

Part C – Terms and conditions

1. Call-Off Contract start date, length and methodology

- 1.1 The Supplier will start providing the Services on the date specified in the Order Form.
- 1.2 This Call-Off Contract will terminate on the End Date specified in the Order Form unless terminated earlier in accordance with Clause 23 and will be a maximum of 24 months from the Commencement Date.

2. Overriding provisions

- 2.1 The Supplier agrees to supply the G-Cloud Services [and any Additional Services (Lot 4 only)] in accordance with this Call-Off Contract and the Supplier's Terms as identified in the Framework Agreement (G-Cloud Services) and incorporated into this Call-Off Contract.
- 2.2 In the event of and only to the extent of any conflict or ambiguity between the Clauses of this Call-Off Contract, the provisions of the Schedules, any document referred to in the Clauses of this Call-Off Contract (including Supplier's Terms) and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - the Framework Agreement
 - the Clauses of this Call-Off Contract (excluding Supplier Terms)
 - the completed Order Form
 - the Supplier's Terms and Conditions, and
 - any other document referred to in the Clauses of this Call-Off Contract.

The Supplier accepts this is the order of prevailing provisions in this Call-Off Contract.

3. Transfer and sub-contracting

- 3.1 The Supplier will not assign, novate or sub-contract any part of this Call-Off Contract without the Buyer's prior written approval which shall not be unreasonably withheld or delayed.
- 3.2 The Supplier will be responsible for the performance of any Sub-Contractors.
- 3.3 The Buyer may assign, novate or otherwise dispose of its rights and obligations under this Call-Off Contract or any part thereof to:
- any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Buyer, or
 - any private sector body which substantially performs the functions of the Buyer
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Call-Off Contract.

4. Supplier Staff

- 4.1 The Supplier Staff will:
- fulfil all reasonable requests of the Buyer
 - apply all due skill, care and diligence to the provisions of the Services
 - be appropriately experienced, qualified and trained to supply the Services
 - respond to any enquiries about the Services as soon as reasonably possible
 - complete any necessary vetting procedures specified by the Buyer
 - Comply with the provisions of the Official Secrets Act 1911 to 1989; and
 - Section 182 of the Finance Act 1989.

5. Due diligence

- 5.1 Both Parties agree that when entering into a Call-Off Contract, they:
- 5.2.1 having made their own enquiries are satisfied by the accuracy of any information supplied by the other Party
- 5.2.2 are confident that they can fulfil their obligations according to the terms of this Call-Off Contract
- 5.2.3 have entered into this Call-Off Contract relying on their own due diligence

6. Warranties, representations and acceptance criteria

- 6.1 The Supplier will perform its obligations under this Call-Off Contract with all reasonable care, skill and diligence, according to Good Industry Practice.
- 6.2 The Supplier will use all reasonable endeavours to prevent the introduction, creation or propagation of any disruptive elements into systems providing services to data, software or Authority Confidential Information held in electronic form.
- 6.3 The Supplier undertakes to the Buyer that each G-Cloud Service will meet the Buyer's acceptance criteria, as defined in the Call-Off Contract Order Form.
- 6.4 The Supplier warrants that it has full capacity and authority and all necessary authorisations, consents, licences and permissions and Intellectual Property Rights to perform this Call-Off Contract.
- 6.5 The Supplier represents that, in entering into this Call-Off Contract it has not committed any Fraud.
- 6.6 The Supplier undertakes to pay all taxes due from it to HMRC and will not indulge in "disguised employment" practices when delivering services under this Call-Off Contract, and
- 6.7 For the avoidance of doubt, the fact that any provision within this Call-Off Contract is expressed as a warranty shall not preclude any right of termination the Buyer may have in respect of breach of that provision by the Supplier.

7. Business continuity and disaster recovery

- 7.1 The Supplier will ensure a disaster recovery approach is captured in a clear disaster recovery plan contained within their service descriptions where appropriate and required by the Buyer.

8. Payment terms and VAT

- 8.1 The Buyer will pay the Supplier within 30 days of receipt of a valid invoice submitted by the Supplier in accordance with this Call-Off Contract.
- 8.2 The Call-Off Contract Charges are deemed to include all Charges for payment processing. All Invoices submitted to the Buyer for the Services shall be exclusive of any Management Charge.
- 8.3 All charges payable by the Buyer to the Supplier shall include VAT at the appropriate rate.

- 8.4 The Supplier will add VAT to the charges at the appropriate rate.
- 8.5 Where specified within 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 shall not recover this charge from the Buyer.
- 8.6 The Supplier will ensure that each invoice contains all appropriate references and a detailed breakdown of the G-Cloud Services supplied. The Buyer may request the Supplier provides further documentation to substantiate the invoice.
- 8.7 Supplier Sub-Contracts must oblige the Supplier to make payments to its Sub-Contractor within 30 calendar days from the receipt of a valid invoice.
- 8.8 The Supplier shall 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 shall pay all monies pursuant to this indemnity to the Buyer not less than 5 UK working days before the date upon which the tax or other liability is payable by the Buyer.
- 8.9 The Supplier shall not suspend the supply of the G-Cloud Services for Buyer's failure to pay undisputed sums of money unless the Supplier is entitled to suspend or terminate this Call-Off Contract. Interest shall be payable by the Buyer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).
- 8.10 In the event of a disputed invoice, the Buyer shall make payment in respect of any undisputed amount in accordance with the provisions of this Call-Off Contract and return the invoice to the Supplier within 10 UK working days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The Supplier shall respond within 10 UK working days of receipt of the returned invoice stating whether or not the Supplier accepts the Buyer's proposed amendments. If it does then the Supplier shall supply with the response a replacement valid invoice.
- 9. Recovery of sums due and right of set-off**
- 9.1 If a Supplier owes money to the Buyer, the Buyer may deduct that sum from the Call-Off Contract Charges due.

