the Framework Agreement as incorporated in to this Call-Off Contact shall be deleted and replaced with the following: “8.68 Either Party will as soon as possible, apply to the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator.”  The time period of “10 Working Days” in Clause 8.69 of the Framework Agreement as incorporated in to this Call-Off Contact shall be amended to “3 Working Days”.  The time period of “60 Working Days” in Clause 8.73 of the Framework Agreement as incorporated in to this Call-Off Contact shall be amended to “10 Working Days”.  The time period of “10 Working Days” in Clause 8.75 of the Framework Agreement as incorporated in to this Call-Off Contact shall be amended to “3 Working Days”.  The time period of “30 Working Days” in the third bullet point in Clause 8.76 of the Framework Agreement as incorporated in to this Call-Off Contact shall be amended to “10 Working Days”.  **4) The following provisions shall be added to clause 11:**  11.9 The Buyer shall be entitled to sub-license the Project Specific IPRs to a Replacement Supplier on equivalent terms to those set out in this Call-Off Contract and such sub-licence shall include amongst others terms which prevent the sub-licensee from copying, adapting, reverse engineering, decompiling and disassembling the Project Specific IPRs licensed under the sub-licence nor using such Project Specific IPRs for any purposes other than in connection with providing the Replacement Services to the Buyer.  Clause 11. The Buyer shall notify the Supplier of the intent to sub-licence and the identity of the intended sub-licencee. The Supplier shall agree in writing to the sub-license within fifteen working days of notification, such agreement not to be unreasonably withheld.  11.10 The Supplier may terminate the licence for material breach in accordance with Clause 18.5 if the Buyer or any person to whom the Buyer grants a sub-licence commits any material breach of the terms of this Clause 11.  11.11 The Buyer shall ensure that prior to entering into any sub-licence the sub-licensee shall have executed a confidentiality undertaking in favour of the licensor of the Solution in or substantially in the form set out in Annex C to this Call-Off Contract;  11.12 Notwithstanding any other rights the Buyer may have in this Call-Off Contract to assign or novate its rights and obligations in this Call-Off Contract, the Buyer may assign, novate or otherwise transfer its rights and obligations under this Clause 11 to any other public sector or private sector body appointed to undertake the regulation of nuclear safeguards in the United Kingdom.  **5) The parties have agreed that Clause 15 of the Part B Terms and Conditions shall not apply to this Order Form.**  **6) A new clause 34 shall be added as follows:**  34 OPERATIONAL CHANGE PROCESS:  34.1 Any Operational Changes identified by the Buyer to improve or change the Services may be requested by the Buyer at any time.  34.2 The Buyer may request an Operational Change by submitting a written request for Operational Change (“**OCR**”) to the Supplier. The OCR shall include the following details: (a) the proposed Operational Change; and (b) the time-scale required for completion of the Operational Change.  34.3 The Supplier shall respond to the OCR with an impact assessment which shall include: (a) details of how it will implement the Operational Change; (b) the time-scale for completion of the Operational Change; (c) any impacts of the Operational Change on the Services; and (d) the cost of the Operational Change which shall include a fixed price proposal and a breakdown of resource against the fixed price proposal.  34.4 The Buyer shall review the impact assessment and shall either accept or reject the impact assessment and discuss the same with the Supplier.  34.5 Once the Buyer approves the final impact assessment and authorises the Supplier to proceed with the Operational Change, the Supplier shall complete the Operational Change by the timescale specified for completion in the OCR, and shall promptly notify the Buyer when the Operational Change is completed. Once the Operational Change is completed to the satisfaction of the Buyer, the Buyer shall pay the fixed price for the Operational Change.  The Following definition shall be added to Schedule 6: “**Operational Change**” means any change in the Services which is: (a) of a routine nature; (b) will not require a change to this Call-Off Contract; (c) is not otherwise delivered by the Supplier as part of the Maintenance and Support services which form part of the Services; and (d) is below a value of £25,000 including VAT; |
| **Public Services Network (PSN):** | Not applicable. |
| **Personal Data and Data Subjects:** | Confirm whether either Annex 1 of Schedule 7 is being used: Annex 1 is being used. |

**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:** | 14 September 2020 | 07 September 2020 |

## **Schedule 1 – Services**

**Hosting Services**:

The Supplier shall provide the Hosting Services in accordance with the Order Form to meet the Buyer’s Requirements set out in Annex A.

