



Crown  
Commercial  
Service

## G-Cloud 11 Framework Agreement

Dated:

Framework reference: RM1557.11

This Framework Agreement is between:

**Crown Commercial Service**

and

**[Supplier name]**

# G-Cloud 11 Framework Agreement

This Framework Agreement governs the relationship between the Crown Commercial Service (CCS) and the Supplier. It covers the provision of G-Cloud 11 Services by the Supplier to CCS and to Buyers.

CCS and the Supplier are known together as the 'Parties'.

## Contents

<b>1. Section 1 - The appointment</b>	<b>3</b>
<b>2. Section 2 - Services offered</b>	<b>4</b>
<b>3. Section 3 - How Services will be bought</b>	<b>9</b>
<b>4. Section 4 - How Services will be delivered</b>	<b>11</b>
<b>5. Section 5 - What happens if the Supplier fails to meet the terms of this Framework Agreement</b>	<b>13</b>
<b>6. Section 6 - What you report to CCS</b>	<b>16</b>
<b>7. Section 7 - Transparency and access to records</b>	<b>19</b>
<b>8. Section 8 - General governance</b>	<b>21</b>
<b>Schedule 1 - MI reporting template</b>	<b>33</b>
<b>Schedule 2 - Self audit certificate</b>	<b>34</b>
<b>Schedule 3 - Glossary and interpretations</b>	<b>35</b>
<b>Schedule 4 - Processing Data</b>	<b>43</b>

# 1. Section 1 - The Appointment

This section includes terms about the Supplier appointment.

## 1.1 Appointment

Under the terms of this Framework Agreement (RM1557.11) and the Supplier's Application, the Minister for the Cabinet Office, represented by the Crown Commercial Service (CCS), 9th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP, appoints:

**company:** [company name]

**registered address:** [company address]

**company number:** [company number]

(the 'Supplier'), as a Framework Agreement Supplier of G-Cloud Services who can be considered for Call-Off Contracts as outlined in the Contract Notice in the Official Journal of the European Union reference RM1557.11 (OJEU Contract Notice).

1.2 **Appointment is to:** [Lots awarded]

1.3 **Appointment starts at:** 02 July 2019

1.4 **Appointment ends at:** 23:59 on 01 July 2020 (unless this Framework Agreement is extended by CCS or Ends early).

1.5 **Framework Agreement extension:** Up to 12 months, by CCS giving written notice to Suppliers.

1.6 **Framework Agreement term:** From and including the date at 1.3 above (Appointment starts at) to and including the date at 1.4 above (Appointment ends at).

1.7 **Call-Off Contract length:** Up to 24 months plus 2 optional extension periods of up to 12 months each.

1.8 The Parties agree that they have read this Framework Agreement and by signing below agree to be bound by its terms.

1.9 All sections, including the Invitation to Tender (known as the Invitation to Apply on the Digital Marketplace) and Schedules to this Framework Agreement are expressly part of this Framework Agreement.

1.10 CCS will pay £1 to the Supplier to perform its obligations under this Framework Agreement, receipt of which is acknowledged by the Supplier signing this Framework Agreement.

1.11 The finalised Framework Agreement will include:

- a signature page, signed by the Supplier
- a signature page, signed by the Crown Commercial Service
- the rest of the Framework Agreement document

1.12 The signature pages and the rest of the Framework Agreement document are counterparts before signing and duplicate originals after signing. The duplicate originals together make one Framework Agreement signed by all the necessary Parties.

**Signed by or on behalf of** [Supplier name]

Signature:

Name:

Role:

Date:

**Signed for and on behalf of CCS**

Signature:

Name:

Role:

Date:

## 2. Section 2 - Services offered

2.1 The Supplier must provide G-Cloud Services for the Lot that they've been appointed to. The G-Cloud 11 framework is split into 3 Lots:

- Lot 1: Cloud hosting
- Lot 2: Cloud software
- Lot 3: Cloud support

For all lots, the Supplier must help Buyers comply with the Technology Code of Practice:

<https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>

### Lot 1 - Cloud hosting

2.2 Cloud hosting Services sold through G-Cloud are cloud platform or infrastructure Services that can help buyers do at least one of:

- deploy, manage and run software
- provision and use processing, storage or networking resources

The G-Cloud cloud hosting Lot is equivalent to the National Institute of Standards and Technology (NIST) definitions of 'Platform as a Service' and 'Infrastructure as a Service':

<http://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf>

G-Cloud cloud hosting Suppliers will provide Services in at least one of these categories:

- archiving, backup and disaster recovery
- compute and application hosting
- container service
- content delivery network
- database
- data warehousing
- NoSQL database
- relational database
- load balancing
- logging and analysis
- message queuing and processing
- networking (including Network as a Service)
- Platform as a Service (PaaS)
- infrastructure and platform security

- distributed denial of service attack (DDOS) protection

- firewall
- intrusion detection
- protective monitoring
- search
- storage
- block storage
- object storage

2.3 Buyers only need to pay for what they use.

## Lot 2 - Cloud software

2.4 Cloud software Services sold through G-Cloud are applications that are accessed over the internet and hosted in the cloud. Buyers only need to pay for what they use.

The G-Cloud cloud software Lot is equivalent to the National Institute of Standards and Technology definition of 'Software as a Service': <http://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf>

G-Cloud cloud software Suppliers will provide cloud software Services in at least one of these categories:

- accounting and finance
- analytics and business intelligence
- application security
- collaborative working
- creative, design and publishing
- customer relationship management (CRM)
- electronic document and records management (EDRM)
- healthcare
- human resources and employee management
- information and communication technology (ICT)
- legal and enforcement
- marketing
- operations management
- project management and planning
- sales

- schools, education and libraries
- software development tools
- transport and logistics

## Lot 3 - Cloud support

2.5 Cloud support Services sold through G-Cloud can help Buyers set up and maintain their cloud software or hosting.

G-Cloud cloud support Suppliers will provide Services in at least one of these categories:

- planning
- setup and migration
- security services
- quality assurance and performance testing
- training
- ongoing support

## Additional services

2.6 Additional Services, through Lot 3 - Cloud support only, must support Buyers in their transition to Cloud services.

2.7 A description for Additional Services must be included by the Supplier and it must be G-Cloud Service-related. Additional Services must help the Supplier with its main G-Cloud Services offering. Non-G-Cloud Services will be removed from the Digital Marketplace.

2.8 Additional Services must not include:

- Services that aren't cloud-related
- recruitment or contractor (contingent labour) Services or Services that are Inside IR35
- 'colocation' Services, for example rack-space the buyer rents from a Supplier's datacentre
- hardware
- bespoke design or development

2.9 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.

## Service application

2.10 The Supplier's Service Application must include as a minimum an overview of the G-Cloud Service and information about:

- the scope of the G-Cloud Service, for example any constraints Buyers should know about like maintenance windows
- whether the Supplier is a reseller or not



- any support the Supplier provides
- how users work with the G-Cloud Service
- the G-Cloud Service onboarding and off-boarding process
- an overview of pricing, including unit prices, volume discounts and data extraction costs
- the Supplier's security certifications and standards
- the Supplier's approach to personnel security

### **3. Section 3 - How Services will be bought**

#### **Digital Marketplace**

- 3.1 The Supplier will describe its Services on the Digital Marketplace. It will keep this information updated for the Term of this Framework Agreement.
- 3.2 The Supplier agrees that the prices and other terms quoted in its Digital Marketplace Application will not be increased during the Term of this Framework Agreement, but Suppliers may reduce any of their G-Cloud prices at any time.
- 3.3 The pricing of Call-Off Contracts must be based on the most up-to-date prices on the Supplier's Digital Marketplace Service page.
- 3.4 Discounted pricing periods may be considered on an individual basis, and subject to CCS approval, will be available to all Buyers.
- 3.5 The Supplier will tell any relevant Buyer about their Digital Marketplace offering on the G-Cloud Framework Agreement at the earliest opportunity.
- 3.6 The Supplier agrees that its G-Cloud Services, pricing, and terms and conditions will be on the Digital Marketplace and will be used as part of the evaluation criteria.
- 3.7 Subject to CCS's approval, the Supplier may update, but not materially change, its Digital Marketplace entry or Service Definitions and CCS may ask the Supplier to provide evidence to show that any updates it makes are non-material. These variations must be within scope of the Framework Agreement and Lot it's in. The Supplier can remove any Digital Marketplace entries if it tells CCS in writing.
- 3.8 If the Supplier fails to provide acceptable evidence for any updates to their service offering, CCS will remove the Service from the Digital Marketplace and may suspend the Supplier from the Framework Agreement.
- 3.9 The Supplier's Terms and Conditions, submitted as part of its Application, can't be amended during the Term of this Framework Agreement.
- 3.10 Subject to clause 3.2, once the G-Cloud Services have been ordered by a Buyer, the Supplier must maintain the Supplier Terms, including the pricing in the Supplier's Digital Marketplace entry at the time of the Order, for the length of any Call-Off Contract.