10. Insurance

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

10.1 Subcontractors

10.1.1 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 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.

10.2 Agents and professional consultants

10.2.1 The Supplier will also ensure that all agents and professional consultants involved in the supply of 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 termination or expiry date to this Call-Off Contract to which the insurance relates.

10.2.2 The Supplier will also ensure that all agents and professional consultants involved in the supply of Services hold employers liability insurance to a minimum indemnity of £5,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the termination or expiry date to this Call-Off Contract to which the insurance relates.

10.3 Additional or extended insurance

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

10.3.2 The Supplier will provide CCS and the Buyer with the following evidence that they have complied with clause 10.3.1 above:

- a broker's verification of insurance; or
- receipts in respect of the insurance premium; or
- other evidence of payment of the latest premiums due.

10.4 Supplier liabilities

10.4.1 Insurance will not relieve the Supplier of any liabilities under the Framework Agreement or this Call-Off Contract.

10.4.2 The Supplier will:

- take all risk control measures relating to the Services as it would be reasonable to expect of a contractor acting in accordance with 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 of which the Supplier is, or becomes, aware; and
- hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of placing cover representing any of the insurance to which it is a Party.

10.4.3 The Supplier will not do or omit to do anything, which would vitiate any of the insurances.

10.5 Indemnity to principals

10.5.1 Where specifically outlined in this Call-Off Contract, the Supplier will ensure that the third-party public and products liability policy will contain an 'indemnity to principals' clause under which the Buyer will be compensated for both of the following claims against the Buyer:

- death or bodily injury; and
- third-party Property damage arising from connection with the Services and for which the Supplier is legally liable.

10.6 Cancelled, suspended, terminated or unrenewed policies

10.6.1 The Supplier will notify CCS and any Buyers as soon as possible if the Supplier becomes aware that any of the insurance policies have been, or are due to be, cancelled, suspended, terminated or not renewed.

10.7 Premium, excess and deductible payments

10.7.1 Where any insurance requires payment of a premium, the Supplier will:

- be liable for the premium; and
- pay such premium promptly.

10.7.2 Where any insurance is subject to an excess or deductible below the Supplier will be liable for it. The Supplier will not be entitled to recover any sum paid for insurance excess or any deductible from CCS or the Buyer.

11. Confidentiality

11.1 Except where disclosure is clearly permitted by this Call-Off Contract, neither Party will disclose the other Party's Confidential Information without the relevant Party's prior written consent.

11.2 Disclosure of Confidential Information is permitted where information:

- must be disclosed to comply with legal obligations placed on the Party making the disclosure
- belongs to the Party making the disclosure (who is not under any obligation of confidentiality) before its disclosure by the information owner
- was obtained from a third party who is not under any obligation of confidentiality, before receiving it from the disclosing Party
- is, or becomes, public knowledge, other than by breach of this clause or Call-Off Contract
- is independently developed without access to the other Party's Confidential Information
- is disclosed to obtain confidential legal professional advice.

11.3 The Buyer may disclose the Supplier's Confidential Information:

- to any central government body on the basis that the information may only be further disclosed to central government bodies;
- to the UK Parliament, Scottish Parliament or Welsh or Northern Ireland Assemblies, including their committees;
- if the Buyer (acting reasonably) deems disclosure necessary or appropriate while carrying out its public functions;
- on a confidential basis to exercise its rights or comply with its obligations under this Call-Off Contract; or
- On a confidential basis to a proposed transferee, assignee or novatee of, or successor in title to, the Buyer.

11.4 References to disclosure on a confidential basis will mean disclosure subject to a confidentiality agreement or arrangement containing the same terms as those placed on the Buyer under this clause.

11.5 The Supplier may only disclose the Buyer's Confidential Information to Supplier Staff who are directly involved in the provision of the Services and who need to

know the information to provide the Services. The Supplier will ensure that its Supplier Staff will comply with these obligations.

- 11.6 Either Party may use techniques, ideas or knowledge gained during this Call-Off Contract unless the use of these things results in them disclosing the other Party's Confidential Information where such disclosure is not permitted by the Framework Agreement, or is an infringement of Intellectual Property Rights.
- 11.7 Information about orders placed by a Buyer (including pricing information and the terms of any Call-Off Contract) may be published by CCS and may be shared with other Buyers. Where Confidential Information is shared with other Buyers, CCS will notify the recipient of the information that its contents are confidential.

