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Commercial  
Service

G-Cloud 10 Call-Off Contract

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

<b>Part A - Order Form</b>	<b>3</b>
<b>Schedule 1 - Services</b>	<b>10</b>
<b>Schedule 2 - Call-Off Contract charges</b>	<b>11</b>
<b>Part B - Terms and conditions</b>	<b>11</b>
<b>Schedule 3 - Collaboration agreement</b>	<b>39</b>
<b>Schedule 4 - Alternative clauses</b>	<b>39</b>
<b>Schedule 5 - Guarantee</b>	<b>40</b>
<b>Schedule 6 - Glossary and interpretations</b>	<b>40</b>
<b>Schedule 7 - Processing, Personal Data and Data Subjects</b>	Error! Bookmark not defined.

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Part A - Order Form

Digital Marketplace service ID number:	[Enter text]
Call-Off Contract reference:	CPD04/119/060 - 00313069
Call-Off Contract title:	MHCLG MarkLogic Enterprise Licence Support Renewals 2018/19
Call-Off Contract description:	MHCLG MarkLogic Enterprise Licence Support Renewals 2018/19
Start date:	28/10/2018
Expiry date:	30/06/2019
Call-Off Contract value:	Estimated £85,257.75 excluding VAT
Charging method:	Invoice/BACS
Purchase order number:	TBA

Comment [EG1]: Is this something they would fill in?

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

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

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

There are terms in the Call-Off Contract that may be defined in the Order Form. These are

identified in the contract with square brackets.

<b>From: the Buyer</b>	Ministry of Housing, Communities and local Government (MHCLG) Fry Building, 2 Marsham Street, London SW1P 4DF.
<b>To: the Supplier</b>	MarkLogic Corporation (650)655-2310 Supplier's address: 999 Skyway Road, Suite 200 San Carlos California 94070 USA Company number: 086035958 (DUNS)
<b>Together: the 'Parties'</b>	

**Principle contact details**

<b>For the Buyer:</b>	
<b>For the Supplier:</b>	

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#### Call-Off Contract term

<b>Start date:</b>	This Call-Off Contract Starts on 28/10/2018 and is valid until 30/06/2019.
<b>Ending (termination):</b>	The notice period needed for Ending the Call-Off Contract is at least 90 Working Days from the date of written notice for disputed sums or at least 30 days from the date of written notice for Ending without cause.
<b>Extension period:</b>	This Call-Off Contract can be extended by the Buyer for up to 12 months, by giving the Supplier 1 months written notice before its expiry.

#### Buyer contractual details

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

<b>G-Cloud lot:</b>	<p>This Call-Off Contract is for the provision of Services under:</p> <p>[Lot 3 - Cloud support]</p> <p><b>Marklogic One Year Annual Software Support</b> The MarkLogic Software Support shall be provided pursuant to the terms and conditions contained in the following Marklogic Corporation Quotation Document and Marklogic Corporation Software License and Services Agreement (SLSA) dated January 28<sup>th</sup>, 2016, which are attached hereto and incorporated herein by reference:</p> <p><b>SEE ATTACHED ORDER DOCUMENTS:</b> a) "Marklogic Corporation Quotation Document" which has the electronic file name MarkLogic quote until 30 June 2019;</p> <p> MarkLogic quote until 30 June 2019.pdf</p> <p>b) "Marklogic Corporation Software License and Services Agreement" dated January 28, 2016 <i>DCLG - SLSA 01.28.2016.pdf</i></p>
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	 <p>Adobe Acrobat Document</p> <p>In summary, this includes:  1) Marklogic Software Support:  Software Support  £68,057.75 excluding VAT for the period 28/10/18 to 30/6/19  Total Marklogic Software Support (7 months)  £68,057.75 excluding VAT  Software Support will be invoiced upon execution of this Call-Off Agreement for the period 28/10/18 to 30/6/19.</p> <p>Notwithstanding anything to the contrary herein, the Parties agree that no Software provided by Supplier hereunder may be used or published by Buyer as open source. Instead, the rights and obligations of the Parties with respect to IPR are as specified in the Software License and Service Agreement included above.</p>
<b>G-Cloud services required:</b>	<p>The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined below:  Support for licences 28/10/18 – 30/06/2019 = £68,057.75 excluding VAT. See embedded quote below.</p>  <p>MarkLogic quote until 30 June 2019.pdf</p> <p>Estimate for support for licences due for period March 2019 – 30/06/2019 = £17,200.00 excluding VAT.</p>
<b>Additional services:</b>	N/A
<b>Location:</b>	The Services will be delivered electronically and telephonically to MHCLG.
<b>Quality standards:</b>	The quality standards required for this Call-Off Contract are in accordance with the Software License and Services Agreement (referenced above)
<b>Technical standards:</b>	The technical standards required for this Call-Off Contract are in accordance with the Software License and Services Agreement (referenced above)
<b>Service level agreement:</b>	The service level and availability criteria required for this Call-Off Contract are in accordance with the Software License and Services Agreement