#### **Background**

- 3.11 All Buyers listed under the OJEU Contract Notice can award a Call-Off Contract under this Framework Agreement.

3.12 The Buyer can appoint an agent to act on their behalf.

3.13 CCS is not responsible for the actions of any Buyer.

## Process

- 3.14 If a Buyer decides to source G-Cloud Services and any Additional Services through this Framework Agreement it must search on the Digital Marketplace for a capable Supplier and then award its Call-Off Contract using this process and following the Regulations and Guidance.
- 3.15 The initial search will return a long list and the Buyer will use additional keywords to refine the search of Suppliers whose service offerings are capable of meeting the Buyer's requirement.
- 3.16 The additional search will return a short list and the Buyer will review supplier documents (to include Supplier Terms and pricing) on the Digital Marketplace to assess suitability against their requirement. All shortlisted offerings must be evaluated against the same evaluation model.
- 3.17 The Buyer will apply some or all of the evaluation criteria in 3.20 (or use their own weightings) against the Supplier documents (including Supplier Terms and pricing) on the Digital Marketplace, to evaluate the Services offered following the shortlist and determine the Service that best meets their requirements.
- 3.18 The Buyer may choose to use a credit reference agency (CRA) to carry out due diligence before any appointment to assess the Supplier's economic and financial standing. The CRA report will be used to determine the level of financial risk that appointing the Supplier would represent. If the Buyer determines that the Supplier's credit risk is poorer than average the Buyer reserves the right not to award a Call-Off Contract to the Supplier.
- 3.19 The Buyer will appoint a Supplier based on Most Economically Advantageous Tender (MEAT).
- 3.20 Buyers will apply their own weighting to each of the direct award criteria to award the Call-Off Contract to the Supplier:

Criteria number	Direct award criteria
1	Whole-life cost: cost effectiveness; price and running costs
2	Technical merit and functional fit: coverage, network capacity and performance as specified in relevant service levels
3	After-sales service management: help desk, account management function and assurance of supply of a range of services
4	Non-functional characteristics

- 3.21 Buyers may notify all unsuccessful shortlisted suppliers so they can review and improve their Service Descriptions.

## 4. Section 4 - How Services will be delivered

### Warranties and representations

- 4.1 The Supplier warrants, represents and undertakes to CCS and each Buyer that:
- it has full capacity, authority and all necessary authorisations, consents, licences and permissions, to enter into and perform its obligations under the Framework Agreement and each Call-Off Contract, including if a Supplier's processes need the consent of its Parent Company
  - the Supplier or an authorised representative will sign the Framework Agreement and the Call-Off

## Contract

- it has used and will continue to use all reasonable endeavours, software and the most up to date antivirus definitions available from an industry accepted antivirus software seller to minimize the impact of Malicious Software.
- accessing systems owned by, under the control of, or used by CCS or any Buyer via its own access to these systems
- in entering into this Framework Agreement and any Call-Off Contract, it has not committed, will not commit or agree to commit a Prohibited Act
- it will continue to pay all taxes due to HMRC and will not indulge in 'disguised employment' practices when delivering services under this Framework Agreement
- at the Start Date, it has notified CCS in writing of any Tax Non-Compliance or any Tax Non-Compliance litigation it is involved in
- it will perform all obligations under this Framework Agreement and any Call-Off Contract complying with all Laws
- it will perform its obligations with all reasonable care, skill and diligence, according to Good Industry Practice
- on a Call-Off Start Date, all information, statements and representations in the Application are accurate and not misleading except if the Buyer has been notified in writing before signing the Call-Off Contract

The fact that any provision within this Framework Agreement is expressed as a warranty does not preclude any right of Ending CCS may have if the Supplier breaches that provision.

## Liability

4.2 Neither Party excludes or limits its liability for:

- death or personal injury caused by its negligence, or that of its Staff
- bribery, Fraud or fraudulent misrepresentation by it or its employees
- breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982
- any liability that cannot be excluded or limited by Law

4.3 Nothing in this Framework Agreement affects a Party's duty to mitigate their loss.

4.4 Except for liabilities which can't be limited by Law, neither Party will be liable to the other for any:

- loss of profits
- loss of business
- loss of revenue
- loss of or damage to goodwill

- loss of savings (whether anticipated or otherwise)
- indirect, special or consequential loss or damage

4.5 The Supplier will be liable for the following types of loss which will be regarded as direct and will be recoverable by CCS for any:

- regulatory losses or fines arising directly from the Supplier's breach of any Laws
- additional operational or administrative costs and expenses from any Material Breach
- wasted expenditure or unnecessary charges CCS pays because of the Supplier's Default
- other liabilities suffered by CCS in connection with the loss of, corruption or damage to, or failure to deliver CCS Data by the Supplier

4.6 The Supplier will not be responsible for any injury, loss, damage, cost or expense that is directly caused by the negligence or wilful misconduct of CCS or breach by CCS of its obligations under the Framework Agreement.

4.7 CCS's obligations under this Framework Agreement are only in its capacity as a contracting party and won't constrain CCS in any other capacity or lead to any liability to the Supplier under this Framework Agreement where CCS exercises its public duties and powers.

4.8 The Supplier's liability to pay any Management Charges due to CCS will be unlimited.

4.9 Subject to any liabilities which can't be limited by Law under clause 4.2, each Party's total aggregate liability under this Framework Agreement in each 12-month period during the Term (whether in contract, tort (including negligence), breach of statutory duty or otherwise) will be limited to the higher of £150,000 or 125% of the Management Charge paid or payable in the Year the default happened. The Parties agree that these clauses 4.2 to 4.9 (inclusive) will not limit the Supplier's and Buyers' liability under any Call-Off Contract.

## Guarantee

4.10 If requested by a Buyer, the Supplier must provide a completed Guarantee before the Call-Off Start Date in the form set out in Call-Off Schedule 5.

## IR35

4.11 The Parties do not intend the Framework Agreement to be used for provision of Services or off-payroll worker recruitment that is Inside IR35.

4.12 CCS may End this Framework Agreement under clause 5.1 for Material Breach if the Supplier is found to be delivering Services to a Buyer Inside IR35.

## 5. Section 5 - What happens if the Supplier fails to meet the terms of this Framework Agreement

### Ending and suspension of a Supplier's appointment: With cause by CCS

5.1 CCS can suspend or End this Framework Agreement by notice with immediate effect if:

- there's a Supplier Insolvency Event
- the Supplier has breached clauses 2.6 to 2.10

- there are at least 3 MI Failures within a 6-month rolling period
- the Supplier has tried to renegotiate any terms of a Call-Off Contract or potential Call-Off Contract
- the Supplier commits a Material Breach of this Framework Agreement
- CCS reasonably considers that the Services supplied by the Supplier to a Buyer is Inside IR35

#### **Force majeure**

5.2 Not used.

5.3 Not used.

5.4 Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations

under this Framework Agreement (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure event.

- 5.5 A Party will promptly (on becoming aware of the same) notify the other Party of a Force Majeure event or potential Force Majeure event which could affect its ability to perform its obligations under this Framework Agreement.
- 5.6 Each Party will use all reasonable endeavours to continue to perform its obligations under the Framework Agreement and to mitigate the effects of Force Majeure. If a Force Majeure event prevents a Party from performing its obligations under the Framework Agreement for more than 60 consecutive Working Days, the other Party can End the Framework Agreement with immediate effect by notice in writing.

### **Ending and suspension of a Supplier's appointment: without cause by CCS**

- 5.7 CCS will have the right, without cause and without liability, to suspend or End this Framework Agreement, or any provisions of any part of this Framework Agreement, by giving at least one month's written notice to the Supplier.
- 5.8 Ending, suspension or expiry of this Framework Agreement will not affect any accrued rights, remedies or obligations of either Party.