12. Conflict of Interest

- 12.1 The Supplier will take all appropriate steps to ensure that Supplier Staff are not in a position where there is or may be an actual conflict between the financial or personal interests of the Supplier Staff and another Supplier where both are providing the Services to the Buyer under any Call-Off Contract in accordance with the Framework Agreement.
- 12.2 Any breach of this clause will be deemed to be a Material Breach.
- 12.3 A conflict of interest may arise in situations including where a member of the Supplier Staff:
- is related to someone in another Supplier team who both form part of the same team performing the Services under the Framework Agreement
 - has a business interest in another Supplier who is part of the same team performing the Services under the Framework Agreement
 - has been provided with, or had access to, information which would give the Supplier or an affiliated company an unfair advantage in the Tender process.
- 12.4 Where the Supplier identifies a risk of a conflict or potential conflict, they will (before starting work under this Call-Off Contract, unless otherwise agreed with the Buyer) inform the Buyer of such conflicts of interest and how they plan to mitigate the risk. Details of such mitigation arrangements are to be sent to the Buyer as soon as possible. On receiving this notification, the Buyer will, at its sole discretion, notify the Supplier if the mitigation arrangements are acceptable or whether the risk or conflict remains a Material Breach.

13. Intellectual Property Rights

- 13.1 The Supplier will have no rights to use any of the Buyer's names, logos or trademarks without the Buyer's prior written approval.

14. Data Protection and Disclosure

- 14.1 The Supplier shall comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Framework Agreement or under this Call-Off Contract.
- 14.2 Where the Supplier is processing Buyer Data or Other Contracting Bodies' Personal Data, the Supplier shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Authority and Other Contracting Bodies' Personal Data (and to guard against unauthorised or unlawful processing or accidental loss, destruction of or damage to the Buyer Data and the Other Contracting Bodies' Personal Data.
- 14.3 The Supplier shall provide the Buyer and/or Other Contracting Body with such information as the Buyer and/or Other Contracting Body may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA including;
- to promptly notify the Buyer and/or Other Contracting Body of any breach of the security measures to be put in place pursuant to this Clause; and
 - to ensure that it does not knowingly or negligently do or omit to do anything which places the Buyer and/or Other Contracting Body in breach of its obligations under the DPA and
 - not to cause or permit to be processed, stored, accessed or otherwise transferred outside the European Economic Area any Buyer Data or Other Contracting Body Personal Data supplied to it by the Buyer or Other Contracting Body without approval.

15. Buyer Data

- 15.1 The Supplier will not remove any proprietary notices relating to the Buyer Data.
- 15.2 The Supplier will not store or use Buyer Data except where necessary to fulfill its obligations.
- 15.3 If Buyer Data is processed by the Supplier, the Supplier will supply the data to the Buyer as requested and in the format specified by the Buyer.

- 15.4 The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent its corruption and loss.
- 15.5 The Supplier will ensure that any system which holds any Buyer Data complies with the security requirements prescribed by the Buyer.
- 15.6 The Supplier will ensure that any system on which the Supplier holds any protectively marked Buyer Data will be accredited as specific to the Buyer and will comply with:
- the government security policy framework and information assurance policy;
 - guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems; and
 - the relevant government information assurance standard(s).
- 15.7 Where the duration of this Call-Off Contract exceeds one year, the Supplier will review the accreditation status at least once a year to assess whether material changes have occurred which could alter the original accreditation decision in relation to Buyer Data. If any changes have occurred then the Supplier will re-submit such system for accreditation.
- 15.8 If at any time 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 where such corruption, loss, breach or degradation of the Buyer Data was caused by the action or omission of the Supplier or its representatives) comply with any remedial action proposed by the Buyer.
- 15.9 The Supplier will provide at the request of CCS or the Buyer, any information relating to the Supplier's compliance with its obligations under the Data Protection Act (to the extent arising under and/or in connection with the Framework Agreement and this Call-Off Contract). The Supplier will also ensure that it does not knowingly or negligently fail to do something that places CCS or any Buyer in breach of its obligations of the Data Protection Act. This is an absolute obligation and is not qualified by any other provision of this Call-Off Contract.
- 15.10 The Supplier agrees to use the appropriate organisational, operational and technological processes and procedures to keep the Buyer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.

15.11 The provisions of this Clause 15 shall apply during the term of this Call-Off Contract and for such time as the Supplier holds the Buyer's Data.

16. Records and audit access

16.1 The Supplier will allow CCS (and CCS's external auditor) to access its information and conduct audits of the Services provided under this Call-Off Contract and the provision of Management Information.

17. Freedom of Information (FOI) requests

17.1 The Supplier will transfer any Request for Information to the Buyer within 2 UK working days of receipt.

17.2 The Supplier will provide all necessary help reasonably requested by the Buyer to enable the Buyer to respond to the Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations.

17.3 To the extent it is permissible and reasonably practical for it to do so, CCS will make reasonable efforts to notify the Supplier when it receives a relevant FOIA or EIR request so that the Supplier may make appropriate representations.

18. Standards and quality

18.1 The Supplier will comply with any standards in this Call-Off Contract and Section 4 (How Services will be delivered) of the Framework Agreement.

19. Security

19.1 The Supplier will use software and the most up-to-date antivirus definitions available from an industry accepted antivirus software vendor to minimise the impact of Malicious Software.