**Maintenance and Support Services**:

The Supplier shall provide the following Maintenance and Support services in accordance with the Order Form to meet the Buyer’s Requirements set out in Annex A,

1. Troubleshooting issues and defects as reported by the Buyer regardless of whether the expected behaviour is explicitly defined in any Buyer specification or not. Where the expected behaviour as reported is not explicitly defined in a Buyer specification:
   1. Any resolution of the issue/defect will be instructed as an Operational Change; and
   2. The time expended for troubleshooting will be agreed as an Operational Change.
2. Resolution of defects where the expected behaviour is explicitly defined in a Buyer specification documentation shared with the Supplier and produced at the time that the relevant functionality was introduced. Where the expected behaviour is undocumented prior to its introduction, will need to be investigated and actioned through the operational change process as an Operational Change.
3. Troubleshooting, investigation and resolution of incidents that result in a disruption of the service whereby the cause is demonstrated to be:
   1. Supplier infrastructure related
   2. Core SIMRS Solution related

Note: Incidents due to other causes (e.g. user error, non-Supplier infrastructure related etc) are supported but chargeable outside the base Support and Maintenance fee

1. The testing and implementation of NAC Reporter updates that were identified and fixed for other clients and are relevant to the Buyer’s operations
2. Response to questions related to application operation of the existing feature set. QnA relating to features not previously used by the Buyer or ways of operating not previously carried out by the Buyer will be under the operational change process as an Operational Change.
3. Point release updates of SIMRS Solution supporting software:
   1. Windows
   2. SQL Server
   3. Devexpress
   4. Visual Studios
   5. Secure Black Box

Note: this support does not include support for more extensive support software updates, which will be addressed as project work

1. Testing and minor SIMRS Solution application changes that are required to support the release of SIMRS Solution supporting software
2. Security patching of the hosted SIMRS Solution environments
3. Availability monitoring of the production environment
4. Monitoring of daily backups of the production environment

Note: requests for data restores to any environment (other than a restore required to resolve an Supplier Infrastructure or Core SIMRS Solution software related incident) will be carried out under the operational change process as an Operational Change.

1. U.S. based laptop maintenance and support
2. Monthly Service Management meeting/call
3. Monthly Service Management reporting

Items 1-12 in the above list have been used by the Supplier to estimate the resources required to provide SIMRS Maintenance and Support. Notwithstanding this list, the Services shall be provided by the Supplier in accordance with the Service Level Agreement set out in Annex B and shall deliver the service levels specified therein.

## **Annex A – Buyer’s Requirement**

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**██████████**

**██████████**

**██████████**

## **Annex B – Service Level Agreement**

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## **Annex C – Confidentiality**

CONFIDENTIALITY AGREEMENT – SIMRS SOLUTION

THIS AGREEMENT is made on [date] 20

BETWEEN:

(1) [insert name] of [insert address] (the “Sub-licensee”); and

(2) NAC of 3930 E. Jones Bridge Road, Suite 200, Norcross, GA 30092, Unites States of America (the “Licensor”) and together

the “Parties”.

WHEREAS:

(A) ONR is the beneficiary of a licence to the SIMRS Solution, of which the Intellectual Property Rights are owned by the Licensor.

(B) ONR wishes to grant a sub-licence to the Sub-licensee in respect of the SIMRS Solution (the “Sub-licence”).

(C) It is a requirement of ONR’s licence that, before ONR grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Licensor in or substantially in the form of this Agreement to protect the Confidential Information of the Licensor.

IT IS AGREED as follows:

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information”

means:

(a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by ONR to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:

(i) the Licensor; or

(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Licensor;

(b) the source code and the object code of the SIMRS Solution sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other

documentation supplied by the Licensor to the ONR pursuant to or in connection with the Sub-licence;

(c) other Information provided by ONR pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee’s attention or into the Sub-licensee’s possession in connection with the Sub-licence; and

(d) Information derived from any of the above,

but not including any Information that:

was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the ONR;

the Sub-licensee obtained on a non-confidential basis from a third party who is not, to the Sub-licensee’s knowledge or belief, bound by a confidentiality agreement with the Licensor or otherwise prohibited from disclosing the information to the Sub-licensee;

was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or

was independently developed without access to the Confidential Information;

“Information” means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

“Sub-licence” has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

(a) a reference to any gender includes a reference to other genders;

(b) the singular includes the plural and vice versa;

(c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

(d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

(e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

(f) references to Clauses are to clauses of this Agreement.