### **Ending on change of control**

- 5.9 The Supplier must tell CCS immediately if the Supplier has a change of Control and, provided this does not contravene any Law, will notify CCS immediately in writing of any circumstances suggesting that a change of Control could happen.
- 5.10 CCS may End this Framework Agreement by giving notice in writing to the Supplier within 6 months of CCS either:
- being notified in writing by the Supplier that a change of Control could happen
  - if it hasn't notified CCS, the date that CCS becomes aware that a change of Control could happen
- 5.11 CCS can End this Framework Agreement by giving notice in writing to the Supplier with immediate effect if either:
- CCS determines at its discretion that the change of Control is prohibited under the Regulations
  - CCS's written approval has not been granted before the change of Control and CCS reasonably believes that the change is likely to have an adverse effect on the provision of the Services

### **Fraud**

- 5.12 If the Supplier commits any Prohibited Act, it will be a Material Breach and:
- CCS may End this Framework Agreement
  - Buyers may End their Call-Off Contracts
  - CCS and any Buyer may fully recover any resulting Losses from the Supplier

### **Notice of fraud**

- 5.13 The Supplier must tell CCS immediately and in writing if it suspects that any Prohibited Act has happened, is

happening or is likely to happen, except if complying with this provision would mean committing an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

## **Consequences of suspension, ending and expiry**

- 5.14 Suspension, Ending or expiry of this Framework Agreement will not affect existing Call-Off Contracts. All Call-Off Contracts will remain in force unless they End, are suspended or expire under the terms of the Call-Off Contract.
- 5.15 Even if a notice is served to End this Framework Agreement, the Supplier will continue to fulfil its obligations, including those obligations expressed to be for the Buyer's benefit until the End date or date of expiry of any Call-Off Contract.
- 5.16 The Supplier must continue to provide Management Information and pay the Management Charges due to CCS even if this Framework Agreement Ends, is suspended or expires.
- 5.17 Ending, suspension or expiry of this Framework Agreement will not affect any prior rights, remedies or obligations of either CCS or the Supplier accrued under this Framework Agreement.
- 5.18 All licences, leases and authorisations granted by CCS to the Supplier under this Framework Agreement will cease when it Ends or expires without the need for CCS to serve notice except if the Framework Agreement states otherwise.

## **Assurance verification**

- 5.19 The Supplier accepts that an Assurance verification process is an important part of the operation of the Framework Agreement. CCS or its agents may check any claims made by the Supplier in their Response and in their Service Definitions. CCS will continue to verify that:
- any information submitted is still an accurate reflection of the actual characteristics of the Supplier and its G-Cloud Service offerings
  - the Supplier's Services remain within scope of the Framework Agreement
  - the Supplier continues to meet the essential qualification criteria established when the Framework Agreement was awarded
- 5.20 Failure of the Assurance verification process by the Supplier will mean that the Service will be removed from the Digital Marketplace and the Supplier may be suspended from the Framework Agreement.

## **6. Section 6 - What you report to CCS**

### **Management Information**

- 6.1 The Supplier will provide complete and accurate Management Information (MI) to CCS using MI Reports. Suppliers will provide these MI Reports for free and using the template provided by CCS.
- 6.2 CCS must provide the Supplier with the latest MI Report template. See Schedule 1 for the link to an example MI Report template.
- 6.3 The Supplier must not use templates from previous months.



- 6.4 The Supplier will not make any amendments to the format of the MI Report template provided by CCS.
- 6.5 CCS has the right at any time and on reasonable notice, to amend the format of the MI Report template and its reporting method.
- 6.6 Using the MI Report to upload monthly returns to the CCS Management Information System (RMI), the Supplier must:
- report on each Order agreed
  - report on each invoice raised or submitted in each month
  - use the template and complete all appropriate data fields provided to submit the MI Report
  - send the MI Report by the 7th day of the following month, or the nearest Working Day before the 7th day if it's a weekend or public holiday
- 6.7 If there has been no activity for a particular month, the Supplier must submit a 'nil return' for that month.
- 6.8 The Supplier must also inform CCS of any corrections to previous MI Reports.
- 6.9 CCS may consider that an MI Failure has happened if an MI Report:
- contains any material errors or omissions
  - is submitted using an incorrect MI Report template
  - isn't submitted by the Reporting Date (including if a nil return should have been filed)
  - isn't submitted for the relevant period
- 6.10 After an MI Failure CCS may issue reminders to the Supplier or require the Supplier to fix mistakes in the MI Report. The Supplier must do this as soon as possible and not more than 5 Working Days after receiving the reminder.

## **Use of Management Information**

- 6.11 The Supplier grants CCS a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to use and to share with any Buyers and Relevant Person any Management Information supplied to CCS for CCS's normal operational activities as a central purchasing body for government.
- 6.12 If CCS shares the Management Information, any Buyer receiving the information will be informed of its sensitive nature and requested not to disclose it to any person who is not a Crown body or Buyer.

## **Admin Fees**

- 6.13 If there are 2 or more MI Failures in any 3-month rolling period, CCS will charge the Supplier for the costs (an Admin Fee) of chasing the Supplier to provide the information.
- 6.14 The Admin Fee is the amount payable by the Supplier to CCS if:
- CCS incurs costs because of incorrect MI
  - the MI Report is not returned within the agreed timescales

6.15 Details of the Admin Fees are available at  
G-Cloud 11 Framework Agreement – RM1557.11  
<https://www.gov.uk/government/publications/xxx>

- 6.16 By signing this Framework Agreement, the Supplier agrees that the Admin Fees are a fair reflection of the additional costs incurred by CCS due to the Supplier failing to supply the MI as required.
- 6.17 CCS will tell the Supplier about any Admin Fees and will be entitled to invoice the Supplier Admin Fees, which will be payable as a supplement to the Management Charge.
- 6.18 Payment of the Admin Fee will not affect any of CCS's other rights under this Framework Agreement.
- 6.19 If three (3) MI Failures occur in any rolling six (6) Month period then an **"MI Default"** shall be deemed to have occurred and CCS shall be entitled to:
- charge and the Supplier shall pay an additional default management charge ("**Default Management Charge**") in respect of the Months in which the MI Failure occurred and subsequent months in which they continue, calculated in accordance with Paragraph 6.20; and/or
  - End this Framework Agreement.
- 6.20 The Default Management Charge shall be the higher of
- the average Management Charge paid or payable by the Supplier in the previous six (6) Month period or, if the MI Default occurred within less than six (6) Months from the commencement date of the first Call-Off Contract, in the whole period preceding the date on which the MI Default occurred; or
  - the sum of five hundred pounds (£500).
- 6.21 If the Supplier provides sufficient Management Information to rectify any MI Failures to the satisfaction of CCS and the Management Information demonstrates that:
- the Supplier has overpaid the Management Charges as a result of the application of the Default Management Charge then the Supplier shall be entitled to a refund of the overpayment, net of any Admin Fees where applicable; or
  - the Supplier has underpaid the Management Charges during the period when a Default Management Charge was applied, then CCS shall be entitled to immediate payment of the balance as a debt together with interest.

## Management charge

- 6.22 The Supplier must pay CCS the Management Charge for setting up and running this Framework Agreement.
- 6.23 The Management Charge excludes VAT and will be a figure of up to 1% of all Charges for the Services invoiced to Buyers. It is currently set at 0.75% of all Charges invoiced to Buyers but may be increased at CCS's discretion.
- 6.24 CCS will submit invoices to the Supplier for the Management Charge due each month based on the MI provided by the Supplier, which must be paid by the Supplier within 30 days of the date of the invoice.
- 6.25 The Management Charge applies to the full Charges specified in each Order and will not be varied because of any service credits or other deductions.
- 6.26 The Supplier must pay the VAT on the Management Charge.
- 6.27 Interest will be payable on any late payments of the Management Charge under this Framework Agreement as set out in the Late Payment of Commercial Debts (Interest) Act 1998.

## Buyer satisfaction monitoring

- 6.28 CCS or a CCS agent may carry out a Buyer satisfaction survey at any time to:
- assess Buyer satisfaction with the provision, performance and delivery of G-Cloud Services by the Supplier and with the quality, efficiency and effectiveness of the supply

- monitor how the Supplier is complying with the terms of its Digital Marketplace Application
- carry out any other assessment it considers appropriate

6.29 CCS can include the results of Buyer satisfaction surveys on the Digital Marketplace and any Buyer can use those results to make decisions about any contract between the Buyer and the Supplier.

## Key performance indicators

6.30 Key Performance Indicator Targets that CCS may use to measure the performance of the Supplier on this Framework Agreement are:

Area	KPI number	Performance criteria	Target	Measured by
Contract management	1	Respond to CCS about any Framework Agreement management matters.	≥95%	The Supplier responding to correspondence (email or phone) from CCS within 2 Working Days. Resolving issues raised within 5 Working Days.
Management information	2	Complete and accurate MI Reports to be returned to CCS by 7th day of the following month.	100%	Complete and accurate MI template submitted by the Supplier to CCS by 7th day of the following month.
Management information	3	Management Charges to be paid within 30 days from date of invoice issue.	100%	Confirmation of payment received by CCS within 30 calendar days.