	(referenced above)
<b>Onboarding:</b>	The onboarding plan for this Call-Off Contract is: N/A
<b>Offboarding:</b>	The offboarding plan for this Call-Off Contract is: N/A
<b>Collaboration agreement:</b>	N/A
<b>Limit on Parties' liability:</b>	<p>The annual total liability of either Party for all Property defaults will not exceed £1,000,000.00.</p> <p>The annual total liability for Buyer Data defaults will not exceed £85,692 or 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater).</p> <p>The annual total liability for all other defaults will not exceed the greater of £85,692 or 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater).</p>
<b>Insurance:</b>	<p>The insurance(s) required will be:</p> <ul style="list-style-type: none"> <li>● a minimum insurance period of 6 years following the expiration or Ending of this Call-Off Contract</li> <li>● professional indemnity insurance cover to be held by the Supplier and by any agent, Subcontractor or consultant involved in the supply of the G-Cloud Services. This professional indemnity insurance cover will have a minimum limit of indemnity of £1,000,000 for each individual claim or any higher limit the Buyer requires (and as required by Law)</li> <li>● employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by Law</li> </ul>
<b>Force majeure:</b>	A Party may End this Call-Off Contract if the Other Party is affected by a Force Majeure Event that lasts for more than 10 consecutive days.
<b>Audit:</b>	The following Framework Agreement audit provisions will be

	incorporated under clause 2.1 of this Call-Off Contract to enable the Buyer to carry out audits: N/A
<b>Buyer's responsibilities:</b>	The Buyer is responsible for; all obligations in accordance with the <i>Software License and Services Agreement (referenced above)</i>
<b>Buyer's equipment:</b>	The Buyer's equipment to be used with this Call-Off Contract includes: N/A

#### Supplier's information

<b>Subcontractors or partners:</b>	The following is a list of the Supplier's Subcontractors or Partners N/A
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#### Call-Off Contract charges and payment

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

<b>Payment method:</b>	The payment method for this Call-Off Contract is by invoice.
<b>Payment profile:</b>	The payment profile for this Call-Off Contract is annually in advance.
<b>Invoice details:</b>	The Supplier will issue electronic invoices. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice.
<b>Who and where to send invoices to:</b>	Invoices will be sent to <a href="mailto:clginvoices@communities.gsi.gov.uk">clginvoices@communities.gsi.gov.uk</a>
<b>Invoice information required – for example purchase order, project reference:</b>	All invoices must include a valid PO number, full description of the goods/services provided, start/end dates and any other relevant supporting evidence.
<b>Invoice frequency:</b>	Invoice will be sent to the Buyer as agreed.

<b>Call-Off Contract value:</b>	The total estimated value of this Call-Off Contract is £85,92.47 excluding VAT. <i>30/10/18</i> Support for licences 28/10/18 – 30/06/2019 = £68,057.75 excluding VAT. Estimate for support for licences due for period March 2019 – 30/06/2019 = £17,634.72 excluding VAT.
<b>Call-Off Contract charges:</b>	The breakdown of the Charges is as stated above.

**Additional buyer terms**

<b>Performance of the service and deliverables:</b>	This Call-Off Contract will include the following implementation plan, exit and offboarding plans and milestones: N/A
<b>Guarantee:</b>	NA
<b>Warranties, representations:</b>	N/A
<b>Supplemental requirements in addition to the Call-Off terms:</b>	None stated
<b>Alternative clauses:</b>	None stated
<b>Buyer specific amendments to/refinements of the Call-Off Contract terms:</b>	N/A
<b>Public Services Network (PSN):</b>	N/A
<b>Personal Data and Data Subjects:</b>	Will Schedule 7 – Processing, Personal Data and Data Subjects be used N

**1. Formation of contract**

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

**2. Background to the agreement**

- (A) The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.10.
- (B) The Buyer provided an Order Form for Services to the Supplier.

Signed:	
Name:	
Title:	
Signature:	
Date:	

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**Schedule 1 - Services**

Support for licences 28/18/18 – 30/06/2019 = £68,057.75 excluding VAT.

