

G-Cloud 9 Call-Off Contract

This Call-Off Contract for the G-Cloud 9 Framework Agreement (RM1557ix) includes:

[**Part A - Order Form**](#_56kxac515ty5)2

[**Schedule 1 - Services**](#_cv1yk8c1mek8)6

[**Schedule 2 - Call-Off Contract charges**](#_mi4cqc22ysv)11

[**Part B - Terms and conditions**](#_on10w3898fso)17

[**Schedule 3 - Collaboration agreement**](#_sz1ppi95pvt0)30

[**Schedule 4 - Alternative clauses**](#_iz3oef672jgx)30

[**Schedule 5 - Guarantee**](#_lkwoqmwlexpr)30

[**Schedule 6 - Glossary and interpretations**](#_3isya5h4h0ui)30

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# Part A - Order Form

|  |  |
| --- | --- |
| **Digital Marketplace service ID number:** | 163077803017043 |
| **Call-Off Contract reference:** | Ecm 4333 |
| **Call-Off Contract title:** | Virtual Machine Environment-Replacement (VME-R) Professional Services and Migration Tooling for  PSCS, ISCS, IICS, FAMIS (Conversion & Benchmark) SFCS, WPCS, JSAPS, DLACS (Benchmark). |
| **Call-Off Contract description:** | Professional Services and Migration Tooling for  PSCS, ISCS, IICS, FAMIS (Conversion & Benchmark)   SFCS & WPCS (Benchmark) |
| **Start date:**  | 9th August 2017 |
| **Expiry date:** | 8th August 2019 |
| **Call-Off Contract value:** | £ 7,490,991 |
| **Charging method:** | Fixed Price  |
| **Purchase order number:** | **To be provided post signature** |

This Order Form is issued under the G-Cloud 9 Framework Agreement (RM1557ix).

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** | **THE DEPARTMENT OF WORK AND PENSIONS whose principle place of business is at Caxton House, 6012 Tothill Street, London, SW1H 9NA** |
| **To: the Supplier** | Advanced 365 LimitedSupplier’s address:Ditton ParkRiding Court RoadDatchetBerkshireSL3 9LLCompany number: 02124540 |
| **Together: the ‘Parties’** |

**Principle contact details**

|  |  |
| --- | --- |
| **For the Buyer:** | Title: [REDACTED]Name: [REDACTED]Email: [REDACTED]Phone: [REDACTED] |
| **For the Supplier:** | Title: [REDACTED]Name: [REDACTED]Email: [REDACTED] Phone: [REDACTED] |

**Call-Off Contract term**

|  |  |
| --- | --- |
| **Start date:** | This Call-Off Contract Starts on 9th August 2017 |
| **Ending (termination):**  | The notice period needed for Ending the Call-Off Contract is at least 90 days from the date of written notice (reference clause 18.1). For the avoidance of doubt it is agreed that in the event of the Buyer requiring early termination for convenience the Buyer will provide 90 days written notice. Should this right be exercised by the Buyer there will be no refund of any monies paid by the Buyer to the Supplier with regards to Migration Tooling or any Services delivered up to and including the date of termination. In the event the Buyer terminates the G Cloud Call-Off Contract for the VME-R Services and Remediation Order Form pursuant to clause 18.1 of that Call-Off Contract, the Buyer will release to the Supplier any monies retained regarding the Professional Services Conversion for completed milestones or part thereof subject to Charges set out in Table 1 (Milestone Payments). The notice period for disputed sums is at least 30 days from the date of written notice (reference clause 18.6).  |
| **Extension period:** | This Call-Off Contract can be extended by the Buyer for 2 period(s) of up to 12 months each, by giving the Supplier one month written notice before its expiry.Extensions which extend the Term beyond 24 months are only permitted if the Supplier complies with the additional exit plan requirements at clauses 21.3 to 21.8. |

**Buyer contractual details**

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

|  |  |
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| **G-Cloud lot:** | This Call-Off Contract is for the provision of Services under: Lot 3 - Cloud support  |
| **G-Cloud services required:** | The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined below:* planning
* setup and migration
* testing
* Ongoing support