19.2 If Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, the Supplier will help the Buyer to mitigate any losses and will restore the Services to their desired operating efficiency as soon as possible.

19.3 Any costs arising from the actions of the Buyer or Supplier taken in compliance with the provisions of the above clause, will be dealt with by the Buyer and the Supplier as follows:

- by the Supplier, where the Malicious Software originates from the Supplier software or the Buyer Data while the Buyer Data was under the control of the

Supplier, unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier.

- by the Buyer if the Malicious Software originates from the Buyer software or the Buyer Data, while the Buyer Data was under the control of the Buyer.

19.4 The Supplier will immediately notify CCS of any breach of security in relation to CCS's Confidential Information (and the Buyer in relation to any breach regarding Buyer Confidential Information). The Supplier will recover such CCS and Buyer Confidential Information however it may be recorded.

19.5 Any system development by the Supplier must also comply with the government's '10 Steps to Cyber Security' guidance, available at:
<https://www.gov.uk/government/publications/cyber-risk-management-a-board-level-responsibility/10-steps-summary>

20. Guarantee

20.1 Where the Buyer has specified in the Order Form that this Call-Off Contract shall be conditional upon receipt of a Guarantee from the guarantor, the Supplier shall deliver to the Buyer a completed Guarantee in the form attached, on or prior to the Commencement Date; and deliver to the Buyer a certified copy of the passed resolution and/or board minutes of its guarantor approving the execution of the Guarantee.

21. Incorporation of terms

21.1 Upon the execution of an Order, the terms and conditions agreed in the Order Form will be incorporated into this Call-Off Contract.

22. Managing disputes

22.1 When either Party notifies the other of a dispute, both Parties will attempt in good faith to negotiate a settlement as soon as possible.

22.2 Nothing in this procedure will prevent a Party from seeking any interim order restraining the other Party from doing any act or compelling the other Party to do any act.

22.3 If the dispute cannot be resolved, either Party will be entitled to refer it to mediation in accordance with the procedures below, unless:

- the Buyer considers that the dispute is not suitable for resolution by mediation,

- the Supplier does not agree to mediation.

22.4 The procedure for mediation is as follows:

- A neutral adviser or mediator will be chosen by agreement between the Parties. If the Parties cannot agree on a mediator within 10 UK working days after a request by one Party to the other, either Party will as soon as possible, apply to the mediation provider or to the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator. This application to CEDR must take place within 12 UK working days from the date of the proposal to appoint a mediator, or within 3 UK working days of notice from the mediator to either Party that they are unable or unwilling to act.
- The Parties will meet with the mediator within 10 UK working days of the mediator's appointment to agree a programme for the exchange of all relevant information and the structure for negotiations to be held. The Parties may at any stage seek help from the mediation provider specified in this clause to provide guidance on a suitable procedure.
- Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- If the Parties reach agreement on the resolution of the dispute, the agreement will be reduced to writing and will be binding on the Parties once it is signed by their duly authorised representatives.
- Failing agreement, either Party may invite the mediator to provide a non-binding but informative opinion in writing. Such an opinion will be provided without prejudice and will not be used in evidence in any proceedings relating to this Call-Off Contract without the prior written consent of both Parties.
- If the Parties fail to reach agreement in the structured negotiations within 60 UK working days of the mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

22.5 Either Party may request by written notice that the dispute is referred to expert determination if the dispute relates to:

- any technical aspect of the delivery of the digital services;
- the underlying technology; or
- otherwise is of a financial or technical nature.

22.6 An expert will be appointed by written agreement between the Parties, but if there is a failure to agree within 10 UK working days, or if the person appointed is unable or unwilling to act, the expert will be appointed on the instructions of the President of

the British Computer Society (or any other association that has replaced the British Computer Society).

22.7 The expert will act on the following basis:

- they will act as an expert and not as an arbitrator and will act fairly and impartially;
- the expert's determination will (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- the expert will decide the procedure to be followed in the determination and will be requested to make their determination within 30 UK working days of their appointment or as soon as reasonably practicable and the Parties will help and provide the documentation that the expert needs for the determination;
- any amount payable by one Party to another as a result of the expert's determination will be due and payable within 20 UK working days of the expert's determination being notified to the Parties
- the process will be conducted in private and will be confidential;
- the expert will determine how and by whom the costs of the determination, including their fees and expenses, are to be paid.

22.8 Without prejudice to any other rights of the Buyer under this Call-Off Contract, the obligations of the Parties under this Call-Off Contract will not be suspended, ceased or delayed by the reference of a dispute submitted to mediation or expert determination and the Supplier and the Supplier Staff will comply fully with the Requirements of this Call-Off Contract at all times.

23. Termination

23.1 The Buyer will have the right to terminate this Call-Off Contract at any time by giving the notice to the Supplier specified in Part A, the Order Form. The Supplier's obligation to provide the Services will end on the date set out in the Buyer's notice.

23.2 The Parties acknowledge and agree that:

- the Buyer's right to terminate under this clause is reasonable in view of the subject matter of this Call-Off Contract and the nature of the Service being provided.
- the Call-Off Contract Charges paid during the notice period given by the Buyer in accordance with this clause are a reasonable form of compensation and are deemed to fully cover any avoidable costs or losses incurred by the Supplier which may arise either directly or indirectly as a result of the Buyer exercising the right to terminate under this clause without cause.