## 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:

Support for licences 28/10/18 – 30/06/2019 = £68,057.75 excluding VAT.

## Part B - Terms and conditions

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

- 1.1 The Supplier must start providing the Services on the date specified in the Order Form.
- 1.2 This Call-Off Contract will expire on the Expiry Date in the Order Form. It will be for up to 24 months from the Start Date unless Ended earlier under clause 18 or extended by the Buyer under clause 1.3.
- 1.3 The Buyer can extend this Call-Off Contract, with written notice to the Supplier, by the period in the Order Form, as long as this is within the maximum permitted under the Framework Agreement of 2 periods of up to 12 months each.
- 1.4 The Parties must comply with the requirements under clauses 21.3 to 1.8 if the Buyer reserves the right in the Order Form to extend the contract beyond 24 months.

### 2. Incorporation of terms

- 2.1 The following Framework Agreement clauses (including clauses and defined terms referenced by them) as modified under clause 2.2 are incorporated as separate Call-Off Contract obligations and apply between the Supplier and the Buyer:

- 4.1 (Warranties and representations)
- 4.2 to 4.7 (Liability)

- 4.11 to 4.12 (IR35)
- 5.2 to 5.3 (Force majeure)
- 5.6 (Continuing rights)
- 5.7 to 5.9 (Change of control)
- 5.10 (Fraud)
- 5.11 (Notice of fraud)
- 7.1 to 7.2 (Transparency)
- 8.3 (Order of precedence)
- 8.4 (Relationship)
- 8.7 to 8.9 (Entire agreement)
- 8.10 (Law and jurisdiction)
- 8.11 to 8.12 (Legislative change)
- 8.13 to 8.17 (Bribery and corruption)
- 8.18 to 8.27 (Freedom of Information Act)
- 8.28 to 8.29 (Promoting tax compliance)
- 8.30 to 8.31 (Official Secrets Act)
- 8.32 to 8.35 (Transfer and subcontracting)
- 8.38 to 8.41 (Complaints handling and resolution)
- 8.49 to 8.51 (Publicity and branding)
- 8.42 to 8.48 (Conflicts of interest and ethical walls)
- 8.52 to 8.54 (Equality and diversity)
- 8.66 to 8.67 (Severability)
- 8.68 to 8.82 (Managing disputes)
- 8.83 to 8.91 (Confidentiality)
- 8.92 to 8.93 (Waiver and cumulative remedies)
- paragraphs 1 to 10 of the Framework Agreement glossary and interpretations
- any audit provisions from the Framework Agreement set out by the Buyer in the Order Form

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

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

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

2.4 When an Order Form is signed, the terms and conditions agreed in it will be incorporated into this Call-Off Contract.

### 3. Supply of services

3.1 The Supplier agrees to supply the G-Cloud Services and any Additional Services under the terms of the Call-Off Contract and the Supplier's Application.

3.2 The Supplier undertakes that each G-Cloud Service will meet the Buyer's acceptance criteria, as defined in the Order Form.

### 4. Supplier staff

4.1 The Supplier Staff must:

- be appropriately experienced, qualified and trained to supply the Services
- apply all due skill, care and diligence in faithfully performing those duties
- obey all lawful instructions and reasonable directions of the Buyer and provide the Services to the reasonable satisfaction of the Buyer
- respond to any enquiries about the Services as soon as reasonably possible

- complete any necessary Supplier Staff vetting as specified by the Buyer

- 4.2 The Supplier must retain overall control of the Supplier Staff so that they are not considered to be employees, workers, agents or contractors of the Buyer.
- 4.3 The Supplier may substitute any Supplier Staff as long as they have the equivalent experience and qualifications to the substituted staff member.
- 4.4 The Buyer may conduct IR35 Assessments using the ESI tool to assess whether the Supplier's engagement under the Call-Off Contract is Inside or Outside IR35.
- 4.5 The Buyer may End this Call-Off Contract for Material Breach if the Supplier is delivering the Services Inside IR35.
- 4.6 The Buyer may need the Supplier to complete an Indicative Test using the ESI tool before the Start Date or at any time during the provision of Services to provide a preliminary view of whether the Services are being delivered Inside or Outside IR35. If the Supplier has completed the Indicative Test, it must download and provide a copy of the PDF with the 14-digit ESI reference number from the summary outcome screen and promptly provide a copy to the Buyer.
- 4.7 If the Indicative Test indicates the delivery of the Services could potentially be Inside IR35, the Supplier must provide the Buyer with all relevant information needed to enable the Buyer to conduct its own IR35 Assessment.
- 4.8 If it is determined by the Buyer that the Supplier is Outside IR35, the Buyer will provide the ESI reference number and a copy of the PDF to the Supplier.