 |
| **Location:** | All Professional Services work will be performed in England. The primary location will be the Supplier’s office at Ditton Park which will be the Supplier’s main location for the migration team along with consultants based in the Mail Box in Birmingham and possibly City Road (London). It is also likely and 'common practice' for the legacy migration practice that some consultants will be home based and either accessing Buyer environments from their home offices or accessing the appropriate environments through the Supplier offices/networks, | Benton Park View Longbenton Newcastle Upon Tyne NE98 1AAandPeel Park, Brunel Way, Blackpool, Lancs ,FY4 5ES |
| **Quality standards:** | All suppliers to the Buyer are required to comply with all relevant Buyer policies, including those that apply to the Buyer security, Data Protection and Buyer Communications. Further details of these can be found at the DWP website <https://www.gov.uk/government/organisations/department-for-work-pensions/about/procurement#code-of-practice>. There may also be additional Quality/Technical Standards that are used locally that you will be expected to conform to, subject to the Buyer communicating them to the Supplier, and the Supplier’s review. |
| **Technical standards:**  | All suppliers to the Buyer are required to comply with all relevant Buyer policies, including those that apply to DWP security, Data Protection and DWP Communications. Further details of these can be found at the DWP website <https://www.gov.uk/government/organisations/department-for-work-pensions/about/procurement#code-of-practice>. There may also be additional Quality/Technical Standards that are used locally that you will be expected to conform to, subject to the Buyer communicating them to the Supplier, and the Supplier’s review. |
| **Service level agreement:** | There are no service levels required for this Call-Off Contract. |
| **Onboarding:**  | Supplier staff will be on-boarded with the Buyer in line with Buyer Responsibilities below and to the extent required to support the conversion phases for PSCS, ISCS, IICS, FAMIS (Conversion and Benchmark)   SFCS & WPCS (Benchmark). |
| **Offboarding:**  | The offboarding plan for this Call-Off Contract will be agreed by the Parties following signature of this Call-Off Contract. |
| **Limit on Parties’ liability:** | The annual total liability of either Party for all Property defaults under this Call-Off Contract shall not exceed £1,000,000. The annual total liability for Buyer Data defaults caused by the Supplier’s default under this Call –Off Contract shall not exceed 50% of the annual Charges payable by the Buyer to the Supplier during the Call-Off Contract Term.The annual total liability for all other defaults under this Call-Off Contract shall not exceed 125% of the annual charges payable by the Buyer to the Supplier during the Call-Off Contract Term.  |

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| **Insurance:** | * The insurance(s) required will be:
* a minimum insurance period of 6 years following the expiration or Ending of this Call-Off Contract
* professional indemnity insurance cover to be held by the Supplier and by any agent, Subcontractor or consultant involved in the supply of the G-Cloud Services. This professional indemnity insurance cover will have a minimum limit of indemnity of £1,000,000 for each individual claim or any higher limit the Buyer requires (and as required by Law)
* employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by Law.
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| **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 one hundred and twenty (120) 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, 7.6,7.7, 7.10 and 7.13 which will apply in their entirety.  |
| **Buyer’s responsibilities:** | The Buyer is responsible for :* Providing access to the principal location at Peel Park and Benton Park View
* A fit for purpose Remote Access Environment;
* The materials for the PSCS, ISCS, IICS, FAMIS SFCS & WPCS applications;
* Responsibilities as defined below and in the Statement of Work referenced as such.

Such as to allow the Supplier to deliver the ordered G-Cloud Services as defined within this Call-Off Order in accordance with the terms of this Call-Off Order. |
| **Buyer’s equipment:** | Not used |

**Supplier’s information**

|  |  |
| --- | --- |
| **Subcontractors or partners:** | The following is a list of the Supplier’s Subcontractors or Partners The Supplier (prime contractor and migration lead) in partnership with Modern Systems (formerly “Blue Phoenix Solutions”) will deliver this Call-Off Contract.  |

**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 payment in arrears subject to acceptance of each Milestone set out below. |
| **Invoice details:** | The Supplier will issue electronic invoices following receipt of a milestone acceptance certificate. to [REDATDED]The Buyer will pay the Supplier within 30 days of receipt of a valid invoice. |
| **Who and where to send invoices to:** | Approved Invoices for payment will be sent to :Department for Work and Pensions, PO Box 406, SSCL, Phoenix House, Celtic Springs Business Park, Newport, NP10 8FZ  |
| **Invoice information required** – for example purchase order, project reference: | All invoices must include the relevant purchase order number. The Buyer will provide purchase orders to the Supplier in a timely manner. |
| **Invoice frequency:** | Invoice will be sent to the Buyer on receipt of a signed off milestone acceptance certificate. |
| **Call-Off Contract value:** | The total value of this Call-Off Contract is [REDACTED]excluding Value Added Tax (VAT) ([REDACTED] of which is the budget for expenses).  |
| **Call-Off Contract charges:** | The breakdown of the Charges is as stated in Schedule 2 (Call off Charges).  |

**Additional buyer terms**

|  |  |
| --- | --- |
| **Performance of the service and deliverables:**  | This Call-Off Contract will include the milestones as detailed in Call-Off Contract charges above |

**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 RM1557ix.
2. The Buyer provided an Order Form for Services to the Supplier.

|  |  |  |
| --- | --- | --- |
| **Signed:** | Supplier | Buyer |
| **Name:** | [REDACTED] | [REDACTED] |
| **Title:** | [REDACTED] | [REDACTED] |
| **Signature:** |  |  |
| **Date:** |  |  |

# Schedule 1 – Services

The Supplier will provide Specialist G-Cloud Services, Legacy Applications and Data Migration Services in line with the provisions below and as further described in the proposal ‘Professional Services and Migration Tooling for PSCS, ISCS, IICS, FAMIS Conversion & Benchmark) SFCS & WPCS (Benchmark) (the “Proposal”) attached below in response to Buyer VME-R Conversion Requirements, and the principles of the Heads of Agreement which are reproduced below.