2 Confidentiality Obligations

2.1 In consideration of the ONR entering into the Sub-licence, the Sub-licensee

shall:

(a) treat all Confidential Information as secret and confidential;

(b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);

(c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Licensor or except as expressly set out in this Agreement;

(d) not transfer any of the Confidential Information outside the United Kingdom;

(e) not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;

(f) immediately notify the Licensor in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and

(g) upon the expiry or termination of the Sub-licence:

(i) destroy or return to the Licensor all documents and other tangible materials that contain any of the Confidential Information;

(ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and

(iii) make no further use of any Confidential Information.

3 Permitted Disclosures

3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

(a) reasonably need to receive the Confidential Information in connection with the Sub-licence; and

(b) have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and

(c) have agreed to terms similar to those in this Agreement.

3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.

3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:

(a) notify the Licensor in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

(b) ask the court or other public body to treat the Confidential Information as confidential.

4 General

4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Licensor shall remain with and be vested in the Licensor.

4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:

(a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;

(b) to require the Licensor to disclose, continue disclosing or update any Confidential Information; or

(c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.

4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

4.4 Without prejudice to any other rights or remedies that the Licensor may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Licensor shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

4.5 The maximum liability of the Sub-licensee to the Licensor for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).

4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.

4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.

4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

5.1 Any notice to be given under this Agreement (each a “Notice”) shall be given in writing [and shall be delivered by hand] and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

(a) if to be given to the Licensor shall be sent to:

NAC, 3930 E. Jones Bridge Road, Suite 200, Norcross, GA 30092, Unites States of America

Attention: [Contact name and/or position, e.g. “The Finance Director”]

(b) if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: [ ]

6 Governing law

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised

representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of NAC

Signature:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:

For and on behalf of [the Sub-licensee]

Signature:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:

## **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:

Fixed price charge for the imaging of new servers; creation of the network segments and other infrastructure components and for commissioning, deployment and testing of new environments as set out in the Implementation Plan:

**██████████**

Fixed price monthly Hosting charge:

**██████████**

Fixed price monthly Maintenance and Support charge:

From 1st November 2020 to 30th April 2021: **██████████**

From 1st May 2021 onwards **██████████**.

The above fixed price monthly charges shall commence only upon signoff by the Buyer of the service in accordance with the Implementation Plan. At that point these charges shall replace the equivalent charges for SIMRS Hosting and Maintenance & Support made under the SIMRS DOS2 Call-Off Agreement between the Supplier and the Buyer.

Charges may also be made on a fixed price basis for implementing an Operational Change Request, for which the Supplier has given a fixed price quotation to implement the change and which has been approved by the Buyer’s Safeguards Delivery Lead. Such changes are limited to a price of ██████████ per Operational Change Request and are subject to a total cap during the contract term of:

**██████████**

The Supplier shall provide transparency to the Buyer in resource estimates and pricing in response to Operational Change Requests.

## **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)
   * 7.4 to 7.13 (Audit)
   * 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.
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**

Not used

## **Schedule 4 - Alternative clauses**

Not used

## **Schedule 5 – Guarantee**

Not used

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

In this Call-Off Contract the following expressions mean:

|  |  |
| --- | --- |
| Expression | Meaning |
| **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). |
| **Application** | The response submitted by the Supplier 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'). |
| **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>/) |
| **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). |
| **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. |
| **Implementation Plan** | The plan for implementing the Services as set out in the Order Form of this Call-Off Contract. |
| **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. |
| **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. |
| **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. |
| **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. |
| **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 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 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. |
| **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). |
| **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: ██████████, ██████████.
      2. The contact details of the Supplier’s Data Protection Officer are: ██████████, ██████████.
      3. The Processor shall comply with any further written instructions with respect to Processing by the Controller.
      4. Any such further instructions shall be incorporated into this Annex.

|  |  |
| --- | --- |
| **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:   * *the Supplier will process the data of external duty holders as amended from time to time when notified by the external duty holders and/or the Buyer for the purpose of fulfilling the Buyer’s safeguards regulatory function.*   **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 the duration of the Term* |
| Nature and purposes of the Processing | *the Personal Data will be processed by the Supplier for the purposes of hosting, supporting and maintaining the SIMRS Solution and the Buyer carrying out its Safeguards Regulatory functions in respect of the monitoring and management of nuclear material.* |
| Type of Personal Data | *Name, email address and telephone number.* |
| Categories of Data Subject | *Buyer staff and external duty holders* |
| 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 Personal Data will be retained for the Term and/or until such a time as the external duty holder notifies the Buyer that it is no longer a duty holder. The Personal Data will be retained and destroyed in accordance with the Buyer’s “Business Classification Scheme and Disposal Schedule”.* |