## 7. Section 7 - Transparency and access to records

### Transparency

7.1 Under the government's transparency policy, CCS can make all or part of the Information (including the Framework Agreement and Call-Off Contract) publicly available subject to any redactions made at the discretion of CCS by considering and applying relevant exemptions under the Freedom of Information Act (FoIA).

7.2 The terms of this Framework Agreement and any Call-Off Contract mean:

- CCS can publish the full text of the Framework Agreement concluded with the Supplier
- the Buyer can publish the signed Call-Off Contract after considering (at CCS's or the Buyer's discretion) any representations made by the Supplier about the application of any relevant FoIA or EIR exemptions
- CCS or the Buyer can publish any information provided by the Supplier as part of early market engagement

7.3 The Supplier agrees that information in its Application may be incorporated by CCS into any Call-Off Contract awarded to, or any Framework Agreement concluded with, the Supplier and may be published.

### **What will happen during the Framework Agreement's Term**

7.4 The Supplier will maintain full and accurate records and accounts, using Good Industry Practice and generally accepted accounting principles, of the:

- operation of the Framework Agreement and the Call-Off Contracts entered into with Buyers
- Services provided under any Call-Off Contracts (including any Subcontracts)
- amounts paid by each Buyer under the Call-Off Contracts

### **What will happen when the Framework Agreement Ends**

7.5 The Supplier will provide a completed self audit certificate (Schedule 2) to CCS within 3 months of the expiry or Ending of this Framework Agreement.

7.6 The Supplier's records and accounts will be kept until the latest of the following dates:

- 7 years after the date of Ending or expiry of this Framework Agreement
- 7 years after the date of Ending or expiry of the last Call-Off Contract to expire or End
- another date agreed between the Parties

7.7 During the timeframes highlighted in clause 7.6, the Supplier will maintain:

- commercial records of the Charges and costs (including Subcontractors' costs) and any variations to them, including proposed variations
- books of accounts for this Framework Agreement and all Call-Off Contracts
- MI Reports
- access to its published accounts and trading entity information
- proof of its compliance with its obligations under the Data Protection Legislation and the Transparency provisions under this Framework Agreement
- records of its delivery performance under each Call-Off Contract, including that of its Subcontractors

### **What will happen during an audit or inspection**

7.8 CCS will use reasonable endeavours to ensure that the Audit does not unreasonably disrupt the Supplier, but the Supplier accepts that control over the conduct of Audits carried out by the auditors is outside of CCS's control.

7.9 Subject to any Confidentiality obligations, the Supplier will use reasonable endeavours to:

- provide audit information without delay
- provide all audit information within scope and give auditors access to Supplier Staff

- 7.10 The Supplier will allow the representatives of CCS, Buyers receiving Services, the Controller and Auditor General and their staff, any appointed representatives of the National Audit Office, HM Treasury, the Cabinet Office and any successors or assigns of the above access to the records, documents, and account information referred to in clause 7.7 (including at the Supplier's premises), as may be required by them, and subject to reasonable and appropriate confidentiality undertakings, to verify and review:
- the accuracy of Charges (and proposed or actual variations to them under this Framework Agreement)
  - any books of accounts kept by the Supplier in connection with the provision of the G-Cloud Services for the purposes of auditing the Charges and Management Charges under the Framework Agreement and Call-Off Contract only
  - the integrity, Confidentiality and security of the CCS Personal Data and the Buyer Data held or used by the Supplier
  - any other aspect of the delivery of the Services including to review compliance with any legislation
  - the accuracy and completeness of any MI delivered or required by the Framework Agreement
  - any MI Reports or other records about the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records
  - the Buyer's assets, including the Intellectual Property Rights, Equipment, facilities and maintenance, to ensure that the Buyer's assets are secure and that any asset register is up to date

### **Costs of conducting audits or inspections**

- 7.11 The Supplier will reimburse CCS its reasonable Audit costs if it reveals:
- an underpayment by the Supplier to CCS in excess of 5% of the total Management Charge due in any monthly reporting and accounting period
  - a Material Breach
- 7.12 CCS can End this Framework Agreement under Section 5 (Ending and suspension of a supplier's appointment) for Material Breach if either event in clause 7.11 applies.
- 7.13 Each Party is responsible for covering all their own other costs incurred from their compliance with the Audit obligations.

## **8. Section 8 - General governance**

### **Definitions and interpretation**

- 8.1 This Framework Agreement will be interpreted using the definitions and provisions in the Glossary and interpretations section.
- 8.2 All schedules are incorporated into this Framework Agreement:
- Schedule 1: MI reporting template
  - Schedule 2: Self audit certificate
  - Schedule 3: Glossary and interpretations

- Schedule 4: Processing Data

## Order of precedence

8.3 If there's any conflict or ambiguity between the clauses of this agreement, to the extent necessary, the order of precedence for resolving the conflict is:

- the Framework Agreement
- the completed Order Form
- the clauses of a Call-Off Contract (excluding Supplier Terms)
- the Supplier's Terms
- any other document referred to in the Call-Off Contract clauses

Alternative Clauses specified in a Buyer's Order Form will take precedence over their corresponding clauses in the Call-Off Contract.

If the Application contains provisions which are more favourable to CCS or the Buyer compared to the rest of the Framework Agreement or Call-Off Contract, the Application provisions will apply. CCS and the Buyer will at their discretion determine whether any provision is more favourable.

## Relationship

8.4 Nothing in this Framework Agreement is intended to:

- create a partnership, or legal relationship of any kind that would impose liability on one Party for the act or failure to act of the other Party
- authorise either Party to act as agent for the other Party

## Who can buy using this Framework Agreement

8.5 CCS and Buyers can order G-Cloud Services from the Supplier using the Buying Process and the provisions of the Call-Off Contract.

## No guarantee of work

8.6 No exclusivity or guarantee of volume or quantity of work has been offered by CCS to Suppliers under this Framework Agreement and the Supplier confirms that it accepts this. Neither CCS or any other Buyer has to offer the Supplier a Call-Off Contract.

## Entire agreement

8.7 This Framework Agreement is the entire agreement and understanding between the Parties.

8.8 Each of the Parties agrees that in entering into this Framework Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement.

8.9 Nothing in these Entire agreement clauses 8.7 to 8.9 (inclusive) will exclude liability or remedy for Fraud or

fraudulent misrepresentation.

## **Law and jurisdiction**

8.10 Any disputes or matters (including non-contractual) under this Framework Agreement will be governed by and construed under the Laws of England and Wales and without prejudice to the dispute resolution process. Each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England and Wales.

## **Legislative change**

8.11 The Supplier won't be relieved of its obligations under this Framework Agreement, or be entitled to increase the Framework Agreement prices as the result of a general change in Law or a Specific Change in Law, without prior written approval from CCS.

8.12 If a Specific Change in Law is made which has a material impact on the delivery of the Services or the Framework Agreement price range, the Supplier will notify CCS of the likely effects of that change. This will include whether any change is required to the Services, the Framework Agreement price range or this Framework Agreement.

## **Bribery and corruption**

8.13 The Supplier must ensure that neither it, nor any person acting on its behalf, will commit any Prohibited Act in connection with this Framework Agreement.

8.14 If the Supplier breaches the Bribery Act 2010, CCS can End this Framework Agreement.

8.15 If the Supplier breaches these Bribery and corruption clauses 8.13 to 8.17 (inclusive), CCS can End this Framework Agreement.

8.16 CCS will be entitled to recover in full from the Supplier and the Supplier will on demand compensate CCS in full for:

- the amount of value of any such gift, consideration or commission
- any other Loss sustained by CCS because of any breach of these Bribery and corruption clauses 8.13 to 8.17 (inclusive)

8.17 The Parties agree that the Management Charge isn't an offence as described in section 1 of the Bribery Act 2010.

## **Freedom of Information Act (FoIA)**

8.18 The Supplier acknowledges that CCS is subject to the Freedom of Information Act (FoIA) and the Environmental Information Regulations (EIR).

8.19 The Supplier will co-operate with CCS and Buyers to enable them to comply with their Information disclosure obligations under this Framework Agreement and any Call-Off Contracts.

8.20 The Supplier must not respond directly to a Request for Information under the FoIA or EIR.

8.21 The Supplier will note that the Information disclosed in response to a FoIA or EIR request may include its Response. This may include attachments, embedded documents, any score or details of its evaluation.