In the event of any conflict between this Call-Off Contract and the Proposal below, the Call-Off Contract shall take precedence.

[REDACTED]

The parties agree that where there is a requirement to amend the terms of this Call-Off Contract to further align to the terms of the embedded Heads of Agreement [HoA.pdf](file:///%5C%5CDfs52765%5C105824004%5CWorkgroup%5CJCP%20DCS%20ISD%20Commercials%5CCVIDs%5CService%20Rem%5CVME%20Rem%5CCVIDs%5CTranche%202%5CAdvanced%20365%5Cscanned%20HoA.pdf), any such changes shall be made in a timely manner, and in accordance with provisions of clause 32 (Variation Process).

[REDACTED]

**PHASE 1 CODE CONVERSION (HoA 1 2a)**

Conversion for the applications listed below. These applications are outcome based and there are fixed price Milestone payments associated with them as detailed in this Call-Off Contract:

1. Social Funds Computer System (SFCS), (as of the signature date of the HOA the Phase 1 Code Conversion is completed for this application, the benchmarking phase is to be completed);
2. War Pensions Computer System (WPCS): (as of the signature date of the HOA the Phase 1 Code Conversion is completed for this application, the benchmarking phase is to be completed);
3. Income Support Computer (ISCS);
4. Pension Services Computer System (PSCS);
5. Industrial Injuries Computer System (IICS);
6. Financial Administrative Management Information System (FAMIS).

**MIGRATION TOOLING (HoA 2 d)**

Provision of a Migration Tooling licence for the conversion and remediation of the applications set out in paragraph 1 above.

Migration Tooling Licence

The licence for the Migration Tooling is flexible enough to allow (without impact on Charges) the following:

1. the machinery of government changes (subject to the paragraph below and Clause 8.11 to 8.12 (Legislative Change) of the Call Off Contract);
2. outsourcing of ADMS / hosting services;
3. modifications to hosting approach and infrastructure (e.g. virtualisation, location change, OS upgrades for RHEL or currently defined target architecture e.g MicroFocus Cobol).

The Parties agree that where any such changes specified in 1 above results in the scope of the Services or Migration Tooling being materially affected this will be managed in accordance with the provisions of the Variation Procedure.

Any third party, for example. non Supplier Software or Third Party Software (or hardware) licences must be purchased from the respective vendor direct e.g. Micro Focus Visual COBOL compilers and run time, Oracle Tuxedo and database licences.

**KEY ASSUMPTIONS**

Key Assumptions for the Services

1. It is assumed that the conversion process will be undertaken on the basis of delivering ‘like for like’ business application functionality i.e. any existing ‘bugs’ or ‘faults’ within the application code will not be ‘fixed’ as part of the conversion process. There may be circumstances where a module does not execute (a failure occurs on the VMEr environment) after conversion as a result of existing ‘bugs’, ‘faults’, or ‘poorly written code’. In such circumstances appropriate action (code remediation) will be taken to ensure that the module executes successfully.
2. It is assumed that CPP disaggregation will be applicable to the application (this is not applicable to all applications (the specific analysis report for each application will also reference this). No CPP modules will be converted. At this point in time the working assumption is that CPP are out of scope, however following the Bulk Printing Discovery phase a CR may be required if CPP conversion is subsequently required.
3. It is assumed that any missing modules for an application will be provided prior to the start of or during the conversion phase on a mutually agreed date.
4. The 5% tolerance agreed in the HoA relates to scope such that, if the number of assets per application is larger than the 5% tolerance the Supplier will check that the assets provided for that particular application are “present and correct’ and that the conversion can begin and the number of assets falls within the 5% tolerance. If the figure is higher than 5% this variation would be subject to formal change control and the Variation Procedure provisions.
5. It is assumed that any supporting datasets (VME data dumps, codefiles, steptables, and non-database files) required for the Fit For Test scripts will be provided prior to the start of the conversion.
6. It is assumed that the ‘definitions’ for the supporting Middleware Framework required for the application will be provided prior to the start of the conversion phase (e.g. all COPYBOOKS and/or LINKAGE definitions).
7. It is assumed that any additional (Tranche 2) supporting Middleware Framework (objects etc.) required by the application will be provided on a ‘as available’ basis. The impact of any such asset not being available during validation and/or FFT testing will be reviewed if and when it occurs. Note: Tranche 2 Middleware has been provided but there are currently a number of areas where we have implemented temporary fixes which require review by the Middleware support team – the permanent fixes will need to be supplied.
8. It is assumed that the Buyer (or its partners) will provide reasonable access to the following Subject Matter Experts:
	1. Database & Data Dictionary Administrators;
	2. Application Programmers;
	3. Application Design ;
	4. Framework/Middleware Design;
	5. Framework/Middleware Programmers;
	6. Architects;
	7. Business Analysts;
	8. Test Analysts;
	9. Code Control/Management.
9. The Buyer has amended the following with regards to the key assumptions in the Proposal dated 12/5/2017:‘Testing conducted by DWP will be appropriate, in place and aligned to support the current programme plan”.
10. It is assumed that all application assets and associated documentation will be transferred from the Analysis Phase environment and made available in the Conversion Phase environment prior to the start of the conversion phase.
11. It is assumed that the responsibility for the execution and verification of the conversion of live data will not be directly undertaken by the Supplier. The Supplier will be in a supporting role for such activities.
12. It is assumed that remote access will be maintained for Supplier Personnel throughout the term of the Call-Off Contract.