- Subject to clause 31 (Liability), if the Buyer terminates this Call-Off Contract without cause, they 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 such Loss. If the Supplier holds insurance, the Supplier will reduce its unavoidable costs by any insurance sums available. The Supplier will submit a fully itemised and costed list of such Loss, with supporting evidence of unavoidable Losses incurred by the Supplier as a result of termination.
 - Either Party will have the right to terminate this Call-Off Contract where clause 29.2 applies.
- 23.3 The Buyer will have the right to terminate this Call-Off Contract at any time with immediate effect by written notice to the Supplier if:
- the Supplier commits a Supplier Default and if the Supplier Default cannot, in the reasonable opinion of the Buyer, be remedied, or
 - the Supplier commits any fraud.
- 23.4 Either Party may terminate this Call-Off Contract at any time with immediate effect by written notice (of not more than 30 UK working days) if the other Party commits a Material Breach of any term of this Call-Off Contract (other than failure to pay any amounts due under this Call-Off Contract) and, if such breach is remediable, fails to remedy that breach within a period of 15 UK working days of being notified in writing to do so.
- 23.5 If an Insolvency Event of either Party occurs, or the other Party ceases or threatens to cease to carry on the whole or any material part of its business, the other Party is entitled to terminate this Call-Off Contract with immediate effect.
- 23.5 If the Buyer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Buyer in writing of such failure to pay and allow the Buyer five (5) calendar days to settle the undisputed invoice. If the Buyer fails to pay such undisputed sums within the allotted additional 5 calendar days, the Supplier may terminate this Call-Off Contract subject to giving the length of notice specified in the Order Form (Termination)
- 24. Consequences of termination and expiry**
- 24.1 Where the Buyer has the right to terminate this Call-Off Contract it may elect to suspend this Call-Off Contract and its performance.

- 24.2 If the Buyer contracts with another Supplier for the Deliverables under this Call-Off Contract, the Supplier will comply with clause 28.
- 24.3 The rights and obligations of the Parties in respect of this Call-Off Contract will automatically terminate upon the expiry or termination of this Call-Off Contract, except those rights and obligations set out in clause 24.7.
- 24.4 At the end of the Call-Off Contract period (howsoever arising), the Supplier must:
- promptly return to the Buyer:
 - all Buyer Data including all copies of Buyer software, code and any other software licensed by the Buyer to the Supplier under this Call-Off Contract;
 - any materials created by the Supplier under this Call-Off Contract where the IPRs are owned by the Buyer;
 - cease to use the Buyer Data and, at the direction of the Buyer, provide the Buyer and the replacement Supplier with a complete and uncorrupted version of the Buyer Data in electronic form in the formats and on media agreed with the Buyer and the replacement Supplier;
 - destroy all copies of the Buyer Data when they receive the Buyer's written instructions to do so or 12 months after the date of expiry or termination, and provide written confirmation to the Buyer that the data has been securely destroyed, except where the retention of Buyer Data is required by Law;
 - work with the Buyer on any work in progress and ensure an orderly transition of the Services to the replacement supplier;
 - return any sums prepaid for Services which have not been delivered to the Buyer by the date of expiry or termination;
 - provide all information requested by the Buyer on the provision of the Services so that:
 - the Buyer is able to understand how the Services have been provided; and
 - the Buyer and the replacement supplier can conduct due diligence.
- 24.5 Each Party will return all of the other Party's Confidential Information. Each Party will confirm that it does not retain the other Party's Confidential Information except where the information must be retained by the Party as a legal requirement or where this Call-Off Contract states otherwise.
- 24.6 All licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Services will be terminated at the end of the Call-Off Contract period (howsoever arising) without the need for the Buyer to serve notice except where this Call-Off Contract states otherwise.

- 24.7 Termination or expiry of this Call-Off Contract will not affect:
- any rights, remedies or obligations accrued under this Call-Off Contract prior to termination or expiration;
 - the right of either Party to recover any amount outstanding at the time of such termination or expiry;
 - the continuing rights, remedies or obligations of the Buyer or the Supplier under clauses:
 - 8 - Payment Terms and VAT
 - 9 - Recovery of Sums Due and Right of Set-Off
 - 10 - Insurance
 - 11 - Confidentiality
 - 12 - Conflict of Interest
 - 13 - Intellectual Property Rights
 - 15 - Buyer Data
 - 24 - Consequences of Expiry or Termination
 - 31 - Liability
 - 32 - Waiver and cumulative remedies
 - any other provision of the Framework Agreement or this Call-Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry will survive the termination or expiry of this Call-Off Contract.

25. Supplier's status

25.1 The Supplier is an independent Contractor and no contract of employment or partnership is created between the Supplier and the Buyer. Neither Party is authorised to act in the name of, or on behalf of, the other Party.

26. Notices

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

26.2 The following table sets out the method by which notices may be served under this Call-Off Contract and the respective deemed time and proof of Service:

Delivery type	Deemed delivery time	Proof of Service
Email	9am on the first Working Day after sending	Dispatched in a pdf form to the correct email address without any error message

26.3 The address and email address of each Party will be the address and email address in the Order Form.

27. Exit plan

27.1 The Supplier has provided details of their exit plan within the service description specified in the Order Form and the Buyer and Supplier will follow these arrangements as per Supplier Terms.