8.22 CCS is responsible for deciding whether the Commercially Sensitive Information or any other Information is

exempt from disclosure under the provisions of the FoIA or the EIR.

- 8.23 CCS may be required to disclose Information under the FoIA, EIR and the Ministry of Justice Code even where Information is identified as confidential or commercially sensitive. This may include disclosure of the information without consulting the Supplier or after having taken the Supplier's views into account.
- 8.24 If the Supplier considers any part of its Response or any other Supplier information to be confidential or commercially sensitive, the Supplier will promptly and in writing:
- identify this Information to CCS
  - explain the potential implications of its disclosure, specifically addressing the public interest test as in the FoIA
  - estimate how long it believes such Information will remain confidential or commercially sensitive
- 8.25 CCS will consider this when making a decision under the FoIA or EIR.
- 8.26 The Supplier must:
- transfer to CCS all Requests for Information that it receives within 2 Working Days of receiving it
  - provide all necessary help reasonably requested by CCS to enable CCS to respond to the Request for Information within the timescales set out in section 10 of the FoIA or regulation 5 of the EIR
  - provide CCS with a copy of all Information about a Request for Information, in its possession or control, in the form that CCS requires within 5 Working Days of CCS's request
- 8.27 CCS will make reasonable efforts to notify the Supplier when it receives a relevant FoIA or EIR request so that the Supplier may make appropriate representations.

## **Promoting tax compliance**

- 8.28 If tax non-compliance happens during the Framework Agreement, the Supplier will:
- tell CCS in writing within 5 Working Days
  - promptly provide CCS with details of the steps it has taken to address the non-compliance
  - provide any other information as CCS reasonably needs
- 8.29 CCS can End this Framework Agreement for Material Breach if the Supplier doesn't:
- comply with clause 8.28
  - provide details of any mitigating factors and its plans to prevent recurrence, which are acceptable to CCS

## **Official Secrets Act**

- 8.30 The Supplier will comply with, and ensure that the Supplier Staff comply with, the provisions of the Official Secrets Act 1911 to 1989 and Section 182 of the Finance Act 1989.
- 8.31 If the Supplier or the Supplier Staff fail to comply with the above Official Secrets Act clause 8.30, CCS reserves the right to End this Framework Agreement with immediate effect by giving notice in writing to the Supplier.



## **Transfer and subcontracting**

- 8.32 The Supplier must not assign, novate, Subcontract or in any other way dispose of this Framework Agreement or any part of it without CCS's prior written approval. Subcontracting any part of this Framework Agreement will not relieve the Supplier of its duties under this Framework Agreement.
- 8.33 The Supplier will only subcontract with the prior written approval of the Buyer. If the Supplier chooses to use Subcontractors, this will be outlined in any Order along with the percentage of delivery allocated to each Subcontractor.
- 8.34 The Supplier is responsible for the acts and omissions of its Subcontractors and Supplier Staff as though they are its own.
- 8.35 Provided that it does not increase the burden on the Supplier under the Framework Agreement, CCS may assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part of it to any:
- other body established by the Crown or under statute to substantially perform any of the functions previously performed by CCS
  - private sector body which substantially performs the functions of CCS

## **Contracts (Rights of Third Parties) Act 1999**

- 8.36 With the exception of Buyers who can enforce provisions intended for their benefit with CCS's approval, a person who is not Party to this Framework Agreement has no right to enforce any of its terms.
- 8.37 CCS may act as agent and trustee for each Buyer. CCS can enforce any clause or recover any Loss for a Buyer for a breach of any clause.

## **Complaints handling and resolution**

- 8.38 Either Party will notify the other Party of any complaints made by the Buyer's end users, which are not resolved within 5 Working Days.
- 8.39 If the Supplier is the Party providing the notice, the notice will contain full details of the Supplier's plans to resolve the complaint.
- 8.40 The Supplier will work to resolve the complaint within 10 Working Days.
- 8.41 The Supplier will provide full details of a complaint, including details of steps taken to resolve it, within 5 Working Days of a request by CCS or the Buyer.

## **Conflicts of interest and ethical walls**

- 8.42 The Supplier must use reasonable endeavours to avoid being in a position of potential conflict between its financial, personal, and other interests (or those of the Supplier Staff or any affiliated company) and the duties owed to CCS and the Buyer under this Framework Agreement or any Call-Off Contract.
- 8.43 Any breach of these Conflict of interest and ethical walls clauses 8.42 to 8.48 (inclusive) will be deemed to be a Material Breach.
- 8.44 A conflict of interest can happen if the Supplier, an affiliated company or a member of the Supplier Staff:
- is being considered for the opportunity to deliver Services and any of them has had involvement in the

same or other related projects that may give them an advantage

- is related to someone in another supplier team or has a business interest in another supplier and both are part of the same team performing the Services
- has been provided with, or had access to, information which would give an unfair advantage in the buying process

8.45 The Supplier will fully compensate and keep CCS and all Buyers safe from Losses which the Buyer or the government may suffer as a result of a breach of these Conflict of interest and ethical walls clauses 8.42 to 8.48 (inclusive).

8.46 If the Supplier identifies a risk of a conflict or potential conflict, it will (before starting work under a Call-Off Contract):

- inform the Buyer of the conflict of interest and how it plans to mitigate the risk
- if agreed by the Buyer, promptly establish the necessary ethical wall arrangements

8.47 Details of the mitigation arrangements must be sent to the Buyer as soon as possible.

8.48 The Buyer will, at its discretion, notify the Supplier if the arrangements are acceptable or whether the risk or conflict is a Material Breach.

## **Publicity and branding**

8.49 The Supplier will not do or fail to do anything which may damage the public reputation of CCS under this Framework Agreement or otherwise. CCS may End the Framework Agreement for Material Breach if the Supplier causes material adverse publicity relating to or affecting CCS or the Framework Agreement.

8.50 The Supplier will indemnify CCS against all Losses resulting from the Supplier's use of CCS's logo.

8.51 The Supplier will not make any press announcements about the Framework Agreement or any Call-Off Contracts without CCS's written approval.

## **Equality and diversity**

8.52 The Supplier will comply with any discrimination Laws and other requirements and instructions which CCS and the Buyer reasonably require.

8.53 The Supplier will make sure that all Supplier Staff engaged in the performance of this Framework Agreement and any Call-Off Contract observe these Equality and diversity clauses 8.52 to 8.54 (inclusive).

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

## **Intellectual property rights**

8.55 Other than as set out in any Call-Off Contract, neither CCS, the Buyer nor the Supplier will acquire any right, title or interest in the other's Intellectual Property Rights (IPRs).

8.56 The Supplier must own or have a valid licence for any IPRs used to perform its obligations under this Framework Agreement and any Call-Off Contract. These must be maintained for the Term of the Framework Agreement and any relevant Call-Off Contracts.

## Data protection and disclosure

- 8.57 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 4 Processing Data.
- 8.58 The Supplier indemnifies CCS and each Buyer against any and all Losses incurred if the Supplier breaches Clause 8.57 and any Data Protection Legislation.

## Notices

- 8.59 Any notices sent must be in writing. An email is accepted as being 'in writing'. CCS's email address is: [info@crowcommercial.gov.uk](mailto:info@crowcommercial.gov.uk)

Manner of delivery	Deemed time of delivery	Proof of service
Email	9am on the first Working Day after sending	Sent in an emailed pdf to the correct email address without any error message

- 8.60 Other than a dispute notice under this Framework Agreement, this clause does not apply to any legal action or other method of dispute resolution which will be served at the following addresses:

For CCS	For the Supplier
Crown Commercial Service 9th Floor The Capital Old Hall Street Liverpool L3 9PP  For the attention of: Kevin Todd  Email: <a href="mailto:info@crowcommercialservice.gov.uk">info@crowcommercialservice.gov.uk</a>	[insert name of supplier] [insert address of supplier] [insert address of supplier] [insert address of supplier]  For the attention of: [insert supplier contact name and email address]  [Supplier to provide contact details]

## Insurance

- 8.61 The Supplier must have employer's liability insurance of at least £5,000,000 before the Framework Agreement is awarded unless the Supplier is exempt under law. Suppliers will need to maintain further insurances to the indemnity levels and as set out in each Call-Off Contract.

## Severability

- 8.62 If any part of the Framework Agreement becomes invalid, illegal or unenforceable, it will be removed from the Framework Agreement and the remaining parts of the Framework Agreement or any Call-Off Contract will be unaffected.
- 8.63 If any fundamental part of this Framework Agreement becomes invalid, CCS and the Supplier may agree to remedy the invalidity. If the Parties can't do this within 20 Working Days of becoming aware of the invalidity, the Framework Agreement will be automatically Ended and each Party will be responsible for their own costs.