**OUT OF SCOPE**

The Supplier will migrate the application assets ‘like for like’, therefore it is important to note the following out of scope items:

1. Original bugs in the system. For the avoidance of doubt, refer to paragraph 1 of ‘Key Assumptions’ paragraph above.
2. Performance: The Supplier will work in collaboration with the Buyer on a Time and Materials basis to ensure that applications are performant but the actual migration activities are performed on a like for like basis. This only applies to any aspects of non-performance that are not attributed to the migration activities undertaken by the Supplier.
3. Issues in the data or test data provided
4. Environmental issues
5. Issues in the VME code. For the avoidance of doubt, refer to paragraph 1 of ‘Key Assumptions’ paragraph above.
6. The sole responsibility of investigating the origins of each defect is out of scope as this needs to be a collaborative effort and performed in conjunction with the Buyer. Investigation of a defect can sometimes take a long time only to find that it is causes by an environmental issue, or in MW code, for example it is not always clear cut as to where the root cause is, but the Supplier could still take time to investigate. For avoidance of doubt, the Supplier will jointly work with the Buyer and its sub contractors to investigate and resolve any defects.
7. Issues not relating to the conversion process for example. issues/bugs in Micro Focus Cobol. For avoidance of doubt, the Supplier will jointly work with the Buyer and its sub contractors to investigate and resolve any defects.

**DELAY PAYMENTS**

The parties have agreed that Delay Payments will apply as result of the Supplier’s failure to achieve Milestone dates for Milestones 5, Milestones 6 and Milestones 7. Payment of Delay Payments is subject to the Buyer procuring the Enterprise Runtime Production/DR licence in accordance with the provisions of the HoA.

Payment of Delay Payments only applies where the delay is caused solely by the Supplier, and deliverables associated with either Milestone 5, Milestone 6 or Milestone 7 are not accepted by the Buyer (acting reasonably), in respect of objective acceptance criteria, which will include escalation paths, robust governance procedures and a remediation period in the ‘Acceptance and Approvals’ paragraph below.

Milestone 5, Milestones 6 and Milestone 7 delays:

With regards to Milestones 5, Milestone 6 and Milestone 7, a Delay Payment will be deducted from the overall Professional Services Charges payable to the Supplier, and will be applied in accordance with the criteria below.

Delay Payments only apply where the delay to the Milestone is due solely to a Supplier cause. (HoA 5.1)

This will be imposed against Milestone 5, Milestone 6 or Milestone 7 on delays which are above a 10% tolerance (calculated in Working Days slippage (Monday – Friday)), based the Milestones Date in Table 3 (Planned Milestone Dates). (HoA 5.3)

The Delay Payments are capped to a total of [REDACTED] for all waves/applications, and capped to per wave as per the Table 4 (Delay Payments) and will be deducted from the Milestone 5, Milestone 6 and/or Milestone 7 payments. (HoA 5.4)

The weighting of the Delay Payment cap is as per the percentage calculations in the Table 4 (Delay Payments). The actual day’s tolerance (no more than 10%) will be apportioned per wave, with both parties acting reasonably, (split between Milestone 5 , Milestone 6 and Milestone 7), to reflect the complexity and level of risk associated with each application wave. (HoA5.5)

These Delay Payments shall not be applied until after the expiry of the tolerance period (detailed in the paragraphs above) which will be the number of Working Days from the agreed documented milestone date per application/wave. The number of Working Days shall be calculated by use of the following tool which takes account of weekends and public holidays: <https://www.timeanddate.com/date/workdays.html>. (HoA 5. 6)