## 5. Due diligence

- 5.1 Both Parties agree that when entering into a Call-Off Contract they:

- have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party

- are confident that they can fulfil their obligations according to the Call-Off Contract terms
- have raised all due diligence questions before signing the Call-Off Contract
- have entered into the Call-Off Contract relying on its own due diligence

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

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

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

- 7.1 The Buyer must pay the Charges following clauses 7.2 to 7.11 for the Supplier's delivery of the Services.
- 7.2 The Buyer will pay the Supplier within the number of days specified in the Order Form on receipt of a valid invoice.
- 7.3 The Call-Off Contract Charges include all Charges for payment processing. All invoices submitted to the Buyer for the Services will be exclusive of any Management Charge.
- 7.4 If specified in the Order Form, the Supplier will accept payment for G-Cloud Services by the Government Procurement Card (GPC). The Supplier will be liable to pay any merchant fee levied for using the GPC and must not recover this charge from the Buyer.
- 7.5 The Supplier must ensure that each invoice contains a detailed breakdown of the G-

Cloud Services supplied. The Buyer may request the Supplier provides further documentation to substantiate the invoice.

- 7.6 If the Supplier enters into a Subcontract it must ensure that a provision is included in each Subcontract which specifies that payment must be made to the Subcontractor within 30 days of receipt of a valid invoice.
- 7.7 All Charges payable by the Buyer to the Supplier will include VAT at the appropriate rate.
- 7.8 The Supplier must add VAT to the Charges at the appropriate rate with visibility of the amount as a separate line item.
- 7.9 The Supplier will indemnify the Buyer on demand against any liability arising from the Supplier's failure to account for or to pay any VAT on payments made to the Supplier under this Call-Off Contract. The Supplier must pay all sums to the Buyer at least 5 Working Days before the date on which the tax or other liability is payable by the Buyer.
- 7.10 The Supplier must not suspend the supply of the G-Cloud Services unless the Supplier is entitled to End this Call-Off Contract under clause 18.6 for Buyer's failure to pay undisputed sums of money. Interest will be payable by the Buyer on the late payment of any undisputed sums of money properly invoiced under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.11 If there's an invoice dispute, the Buyer must pay the undisputed amount and return the invoice within 10 Working Days of the invoice date. The Buyer will provide a covering statement with proposed amendments and the reason for any non-payment. The Supplier must notify the Buyer within 10 Working Days of receipt of the returned invoice if it accepts the amendments. If it does then the Supplier must provide a replacement valid invoice with the response.
- 7.12 Due to the nature of G-Cloud Services it isn't possible in a static Order Form to exactly define the consumption of services over the duration of the Call-Off Contract. The

Supplier agrees that the Buyer's volumes indicated in the Order Form are indicative only.

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

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

## 9. Insurance

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

9.2 The Supplier will ensure that:

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

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

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

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

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

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

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

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

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

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

## **10. Confidentiality**

10.1 Subject to clause 24.1 the Supplier must during and after the Term keep the Buyer fully

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

## 11. Intellectual Property Rights

- 11.1 Unless otherwise specified in this Call-Off Contract, a Party will not acquire any right, title or interest in or to the Intellectual Property Rights (IPRs) of the other Party or its licensors.
- 11.2 The Supplier grants the Buyer a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to use the Project Specific IPRs and any Background IPRs embedded within the Project Specific IPRs for the Buyer's ordinary business activities.
- 11.3 The Supplier must obtain the grant of any third-party IPRs and Background IPRs so the Buyer can enjoy full use of the Project Specific IPRs, including the Buyer's right to publish the IPR as open source.
- 11.4 The Supplier must promptly inform the Buyer if it can't comply with the clause above and the Supplier must not use third-party IPRs or Background IPRs in relation to the Project Specific IPRs if it can't obtain the grant of a licence acceptable to the Buyer.
- 11.5 The Supplier will, on written demand, fully indemnify the Buyer and the Crown for all Losses which it may incur at any time from any claim of infringement or alleged infringement of a third party's IPRs because of the:
- rights granted to the Buyer under this Call-Off Contract
  - Supplier's performance of the Services
  - use by the Buyer of the Services

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

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

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

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

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

## 12. Protection of information

12.1 The Supplier must:

- comply with the Buyer's written instructions and this Call-Off Contract when Processing Buyer Personal Data
- only Process the Buyer Personal Data as necessary for the provision of the G-Cloud Services or as required by Law or any Regulatory Body