## Managing disputes

- 8.64 When either Party notifies the other of a dispute, both Parties will attempt in good faith to negotiate a settlement within 20 Working Days. This will include escalation of the dispute to the CCS Representative and the Supplier Representative.
- 8.65 The obligations of the Parties under this Framework Agreement will not be suspended, ceased or delayed by the reference of a dispute to mediation or arbitration and the Supplier and Supplier's Staff will continue to comply with the requirements of this Framework Agreement.
- 8.66 Nothing in this process prevents a Party from seeking any interim order restraining the other Party from, or compelling the other Party to do, any act.
- 8.67 If the dispute cannot be resolved, the parties will first attempt to settle the matter by mediation and before either party commences formal action.

## Mediation process

- 8.68 A mediator will be agreed by both Parties. If the Parties cannot agree on a mediator within 10 Working Days after a request by one Party to the other, either Party will as soon as possible, apply to the mediation provider or to the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator. This application to CEDR must take place within 12 Working Days from the date of the proposal to appoint a mediator, or within 3 Working Days of notice from the mediator to either Party that they can't or won't act.
- 8.69 The Parties will meet the mediator within 10 Working Days of the mediator's appointment to agree a structure for the negotiations. The Parties can at any stage ask the mediation provider for advice about the process.
- 8.70 Unless otherwise agreed, all negotiations and settlement agreements connected with the dispute will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 8.71 If the Parties reach agreement, it will be put in writing and will be binding once it's signed by the Parties' authorised representatives.
- 8.72 If agreement cannot be reached following a mediation either Party can invite the mediator to provide a non-binding opinion on settlement terms in writing. This opinion will be provided and will not be used in evidence in any proceedings about this Framework Agreement without the prior written consent of both Parties.
- 8.73 If the Parties fail to reach agreement within 60 Working Days of the mediator being appointed, or other period as agreed by the Parties, it can be referred to the courts or to arbitration (if both parties agree to determination by arbitration).
- 8.74 Either Party can request by written notice that the dispute is referred to expert determination if the dispute relates to:
- any technical aspect of the delivery of the Services
  - the underlying technology
  - financial issues

- 8.75 An expert will be appointed by written agreement between the Parties, but if they fail to agree on an expert within 10 Working Days of the first proposal by a Party, or if the person appointed is unable or unwilling to act, the expert will be appointed on the instructions of the relevant professional body.
- 8.76 The expert will:
- act fairly and impartially and not as an arbitrator
  - provide a determination that will be final and binding on the Parties, unless there's a material failure to follow the agreed process
  - decide the process to be followed and will be requested to make their determination within 30 Working Days of their appointment or as soon as possible and the Parties will provide the documentation that the expert needs
  - decide how and by whom the costs of the determination, including their fees and expenses, are to be paid. Any amount payable by one Party to another will be due within 20 Working Days of the Parties being notified of the determination
- 8.77 The expert determination process will be conducted in private and will be confidential.

## **Confidentiality**

- 8.78 Unless disclosure is expressly permitted elsewhere in this Framework Agreement, each Party will:
- treat the other Party's Confidential Information as confidential and safeguard it accordingly
  - not disclose it without the relevant Party's written consent
- 8.79 The Supplier must take all necessary precautions to ensure that any CCS Confidential Information is only disclosed to Supplier Staff to the extent that it is strictly necessary for this Framework Agreement and must ensure that they comply with the obligations under this clause.
- 8.80 The Confidentiality clauses will not apply to any Confidential Information received by one Party from the other which:
- is or becomes public knowledge (unless by breach of this Framework Agreement)
  - was already in the possession of the receiving Party without restriction as to its disclosure
  - is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure
  - is information independently developed without access to the other Party's Confidential Information
  - must be disclosed under a statutory or legal obligation
  - is disclosed on a Confidential Basis to a professional adviser
- 8.81 Nothing in this Framework Agreement will prevent CCS from disclosing the Supplier's Confidential Information (including Management Information):
- for the examination and certification of CCS's accounts
  - for any examination under Section 6(1) of the National Audit Act 1983

- to the UK Parliament, Scottish Parliament or Welsh or Northern Ireland Assemblies, including their committees
- to any government department or any Buyer on the basis that the information can only be further disclosed to central government bodies and Buyers
- if CCS (acting reasonably) deems disclosure is appropriate for the performance of public functions
- for sharing knowledge of the G-Cloud Services and their performance to Buyers on a Confidential Basis to exercise its rights or comply with its obligations under this Call-Off Contract
- on a Confidential Basis to a proposed transferee, assignee or novatee of, or successor in title to CCS

8.82 The Supplier will maintain physical and IT security that follows Good Industry Practice to ensure there is no unauthorised access to any CCS or Buyer Confidential Information and data.

8.83 Information about Orders placed by a Buyer (including pricing information and the terms of any Call-Off Contract) can be published by CCS and shared with other Buyers. If Confidential Information is shared with other Buyers, CCS will notify the recipient that its contents are confidential.

8.84 If the Supplier fails to comply with these confidentiality clauses, CCS reserves the right to End this Framework Agreement with immediate effect by notice in writing.

8.85 The Supplier will immediately tell CCS about any security breach of CCS's Confidential Information and will keep a record of those breaches. The Supplier will take all necessary steps to recover this information. The Supplier will co-operate with CCS in any investigation into the breach that CCS considers necessary.

8.86 Either Party can use techniques, ideas or knowledge gained during this Framework Agreement unless using them results in unauthorised disclosure of the other Party's Confidential Information or infringes Intellectual Property Rights under this Framework Agreement.

## Waiver and cumulative remedies

8.87 The rights and remedies provided by this Framework Agreement can only be waived in writing by a Party if intent is clear and will only apply in the specific circumstances outlined here. Unless a right or remedy of CCS is expressed to be an exclusive right or remedy, the exercise of it by CCS doesn't affect CCS's other rights and remedies. Any failure or delay by a Party to exercise a right or remedy will not constitute a waiver.

8.88 The rights and remedies provided by this Framework Agreement are cumulative and, unless otherwise provided in this Framework Agreement, are not exclusive of any right or remedies provided at Law.

## Corporate Social Responsibility

8.89 In September 2017, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646497/2017-09-13\\_Official\\_Sensitive\\_Supplier\\_Code\\_of\\_Conduct\\_September\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf)

8.90 CCS expects its suppliers and subcontractors to meet the standards set out in that Code. In addition, CCS expects its suppliers and subcontractors to comply with the standards set out in this Schedule.

8.91 The Supplier acknowledges that the Buyer may have additional requirements in relation to corporate social responsibility. The Buyer expects that the Supplier and its Subcontractors will comply with such corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time.

- 8.92 In addition to legal obligations, the Supplier shall support CCS and the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:
- eliminate discrimination, harassment or victimisation of any kind; and
  - advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

8.93 The Supplier:

- shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
- shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;
- warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
- shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offenses anywhere around the world.
- shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
- shall prepare and deliver to CCS, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Paragraph 3;
- shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- shall not use or allow child or slave labour to be used by its Subcontractors;
- shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to CCS, the Buyer and Modern Slavery Helpline.

8.94 The Supplier shall:

- ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- ensure that all Supplier Staff are provided with written and understandable Information about their employment conditions in respect of wages before they enter;
- All workers shall be provided with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- not make deductions from wages:
  - as a disciplinary measure
  - except where permitted by law; or
  - without expressed permission of the worker concerned;
- record all disciplinary measures taken against Supplier Staff; and
- ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

8.95 The Supplier shall:

- ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;
- that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
- ensure that use of overtime used responsibly, taking into account:
  - (a) the extent;
  - (b) frequency; and
  - (c) hours worked;

by individuals and by the Supplier Staff as a whole;

8.96 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 8.97 below.

8.97 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:

- this is allowed by national law;
- this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;
  - Appropriate safeguards are taken to protect the workers' health and safety; and
  - the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

8.98 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

8.99 The supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>



## Schedule 1 - MI reporting template

The MI reporting template is available at

<https://www.digitalmarketplace.service.gov.uk/suppliers/frameworks/g-cloud-11>.

You need to be logged in to the Digital Marketplace to see it.

## Schedule 2 - Self audit certificate

[The Supplier must provide CCS with Self audit certificates within 3 months of this Framework Agreement expiring or Ending. It must be signed by the Head of Internal Audit, a Finance Director or the company's external auditor.]