The parties agree that the Delay Payments will be subject to the process based on revised acceptance dates agreed through the process described in the ‘Acceptance and Approvals’ paragraph below which, time permitting and with both parties acting reasonably, will include enacting an escalation path, robust governance procedures and remediation period(s) before they are enforced. (HoA 5.7)

For each wave, Delay Payments are enforceable against delays to either Milestone 5 Milestone 6 and Milestone 7 but only enforceable once against the overall timeline for that particular wave. Thereafter, the provisions set out the Acceptance and Approvals paragraph below shall apply. (HoA 5.8)

**INTELLECTUAL PROPERTY RIGHT INDEMNITY**

With regards to the Services and Software in this Order Form Clause 11 (Intellectual Property Rights) of the Call-Off Contract applies.

**EXIT**

In relation to Exit, the following will be required but not limited to:

1. An initial Exit plan, which is to be maintained/ agreed on Quarterly basis or on significant changes to scope;
2. Compliance with Exit Plan;
3. Access to Supplier personnel and information/artefacts pertaining to the scope;
4. On the Expiry Date of this Call-Off Contract all artefacts and Buyers Data relating to scope will be handed over to the Buyer (this excludes all Supplier software, and/or Supplier Background IPRs) at the time of expiry without any cost implications or IPR restriction. In circumstances where the Buyer exercises its right to terminate this Call Off Contract pursuant to clause 18.1, or where either Party terminates this Call Off Contract in accordance with Clause 18.5 or where the Supplier terminates this Call-Off Contract in accordance with Clause 18.6 the Buyer cannot use the Supplier’s artefacts to go live with an alternative service provider which follows the Supplier’s approach detailed in this Call-Off Contract, but the Buyer may continue to deliver the scope itself so long as no Supplier’s software and/or Background IPRs are shared with any third party;
5. Repayment of advance charges if any;
6. Deletion of Buyer Data;
7. Knowledge transfer; and
8. Removal of security clearance and site/system access.

**LOCATIONS (HoA 11)**The Charges are based upon a model of offsite/remote working. For clarity, although there will be a degree of working onsite in the Buyer’s offices (including attendance at meetings) the majority of the work will be performed by the Supplier consultants from their own office or home locations. It is assumed that Supplier consultants will have full remote access to the relevant Buyer development and test servers; consultants will remotely access assets and environments provided by the Buyer. The Supplier key delivery and management staff will be co-located with the Buyer project team members at Buyer locations.

The Buyer will enable ‘remote working’ with the majority of the Services provided by the Supplier from ‘offsite’ locations although a hybrid approach consisting of some onsite presence will be undertaken to reduce unnecessary expense and maximise productivity.

Whenever appropriate and in the interests of the programme, both Parties agree to co-location, for example, there will be certain scenarios during this Remediation Phase where it may be better for each Party to sit alongside each other to either resolve particularly challenging problems or support the ‘learning exercise’ for the Buyer personnel supplementing the Supplier led remediation stream. Co-location may not be limited to Buyer offices. Expenses will be charged for any onsite work.

**OPTIONS**

Conversion and benchmark activity pertaining to Housing Benefits Computer System and/or Carers Allowance Computer System.

For the avoidance of doubt the conversion of HBCS and CACS is outside of the scope of this Order Form. The Buyer may elect to procure the services once the parties have completed an assessment of the applications and the charges have been confirmed.

In the event the Buyer wishes to procure these services this will be added to the Call Off Contract in accordance with the Variation Procedure.

For illustrative purposes and subject to the assessment of the applications above the estimated Charges are specified in the table below. This illustrative pricing is based upon the Buyer receiving the same level discount as applied to the Migration Tooling being procured in this Order Form which is based on this being procured prior to April 30 2018 .

(HoA 3 1 2nd Para)

|  |  |  |
| --- | --- | --- |
| **Application** | **Professional Services** | **Migration Tooling** |
| Housing Benefit Computer System | [REDACTED] | [REDACTED] |
| Carers Allowance Computer System | [REDACTED] | [REDACTED] |

# 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 are below and as further detailed in Proposal.

**CHARGES AND PAYMENT TERMS**

Migration Tooling Charge (HoA 1.b HoA 7.2)

[REDACTED]

The total Charge will be invoiced in August 2017.

Professional Services Phase 1 – Code Conversion (including bucket data and benchmarking activity) Charge. (HoA2 1.e.1st para HoA 7.5)

[REDACTED] plus an estimated value for expenses of [REDACTED]

This Professional Services Phase 1 Code Conversion will be invoiced on the Milestones set out in Table 1 (Milestone Payments).

Expenses will be paid in line with DWP policy .