28. Handover to replacement supplier

28.1 Within 10 UK Working Days of the expiry or termination of this Call-Off Contract, the Supplier will make available to the Buyer:

- any data (including Buyer Data), Buyer Personal Data and Buyer Confidential Information in the Supplier's possession, power or control.
- any sums prepaid to the Supplier in respect of Ordered Deliverables not provided by the date of expiry or termination of this Call-Off Contract.

28.2 When requested, the Supplier will (at its own expense where the Call-Off Contract has been terminated before end of term due to Supplier cause) help the Buyer to migrate the Services to a replacement Supplier in line with the exit plan (clause 27) to ensure continuity of the Services.

29. Force Majeure

29.1 Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Call-Off Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure event. Each Party will use all reasonable endeavours to continue to perform its obligations under this Call-Off Contract for the length of a Force Majeure event.

29.2 If a Force Majeure event prevents a Party from performing its obligations under this Call-Off Contract for more than 15 consecutive calendar days, the other Party may terminate this Call-Off Contract with immediate effect by notice in writing.

30. Entire agreement

30.1 This Call-Off Contract constitutes the entire agreement between the Parties relating to the matters dealt within it. It supersedes any previous agreement between the Parties relating to such matters.

30.2 Each Party agrees that in entering into this Call-Off Contract it does not rely on, and will have no remedy relating to, any agreement or representation (whether negligently or innocently made) other than as expressly described in this Call-Off Contract.

- 30.3 Nothing in this clause will exclude any liability for (or remedy relating to) fraudulent misrepresentation or fraud.
- 30.4 Each of the Parties agrees that in entering into this Call-Off Contract it does not rely on, and will have no remedy relating to, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as described in this Call-Off Contract.

31. Liability

31.1 Neither Party excludes or limits its liability for:

- death or personal injury;
- bribery or fraud by it or its employees;
- breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982; or
- any liability to the extent it cannot be excluded or limited by Law.

31.2 Subject to Clauses 31.1 and 31.10 and any lower limits specified in the Order Form, and notwithstanding Clause 31.4, each Party's total aggregate liability relating to all Losses due to a Default in connection with this Call-Off Contract::

- resulting in direct loss or damage to physical Property (including any technical infrastructure, assets or Equipment) of the other Party, will be limited to the sum of £1,000,000 in each Call-Off Contract year in which the Default occurs
- subject to the first bullet point in this clause 31.2 which occur in the first 6 months, will be limited to the greater of the sum of £500,000 or a sum equal to 200% of the estimated Call-Off Contract Charges for the first six months
- subject to the first bullet point in this clause 31.2 which occur during the remainder of the Call-Off Contract period, will be limited to the greater of the sum of £500,000 or an amount equal to 125% of the Call-Off Contract Charges paid, due or which would have been payable under this Call-Off Contract in the 6 months immediately preceding the event giving rise to the liability
- subject to the first bullet point in this clause 31.2 which occur after the end of the Call-Off Contract period, will be limited to the greater of the sum of £500,000 or an amount equal to 125% of the Call-Off Contract Charges paid, due or which would have been payable under this Call-Off Contract in the 6 months immediately before the end of the Call-Off Contract period.

31.3 Subject to clause 31.1, 31.4, in no event will either Party be liable to the other for any:

- loss of profits;
- loss of business;

- loss of revenue;
- loss of or damage to goodwill;
- loss of savings (whether anticipated or otherwise); or
- any indirect, special or consequential loss or damage.

- 31.4 Subject to Clause 31.2 the Supplier will be liable for the following types of loss which will be regarded as direct and will be recoverable by the Buyer:
- the additional operational or administrative costs and expenses arising from any Supplier Default; and
 - any wasted expenditure or charges rendered unnecessary and/or incurred by the Buyer arising from the Supplier's Default; and any losses, costs, damages, expenses or other liabilities suffered or incurred by the Buyer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Buyer Data by the Supplier; and
 - any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Law.
- 31.5 The annual aggregate liability for all defaults resulting in direct loss, destruction, corruption, degradation or damage to the Buyer Data or the Buyer Personal Data or any copy of such Buyer Data, caused by the Supplier's default under or in connection with a Call-Off Contract shall be subject to the financial limits set out in the Order Form.
- 31.6 No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by, or on behalf of, the Buyer to any document or information provided by the Supplier in its provision of the Services, and no failure of the Buyer to discern any defect in, or omission from, any such document or information will exclude or limit the obligation of the Supplier to carry out all the obligations of a professional Supplier employed in a client and Buyer relationship.
- 31.7 Unless otherwise expressly provided, the obligations of the Buyer under this Call-Off Contract are obligations of the Buyer in its capacity as a Contracting counterparty and nothing in this Call-Off Contract will be an obligation on, or in any other way constrain the Buyer in any other capacity, nor will the exercise by the Buyer of its duties and powers in any other capacity lead to any liability under this Call-Off Contract on the part of the Buyer to the Supplier.
- 31.8 Any liabilities which are unlimited will not be taken into account for the purposes of establishing whether any limits relating to direct loss or damage to physical Property within this clause have been reached.