Dear Sir or Madam,

Under the Framework Agreement entered into on 2 July 2019 between [insert Supplier name] and the Crown Commercial Service, we confirm the following:

In our opinion [Supplier name] has in place suitable systems for identifying and recording the transactions taking place under the provisions of the above Framework Agreement.

We have tested the systems for identifying and reporting on Framework Agreement activity and found them to be operating satisfactorily.

We have tested a sample of [\_] [Insert number of sample transactions tested] orders and invoices during our audit for the financial year ended [insert financial year] and confirm that they are correct and under the terms and conditions of the above Framework Agreement.

Signature:

Name:

Role:

Date:

## Schedule 3 - Glossary and interpretations

1. If the context allows, any words in the singular also include the plural meaning and the other way round.
2. The words 'include', 'includes' 'including' and 'for example' and words of similar effect will not limit the general effect of the words which precede them.
3. References to any person will include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees.
4. References to any statute, enactment, order, regulation or other similar instrument will be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted.
5. Headings are included in this Framework Agreement for ease of reference only and will not affect the interpretation or construction of this Framework Agreement.
6. References in this Framework Agreement to any clause or Schedule without further designation will be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered.
7. References in this Framework Agreement to any paragraph or sub-paragraph without further designation will be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered.
8. Reference to a clause is a reference to the whole of that clause unless stated otherwise.
9. Approvals or agreements to be given by a Party should not be unreasonably withheld or delayed.
10. Reference to a month means a calendar month.

Word	Meaning and interpretation
<b>Additional Services</b>	Any services ancillary to the G-Cloud Services that are in the scope of Section 2 (Services Offered) which a Buyer may request.
<b>Admin Fees</b>	The fees payable by the Supplier under clauses 6.13 to 6.18.
<b>Alternative Clauses</b>	The alternative clauses which the Buyer can incorporate as set out in Call-Off Schedule 4.
<b>Applicant</b>	Has the meaning given in paragraph 1.3 of the Invitation to Tender.
<b>Application</b>	The response submitted by the Supplier to the Invitation to Tender.
<b>Application Clarifications Deadline</b>	Has the meaning given in paragraph 4.2 of the Invitation to Tender
<b>Application Submission Deadline</b>	Has the meaning given in paragraph 4.2 of the Invitation to Tender
<b>Assurance</b>	The assurance verification process performed by CCS under clauses 5.19 and 5.20.
<b>Audit</b>	An audit carried out under this Framework Agreement in accordance with clauses 7.4 to 7.13.
<b>Buyer</b>	A UK public sector body, or contracting authority, as described in the OJEU Contract Notice or Regulation 2 of the Public Contracts Regulations 2015, that can execute a Call-Off Contract under this Framework Agreement; or the contracting authority ordering services as identified in the Order Form (as the context provides).
<b>Buyer Data</b>	All data supplied by the Buyer to the Supplier including Personal Data and Service Data that is owned

	and managed by the Buyer.
<b>Buyer Satisfaction Survey</b>	A survey carried out under clauses 6.28 to 6.29 (Buyer Satisfaction Monitoring).
<b>Buyer Software</b>	Software owned by or licensed to the Buyer (other than under or for this Framework Agreement), which is or will be used by the Supplier for the purposes of providing the Services.
<b>Buying Process</b>	The ordering and award process specified in Section 3 (How services will be bought).
<b>Call-Off Buying Process</b>	The process for placing orders given in Section 3 (How services will be bought).
<b>Call-Off Contract</b>	The legally binding agreement (entered into following the provisions of this Framework Agreement) for the provision of Services made between a Buyer and the Supplier including the completed Order Form.
<b>Call-Off Term</b>	The period of the Call-Off Contract as specified in the Order Form.
<b>CCS Data</b>	All data supplied by the Buyer to the Supplier including Personal Data that is owned and managed by CCS.
<b>CCS Representative</b>	The CCS representative for this Framework Agreement.
<b>Charges</b>	The prices (excluding any applicable VAT) payable to the Supplier by the Buyer under the Call-Off Contract.
<b>Collaboration Agreement</b>	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 IT services.
<b>Commercially Sensitive Information</b>	Information, which CCS has been notified about by the Supplier in writing (before the Start Date of the Framework Agreement) or the Buyer (before the Call-Off Contract Start Date) with full details of why the Information is considered commercially sensitive.
<b>Comparable Supply</b>	The supply of services to another customer of the Supplier that are the same or similar to any of the Services.
<b>Confidential Basis</b>	Any disclosure by the recipient to a third party is subject to a confidentiality agreement or arrangement containing the same terms as those placed on the recipient under the confidentiality clauses.
<b>Confidential Information</b>	Data, personal data and any information, which may include (but is not limited to) any: <ul style="list-style-type: none"> <li>• information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above</li> <li>• other information clearly designated as being confidential or which should reasonably be considered to be confidential (whether or not it is marked 'confidential').</li> </ul>
<b>Control</b>	'Control' as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly.
<b>Controller</b>	Takes the meaning given in the GDPR
<b>Crown</b>	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.
<b>Data Loss Event</b>	<small>any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Framework Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach</small>
<b>Data Protection Impact Assessment</b>	An assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data
<b>Data Protection Legislation</b>	(i) The GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to Processing of personal data and privacy and (iii) all applicable Law about the Processing of personal data and privacy including if applicable legally binding guidance and codes of practice issued by the Information Commissioner.
<b>Data Protection Officer</b>	Takes the meaning given in the GDPR

<b>Data Subject</b>	Takes the meaning given in the GDPR
<b>Data Subject Request</b>	A request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data
<b>Default</b>	<p>This means any:</p> <ul style="list-style-type: none"> <li>• breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term)</li> <li>• 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 Framework Agreement</li> </ul> <p>Unless otherwise specified in this 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.</p>
<b>Digital Marketplace</b>	<a href="https://www.digitalmarketplace.service.gov.uk/">The government marketplace where Services are available for purchase (https://www.digitalmarketplace.service.gov.uk/)</a>
<b>Direct Award Criteria</b>	The award criteria to be applied for the award of Call-Off Contracts for G-Cloud Services set out in Section 3 (How services will be bought).
<b>DOTAS</b>	The Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide information on them within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made that Act as extended to National Insurance Contributions by the National Insurance Contributions Regulations 2012 made under section 132A Social Security Administration Act 1992.
<b>DPA 2018</b>	Data Protection Act 2018
<b>End</b>	Means to terminate; and Ended and Ending will be construed accordingly.
<b>Environmental Information Regulations or EIR</b>	The Environmental Information Regulations 2004 together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department about these regulations.
<b>Employment Status Indicator test tool or ESI tool</b>	<a href="http://tools.hmrc.gov.uk/esi">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</a>
<b>Force Majeure</b>	<p>A Force Majeure event means anything affecting either Party's performance of their obligations arising from any:</p> <ul style="list-style-type: none"> <li>• acts, events or omissions beyond the reasonable control of the affected Party</li> <li>• riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare</li> <li>• acts of government, local government or Regulatory Bodies</li> <li>• fire, flood or disaster and any failure or shortage of power or fuel</li> <li>• industrial dispute affecting a third party for which a substitute third party is not reasonably available</li> </ul> <p>The following do not constitute a Force Majeure event:</p> <ul style="list-style-type: none"> <li>• any industrial dispute about the Supplier, its staff, or failure in the Supplier's (or a Subcontractor's) supply chain</li> <li>• 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</li> <li>• the event was foreseeable by the Party seeking to rely on Force Majeure at the time this Framework Agreement was entered into</li> <li>• 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</li> </ul>
<b>Framework Agreement</b>	The clauses of this Framework Agreement, the Invitation to Tender together with the Schedules.
<b>Framework Suppliers</b>	The Suppliers (including the Supplier) who have been awarded a G-Cloud 10 Framework Agreement.