 

Charges Principles

Any costs in excess of [REDACTED] which did not occur as a result of any agreed change in scope or assumptions stated in this Call-Off Contract, or any act or omission by the Buyer or any of Buyer’s third parties will be borne solely by the Supplier and shall have no impact on price or agreed outcome-based milestones set out in this Call-Off Contract.

This fixed price estimate is based on the pricing variance being no more than +5% following confirmation of the full inventory of application assets and confirmed for each application.

All Charges exclude Value Added Tax which shall be added at the then prevailing rate.

In circumstances where the Supplier’s costs increase above the CEL indexation rate (beyond the end of the two year fixed price period), the Supplier may present evidence of this to the Buyer and discussion will be held about the cost increase for the resources in question, albeit a cap of CEL plus 3% will apply to any increase that the Buyer may agree to pay. (HoA2 1.g)

**PAYMENT PROFILE**

Migration Tooling Charge

The total Charge will be invoiced in August 2017.

Professional Services Phase 1 Code Conversion

1. The parties agree that there will be Milestones for each application conversion wave and there will be 8 application conversion waves. The Milestones are defined in the tables below: Table 1: (*Milestones Payments)*, Table 2 (*Milestones Definitions*). (HoA 4.1)
2. An amount of [REDACTED] of the Professional Services Conversion Charges will be retained for distribution across Milestone 5, Milestone 6 and Milestones 7 as specified in Table 1 (Milestones Payments). (HoA 4 2).
3. The amount will be paid by the Buyer proportionally and against each application wave once the Supplier has successfully achieved the Milestones in accordance with Acceptance paragraph below .
4. It is agreed that payment of:
5. twenty percent of (20% ) of the retained [REDACTED] will occur on successful completion of Milestones 7 and will be made on an application by application basis, and in accordance with the proportions set out in Table 1 (Milestone Payments); and
6. eighty percent of (80% ) of retained [REDACTED] will occur on successful completion of Milestones 8 and will be made on an application by application basis, and in accordance with the proportions set out in Table 1 (Milestone Payments).
7. [REDACTED] which is the balance of the Professional Services Conversion Charge is distributed across Milestones 1 to 4 for each application conversion wave in accordance with Table 1 (Milestone Payments). (HoA 4.3)
8. Any Milestone payments due to be paid to the Supplier will not be withheld by the Buyer if failure to achieve the Milestone(s) is due to a Buyer cause. This is conditional upon the Supplier providing the Buyer with prompt notification that it expects that the Buyer may cause the delay, such that the Buyer has the opportunity to remedy the delay. (HoA 4.3)
9. The Buyer will act in a reasonable manner when applying any retentions to the retained amounts in Milestones 5, Milestone 6 and Milestone 7.
10. Table 3 (Planned Milestone Dates) sets out the planned Milestone Dates, the actual dates for such Milestones will be populated by the Parties no later than 10 Working Days from the Start Date (or within such other agreed time period). Any subsequent changes to delivery and Milestone dates will be subject to the Variation Procedure. (HoA 4.6)
11. The actual date and hence payment for Milestone 8 for each application wave conversion will be at the end of the conversion wave phase when the application is in live operations in accordance with the relevant acceptance criteria. (HoA 7)

**TABLES**

Table 1 Milestones Payments and Milestone Delivery Dates

[REDACTED]

Table 2 Milestone Definitions (HoA 4.5)