31.9 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Buyer or by breach by the Buyer of its Call-Off Contract obligations.

31.10 The Supplier's liability to pay any Management Charges which are payable to the Authority shall not be limited.

32. Waiver and cumulative remedies

32.1 The rights and remedies provided by this agreement may be waived only in writing by the Buyer or the Supplier representatives in a way that expressly states that a waiver is intended, and such waiver will only be operative regarding the specific circumstances referred to.

32.2 Unless a right or remedy of the Buyer is expressed to be exclusive, the exercise of it by the Buyer is without prejudice to the Buyer's other rights and remedies. Any failure to exercise, or any delay in exercising, a right or remedy by either Party will not constitute a waiver of that right or remedy, or of any other rights or remedies.

33. Fraud

33.1 The Supplier will notify the Buyer if it suspects that any fraud has occurred, or is likely to occur. The exception to this is if while complying with this, it would cause the Supplier or its employees to commit an offence.

33.2 If the Supplier commits any fraud relating to a Framework Agreement, this Call-Off Contract or any other Contract with the government:

- the Buyer may terminate the Call-Off Contract
- CCS may terminate the Framework Agreement
- CCS and/or the Buyer may recover in full from the Supplier whether under Clause 33.3 below or by any other remedy available in law.

33.3 The Supplier will, on demand, compensate CCS and/or the Buyer, in full, for any loss sustained by CCS and/or the Buyer at any time (whether such loss is incurred before or after the making of a demand following the indemnity hereunder) in consequence of any breach of this clause.

34. Prevention of bribery and corruption

34.1 The Supplier will not commit any Prohibited Act.

34.2 The Buyer and CCS will be entitled to recover in full from the Supplier and the Supplier will, on demand, compensate CCS and/or the Buyer in full from and against:

- the amount of value of any such gift, consideration or commission; and
- any other loss sustained by CCS and/or the Buyer in consequence of any breach of this clause.

35. Legislative change

35.1 The Supplier will neither be relieved of its obligations under this Call-Off Contract nor be entitled to increase the Call-Off Contract prices as the result of a general change in Law or a Specific Change in Law without prior written approval from the Buyer.

36. Publicity, branding, media and official enquiries

36.1 The Supplier will take all reasonable steps to not do anything which may damage the public reputation of the Buyer. The Buyer may terminate this Call-Off Contract for Material Breach where the Supplier, by any act or omission, causes material adverse publicity relating to or affecting the Buyer or the Call-Off Contract. This is true whether or not the act or omission in question was done in connection with the performance by the Supplier of its obligations hereunder.

37. Non Discrimination

37.1 The Supplier will notify CCS and relevant Buyers immediately of any legal proceedings issued against it by any Supplier Staff on the grounds of discrimination.

38. Premises

38.1 Where either Party uses the other Party's premises, such Party is liable for all Loss or damage it causes to the premises. Such Party is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.

38.2 The Supplier will use the Buyer's premises solely for the performance of its obligations under this Call-Off Contract.

38.3 The Supplier will vacate the Buyer's premises upon termination or expiry of the Call-Off Contract.

38.4 This clause does not create an tenancy or exclusive right of occupation.

38.5 While on the Buyer's premises, the Supplier will:

- ensure 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;
- comply with any instructions from the Buyer on any necessary associated safety measures ; and
- notify the Buyer immediately in the event of any incident occurring on the premises where that incident causes any personal injury or damage to Property which could give rise to personal injury.

38.6 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.

38.7 All Equipment brought onto the Buyer's premises will be at the Supplier's risk. Upon termination or expiry of the Call-Off Contract, the Supplier will remove such Equipment.

39. Equipment

39.1 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.

39.2 Upon termination or expiry of the Call-Off Contract, the Supplier will remove the Equipment, and any other materials, leaving the premises in a safe and clean condition.

40. The Contracts (Rights of Third Parties) Act 1999

40.1 A person who is not party to this Call-Off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Call-Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

41. Law and jurisdiction

41.1 This Call-Off Contract will be governed by the Laws of England and Wales. Each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England and Wales.

42. Environmental requirements

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

42.2 The Supplier must support Buyers in their efforts to work in an environmentally-friendly way, eg by helping them engage in practices like recycling or lowering their carbon footprint.

43. Defined Terms

In this Call-Off Contract, the following expressions and defined terms have the following interpreted meaning:

'Additional Services'	The services in addition to the G-Cloud Services which are within the scope of the Framework Agreement which the Buyer may request from time to time.
'Application'	The response submitted by the Supplier to the Invitation to Tender (ITT).
'Assurance'	The verification process undertaken by CCS as described in this Framework Agreement.
'Background IPRs'	For each Party: <ul style="list-style-type: none"> • IPRs owned by that Party before the date of this Call-Out Contract, including IPRs contained in any of the Party's know-how, documentation, processes and procedures, • IPRs created by the Party independently of this Call-Out Contract, and/or • For the Buyer, Crown Copyright which is not available to the Supplier otherwise than under this Call-Out Contract, but excluding IPRs owned by that Party subsisting in Buyer software or Supplier software.
'Buyer'	A UK public sector body, or Contracting Body, as described in the OJEU Contract Notice, that can execute a competition and a Call-Off Contract within this Framework Agreement and is identified in the Call-Off Order Form.
'Buyer's Confidential Information'	All Buyer Data and any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Suppliers of the Buyer, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above Any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential').
'Buyer Data'	Data that is owned or managed by the Buyers.
'Buyer Software'	Software owned by or licensed to the Buyer (other than under or pursuant to this Agreement), which is or will be used by the