|  |  |  |  |
| --- | --- | --- | --- |
| **Milestone Number**  | **Milestone Definitions**  | **Description**  | **Release of payment**  |
| 1 | Asset checked, confirmed and conversion ready to begin | Asset Check complete and Asset Check Documentation provided – a checklist identifying what assets have already been provided and what are outstanding. | Upon acceptance  |
| 2 | Delivery of Data Model and    | Converted Data Model (which will define how the data is held within the Oracle Database) completed, documented and ready for review and sign off by the Buyer.Walkthrough with TAA of the Data Model(s) and associated documentation - – including Table and Column Definitions to support future conversion of test data and creation of DB-Layer; Database Scripts to Create Tables and Indexes, Implement Referential Integrity via Primary and Foreign Key Constraints, HTML Schema Viewer created. | Upon acceptance  |
| 3 | Delivery of Data Handling Modules | Data Handling Modules conversion complete and documented and ready for review and sign off by the Buyer.Provide a list of all DHM’s compiled/not compiled with explanation.Walkthrough to include a demonstration of a DHM in operation via a test harness. | Upon acceptance  |
| 4 | Provision of the TEST data conversion and data verification process.Walkthrough with TAA of the TEST data conversion and verification process.andOnline dialogues available for walkthrough with the Buyer  | TAA review of TEST data conversion and verification process and attend walkthroughandBuyer Test Team to attend walkthrough of Online Dialogues. | Upon acceptance  |
| 5 | Delivery of all remaining assets Online and Batch FFT executed (both JSA and ESA).andConversion Completion FFT Exit Report and associated documentation:• Online Dialogue and Batch code and release notes.• Updated COBOL Inventory• Updated SCL Inventory• Non-database file conversion report (to support Online & Batch)• List of COBOL modules having post conversion manual changes made• List of SCL modules having post conversion manual changes made | TAA to confirm receipt of all the application assets in scope (primarily Online Dialogue and Batch code).Buyer Test Team to witness of FFT execution, and review and sign-off of associated FFT Completion documentation. | Upon acceptance  |
| 6 | Live data conversion and verification process confirmed | Successful completion of execution of Live data conversion and verification process | Upon acceptance  |
| 7 | Supplier Benchmarking support, working with the Buyer ensuring FFT run in benchmarking plus Application ready for the Buyer testing (Supplier Remediation phase) Live Database Configuration and Performance Enablers documented to be undertaken in parallel with benchmark support  | Support from standing team supporting the Buyer through the Buyer benchmark phase. Benchmark Support includes• Onsite presence (co-location) – rapid turnaround and input • Technical Application and Data leadership and strategic guidance • It’s an ‘all hands on deck’ collaborative approach whereby we will be available to help and support the Buyer during this phase. • Wherever appropriate we will be innovative with tooling and approach  • Database Configuration Baseline/Recommendations document provided to the Buyer, and Performance Enablers documented (to the extend feasible to be provided within benchmark set timeframe).  Release event for 20% of [REDACTED] | At the end of Benchmarking  |
| 8 | Application has 'gone live'  | Application successfully gone live (according to current programme plan) following remediation phase. Programme milestone 8 - Release event for 80% of [REDACTED] | Upon completion post go live (PRISM or alternative, no more than 6 weeks following go-live)  |

Table 3 Planned Milestone Invoice Dates

[REDACTED]

Table 4 Delay Payments HoA5.5 and HoA4.4

[REDACTED]

**ACCEPTANCE AND APPROVALS**

Acceptance

1. Each Conversion Programme Deliverable associated to a Milestone date and payment has been assigned an acceptance date and an acceptance/evaluation completion date as specified in Table 2(Milestone Definitions). The acceptance criteria is subject to minor change and will be agreed between the Buyer and Supplier in writing on an application by application basis. The Buyer will release to the Supplier relevant purchase orders in a timely manner and in any event prior to the Milestone invoice payment due date. (HoA 6.1)
2. The acceptance date is reached when the Supplier submit their Supplier Certificate (and appropriate supporting documentation) to the Buyer for any Milestone deliverable. This will be as a result of their robust internal quality evaluation and represents their conviction that the deliverable meets the associate Buyer acceptance criteria in full based on the Supplier’s own quality checks. The evaluation date is when the Buyer has agreed to carry out an evaluation and not formal acceptance
3. The acceptance completion date is reached when the Buyer issue in a timely manner a Buyer certificate to the Supplier that confirms acceptance of the deliverable. The evaluation completion date is reached when the Buyer has carried out their evaluation but are not able to approve the deliverable and hence will issue a Buyer certificate to the Supplier that confirms reason for failure.
4. Each deliverable associated to a Milestone date and payment will be subject to formal certification for both delivery and acceptance. The paragraph headed ‘Approvals’ in this section details the approvals and acceptance process in full. (HoA 6.2)
5. Based on the Programme Deliverables and Timetable in Table 2 (Milestone Definitions), the Supplier will be allowed a period of time in order to remedy any failures of any specific Milestone deliverables by submitting a formal remediation plan (which must be accepted by Buyer, acting reasonably). In this case, new acceptance date and acceptance/evaluation completion date will be agreed. (HoA 6.3)
6. The Supplier will promptly notify the Buyer of any likely inability to meet a planned Milestone date, and will submit a remediation plan in sufficient time to allow the Buyer to assess the impact of the remediation plan and take appropriate actions. (HoA 6.4)
7. If the number of remediation attempts (in relation to any one specific Milestone) exceeds two (2) attempts (or such other agreed number of attempts), the FULL Milestone Payment would become payable once the failure is remedied and will be again subject to the acceptance process. This is subject to the Delay Payments set out in above in relation to Milestones 5, Milestone 6 and Milestone 7 for each wave. (HoA 6.5)
8. For either Milestone 5, Milestone 6 or Milestone 7, if the number of remediation attempts exceeds two (2) attempts (or any such other agreed number of attempts within a reasonable timescale) for the final payment Milestone, the Buyer will not make the full Milestone payment until the associated deliverables are fully remediated by the Supplier in line with the acceptance process, where such failure is of a material nature and occurred as a result of a Supplier act or omission. Such new Milestones dates post remediation attempts must deliver within the maximum 10% tolerance against the agreed project plan for that particular wave, thereafter a Delay Payments shall become payable in full in accordance with the ‘Delay Payment’ paragraph above. (HoA 6.6)
9. Should remediation not be successful within the two (2) remediation attempts as detailed above in paragraph 8, this shall constitute a material breach for the Buyer to take action as appropriate. (HoA 6.7)
10. This Acceptance paragraph shall be read in the context that the Buyer will be entitled to claim Delay Payments at amounts set out in the ‘Delay Payments’ paragraph above. (HoA 6.8)
11. Any Milestone payments due will be made following the Buyer’s formal acceptance, which shall be undertaken by the Buyer within a timely manner of all deliverables associated with the Milestone by issue of the Buyer milestone achievement certificate. Any Milestone payment will be subject to receipt of a valid invoice. (HoA 6.9)
12. The Supplier will submit a draft invoice (for information purposes only) for the relevant Milestone payment to the Buyer with the final milestone deliverable Supplier Certificate. When the Buyer issue the final milestone deliverable Buyer Certificate confirming the acceptance of the final Milestone deliverable to the Supplier, the final invoice may be submitted to the Buyer. The Buyer will process the final invoice in line with the provisions of this Order Form and the terms of the Call-Off Contract making reasonable endeavours to process invoices of payment as quickly as possible from receipt of final invoice. (HoA 6.10)
13. Approvals

The attached document is the Appendix B (Approvals and Acceptance) from the HoA and provides details of the approvals and acceptance process which will be applied to the Milestone deliverables. The Supplier and the Buyer agree that after the Start Date they will work together to refine this document and update it to reflect the agreed positon. This will be added to this Call-Off Contract in accordance with the provisions of the Variation Procedure.

[REDACTED]

# Part B - Terms and conditions

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

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

**2. Incorporation of terms**

1. The following Framework Agreement clauses (including clauses and defined terms referenced by them) as modified under clause 2.2 are incorporated as separate Call-Off Contract obligations and apply between the Supplier and the Buyer:
	* 4.1 (Warranties and representations)
	* 4.2 to 4.7 (Liability)
	* 4.11 to 4.12 (IR35)
	* 5.4 to 5.5 (Force majeure)
	* 5.8 (Continuing rights)
	* 5.9 to 5.11 (Change of control)
	* 5.12 (Fraud)
	* 5.13 (Notice of fraud)
	* 7.1 to 7.2 (Transparency)
	* 8.3 (Order of precedence)
	* 8.4 (Relationship)
	* 8.7 to 8.9 (Entire agreement)
	* 8.10 (Law and jurisdiction)
	* 8.11 to 8.12 (Legislative change)
	* 8.13 to 8.17 (Bribery and corruption)
	* 8.18 to 8.27 (Freedom of Information Act)
	* 8.28 to 8.29 (Promoting tax compliance)
	* 8.30 to 8.31 (Official Secrets Act)
	* 8.32 to 8.35 (Transfer and subcontracting)
	* 8.38 to 8.41 (Complaints handling and resolution)
	* 8.49 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)
	* 8.57 to 8.62 (Data protection and disclosure)
	* 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. 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 Framework Agreement incorporated clauses will be referred to as ‘incorporated Framework clause XX’, where ‘XX’ is the Framework Agreement clause number.
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**

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 Act (DPA) 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 (HoA 12)**

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. Where relevant to this Call-Off Contract 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 Accreditation of Information Systems 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/guidance/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 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 the notice to the Supplier 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 8.92 to 8.93 (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 (HoA 12 .1)**

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 in the form set out in Schedule 3.
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.

# Schedule 3 - Collaboration agreement

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

# Schedule 4 - Alternative clauses

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

# Schedule 5 - Guarantee

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

# Schedule 6 - Glossary and interpretations

In this Call-Off Contract the following expressions mean:

|  |  |
| --- | --- |
| **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 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 TaxAct 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, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies 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 if applicable legally binding guidance and codes of practice issued by the Information Commissioner. |
| **Data Subject** | Will have the same meaning as set out in the Data Protection Act 1998. |
| **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** | 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>/) |
| **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 RM1557ix 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. |
| **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. |
| **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. |
| **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. |
| **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** | As described in the Data Protection Act 1998 (<http://www.legislation.gov.uk/ukpga/1998/29/contents>) |
| **Processing** | This has the meaning given to it under the Data Protection Act 1998 as amended but, for the purposes of this Call-Off Contract, it will include both manual and automatic processing. ‘Process’ and ‘processed’ will be interpreted accordingly. |
| **Prohibited Act** | To directly or indirectly offer, promise or give any person workingfor or engaged by a Buyer or CCS a financial or other advantageto:* 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.  |
| **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). |
| **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. |
| **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. |