	Supplier for the purposes of providing the Services.
'Call-Off Contract'	<p>The legally binding agreement (entered into following the provisions of this Framework Agreement) for the provision of Services made between a Buyer and the Supplier.</p> <p>This may include the Order Form detailing service requirements, term of Call-Off Order, start date and pricing.</p>
'Charges'	The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under the Call-Off Contract.
'PSN Code of Practice'	Those obligations and requirements for PSN Service Providers wanting to participate in the PSN together with all documents annexed to it and referenced within it, as set out in the code template.
'Collaboration Agreement'	An agreement 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 an efficient end-to-end G-Cloud Services.
'Commencement Date'	<p>For the purposes of the Framework Agreement, commencement date shall be as outlined in Section 1 - The Appointment within this Framework Agreement.</p> <p>For the purposes of the Call-Off Contract, commencement date shall be as set in the Order Form.</p>
'Commercially Sensitive Information'	Information, which CCS has been notified about, (before the start date of the Framework Agreement) or the Buyer (before the Call-Off Contract start date) with full details of why the Information is deemed to be commercially sensitive.
'Comparable Supply'	The supply of services to another Buyer of the Supplier that are the same or similar to any of the Services
'Confidential Information'	<p>CCS's Confidential Information or the Supplier's Confidential Information, which may include (but is not limited to):</p> <ul style="list-style-type: none"> ● any information that relates to the 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 ● any other information clearly designated as being confidential or which ought reasonably be considered to

	be confidential (whether or not it is marked 'confidential')
'Contracting Bodies'	The Buyer and any other person as listed in the OJEU Notice or Regulation 2 of the Public Contracts Regulations 2015, as amended from time to time, including CCS
'Control'	Control as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly
'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 government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
'Data Protection Legislation or DPA'	The Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable legally binding guidance and codes of practice issued by the Information Commissioner.
'Data Subject'	Shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time.
'Default'	<ul style="list-style-type: none"> • any breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) • any other default, act, omission, negligence or negligent statement of the Supplier, of its Subcontractors or any Supplier Staff in connection with or in relation to this Framework Agreement or this Call-Off Contract <p>Unless otherwise specified in this Call-Off Contract the Supplier is liable to CCS for a Default of the Framework Agreement and in relation to a Default of the Call-Off Contract, the Supplier is liable to the Buyer.</p>

'Deliverable'	Those G-Cloud Services which the Buyer contracts the Supplier to provide under the Call Off Contract.
'Digital Marketplace'	The government marketplace where Services will be made available to Buyers to enable them to be bought (https://www.digitalmarketplace.service.gov.uk/)
'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 the Call-Off Contract.
'Direct Award Criteria'	The award criteria to be applied for the award of Call-Off Contracts for G-Cloud Services set out in Section 3 'Buying Process'.
'Direct Ordering Procedure'	The ordering procedure set out in Framework Agreement.
'Effective Date'	The date on which the Call-Off Contract is signed and as set out in the Order Form.
'FoIA'	The Freedom of Information Act 2000 and any subordinate legislation made under the Act occasionally together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation.
'Framework Agreement'	This contractually-binding document.
'Framework Suppliers'	The suppliers (including the Supplier) appointed under this G-Cloud 8 Framework Agreement.
'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 Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown.
'G-Cloud Services'	The cloud services described in Framework Section 2 (G-Cloud Services) as defined by the Service Definition, the Supplier Terms and any related tender documentation, which the

	Supplier shall make available to the Authority and Other Contracting Bodies and those services which are deliverable by the Supplier under the Collaboration Agreement.
'Good Industry Practice'	Standards and procedures conforming to the Law and the application of skill, care and foresight which would be expected from a person or body who has previously been engaged in a similar type of undertaking under similar circumstances. The person or body must adhere to the technology code of practice (https://www.gov.uk/service-manual/technology/code-of-practice.html) and the government service design manual (https://www.gov.uk/service-manual).
'Group'	A company plus any subsidiary or Holding Company. 'Holding company' and 'Subsidiary' are defined in section 1159 of the Companies Act 2006.
'Group of Economic Operator'	A partnership or consortium not (yet) operating through a separate legal entity.
'Guarantee'	The deed of guarantee described in the Order Form (Parent Company Guarantee).
'Guidance'	Any current UK Government Guidance on the Public Contracts Regulations. In the event of a conflict between any current UK Government Guidance and the Crown Commercial Service Guidance, current UK Government Guidance shall take precedence.
'Holding Company'	As described in section 1159 and Schedule 6 of the Companies Act 2006.
'Information'	As described under section 84 of the Freedom of Information Act 2000, as amended from time to time.
'Insolvency Event'	Can be: <ul style="list-style-type: none"> ● 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	means: <ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to