<b>Fraud</b>	Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown.
<b>Freedom Of Information Act or FoIA</b>	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.
<b>G-Cloud Services</b>	The cloud services described in 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.
<b>GDPR</b>	The General Data Protection Regulation (Regulation (EU) 2016/679)
<b>General Anti-Abuse Rule</b>	The legislation in Part 5 of the Finance Act 2013 and any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.
<b>Good Industry Practice</b>	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 under the same or similar circumstances.
<b>Group of Economic Operators</b>	A partnership or consortium not (yet) operating through a separate legal entity.
<b>Guarantee</b>	The guarantee in Call-Off Schedule 5 (Guarantee).
<b>Guidance</b>	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.
<b>General Anti-Abuse Rule</b>	The legislation in Part 5 of the Finance Act 2013 and any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.
<b>Halifax Abuse Principle</b>	The principle explained in the CJEU Case C-255/02 Halifax and others.
<b>Implementation Plan</b>	The plan set out in the Order Form.
<b>Information</b>	This has the meaning given under section 84 of the Freedom of Information Act 2000.
<b>IR35</b>	IR35 is also known as ‘intermediaries legislation’. It’s a set of rules that affect tax and National Insurance if a Supplier is contracted to work for a client through an intermediary.
<b>Independent Control</b>	where a Controller has provided Personal Data to another Party which is not a “Processor or Joint Controller because the recipient itself determines the purposes and means of processing but does so separately from the Controller providing it with Personal Data
<b>Inside IR35</b>	Employment engagements that would be within the scope of the IR35 Intermediaries legislation if assessed by the ESI tool.
<b>Insolvency Event</b>	Can be: <ul style="list-style-type: none"> <li>● a voluntary arrangement</li> <li>● a winding-up petition</li> <li>● the appointment of a receiver or administrator</li> <li>● an unresolved statutory demand</li> <li>● a Schedule A1 moratorium</li> </ul>
<b>Intellectual Property Rights or IPR</b>	(a) 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 (b) 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 (c) all other rights having equivalent or similar effect in any country or jurisdiction
<b>Intermediary</b>	For the purposes of the IR35 rules, an intermediary can be:

	<ul style="list-style-type: none"> <li>• the supplier's own limited company</li> <li>• a service or a personal service company</li> <li>• a partnership</li> </ul> <p>It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example an employment agency).</p>
<b>Invitation to Tender</b>	The Invitation to Tender for this Framework Agreement issued on 7 March.
<b>IR35</b>	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.
<b>Joint Controllers</b>	where two or more Controllers jointly determine the purposes and means of processing
<b>Key Performance Indicators</b>	The performance indicators in clause 6.30.
<b>Know-How</b>	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.
<b>Law</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply.
<b>LED</b>	Law Enforcement Directive (Directive (EU) 2016/680)
<b>Loss</b>	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.
<b>Lot</b>	Any of the 3 lots specified in the Invitation to Tender and 'Lots' will be construed accordingly.
<b>Malicious Software</b>	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
<b>Management Charge</b>	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.
<b>Management Information or MI</b>	The management information specified in Section 6 (What you report to CCS).
<b>Material Breach</b>	<p>A breach by the Supplier of the following clauses in this Framework Agreement:</p> <ul style="list-style-type: none"> <li>• IR35</li> <li>• Transfer and subcontracting</li> <li>• Equality and diversity</li> <li>• Conflicts of interest and ethical walls</li> <li>• Warranties and representations</li> <li>• Management information</li> <li>• Management charge</li> <li>• Publicity and branding</li> <li>• Bribery and corruption</li> <li>• Fraud and notice of fraud</li> <li>• Data protection and disclosure</li> <li>• Intellectual Property Rights</li> <li>• Confidentiality</li> <li>• any single serious breach or persistent failure to perform as required by this Framework Agreement or under a Call-Off Contract</li> </ul>
<b>MI Failure</b>	A failure by the Supplier to provide as set out in clause 6.9.

<b>Ministry of Justice Code</b>	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.
<b>MI Report</b>	The management information report provided by the Supplier under Section 6 (What you report to CCS).
<b>OJEU Contract Notice</b>	The contract notice in the Official Journal of the European Union, seeking expressions of interest from potential providers of G-Cloud Services.
<b>Open Procedure</b>	The process set out in Regulation 27 PCR 2015
<b>Order</b>	An order for G-Cloud Services placed by a Buyer with the Supplier in accordance with the Buying Process.
<b>Order Form</b>	The order form in the Call-Of Contract to be used by a Buyer to order G-Cloud Services.
<b>Parent Company</b>	Any company which is the ultimate Holding Company of the Supplier.
<b>Party</b>	Party for the purposes of the: <ul style="list-style-type: none"> <li>● Framework Agreement, CCS or the Supplier</li> <li>● Call-Off Contract, the Supplier or the Buyer and 'Parties' will be interpreted accordingly</li> </ul>
<b>Partner</b>	Any business entity with whom the Supplier works in order to provide the Services.
<b>Personal Data</b>	Takes the meaning given in the GDPR
<b>Personal Data Breach</b>	Takes the meaning given in the GDPR
<b>Processing</b>	Takes the meaning given in the GDPR
<b>Processor</b>	Takes the meaning given in the GDPR
<b>Processor Personnel</b>	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Framework Agreement
<b>Prohibited Act</b>	To directly or indirectly offer, promise or give any person working for or engaged by a Buyer or CCS a financial or other advantage to: <ul style="list-style-type: none"> <li>● induce that person to perform improperly a relevant function or activity</li> <li>● reward that person for improper performance of a relevant function or activity</li> <li>● commit any offence: <ul style="list-style-type: none"> <li>○ under the Bribery Act 2010</li> <li>○ under legislation creating offences concerning Fraud</li> <li>○ at common Law concerning Fraud</li> <li>○ committing or attempting or conspiring to commit Fraud</li> </ul> </li> </ul>
<b>Protective Measures</b>	Appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
<b>PSN Authority</b>	The Government body which will administer the PSN from time to time (with assistance from other parties)
<b>Regulations</b>	The Public Contracts Regulations 2015 (at <a href="http://www.legislation.gov.uk/ukxi/2015/102/contents/made">http://www.legislation.gov.uk/ukxi/2015/102/contents/made</a> ) and the Public Contracts (Scotland) Regulations 2015 (at <a href="http://www.legislation.gov.uk/ssi/2015/446/contents/made">http://www.legislation.gov.uk/ssi/2015/446/contents/made</a> ).
<b>Regulatory Bodies</b>	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 Framework Agreement.
<b>Relevant Person</b>	Any employee, agent, servant, or representative of CCS, any other public body or person employed by or on behalf of CCS, or any other public body.
<b>Reporting Date</b>	The seventh day of each month following the month to which the relevant MI relates. A different date can be chosen if agreed between the Parties.
<b>Request(s) for Information</b>	A request for information or an apparent request under the Code of Practice on Access to Government Information, FoIA or the Environmental Information Regulations.



<b>Response</b>	The response submitted by the Supplier to the Invitation to Tender.
<b>Self Audit Certificate</b>	The certificate in the form in Schedule 2 (Self Audit Certificate), to be provided to CCS by the Supplier.
<b>Services</b>	Means G-Cloud Services and any/or Additional Services.
<b>Service Definition(s)</b>	The definition of the Supplier's G-Cloud Services provided as part of their Application that includes, but is not limited to, those items listed in Section 2 (Services Offered) of this Framework Agreement.
<b>Service Description</b>	The description of the Supplier service offering as published on the Digital Marketplace.
<b>Service Essentials</b>	The Applicants service details provided in their Application and as set out in supplier guidance issued from time to time.
<b>Service Personal Data</b>	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 Framework Agreement or a Call-Off Contract.
<b>Special Purpose Vehicle</b>	A separate legal entity jointly controlled by a Group of Economic Operators to provide Services.
<b>Specific Change in Law</b>	A change in the Law that relates specifically to the business of CCS and which would not affect a Comparable Supply.
<b>Standstill Period</b>	Has the meaning given in paragraph 11.4 of the Invitation to Tender.
<b>Start Date</b>	For the Framework Agreement, the start date is as outlined in 'Section 1 - The appointment'. For the Call-Off Contract, start date is as described in the Order Form.
<b>Subcontract</b>	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.
<b>Subcontractor</b>	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.
<b>Subprocessor</b>	Any third party appointed to process Personal Data on behalf of that Processor related to this Framework Agreement.
<b>Supplier Declaration</b>	The document containing the selection and award questions for the procurement.
<b>Supplier Representative</b>	The representative appointed by the Supplier in relation to this Framework Agreement.
<b>Supplier Staff</b>	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 Framework Agreement or any Call-Off Contracts.
<b>Supplier Terms</b>	The Supplier's terms and conditions for G-Cloud Services and as set out in Section 2 (Services offered) and in the form supplied as part of the Supplier's Application.
<b>Tax Non-Compliance</b>	(a) Any tax return the Supplier submitted to HMRC, or the relevant tax authority if the Supplier is established on or after 1 October 2012, is found to be incorrect as a result of: (i) HMRC or the relevant tax authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an equivalent effect (ii) the failure of an avoidance scheme used by the Supplier which should be notified to HMRC or the relevant tax authority under the DOTAS or any equivalent regime (b) the Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any country for tax related offences which is not spent at the Effective Date or to a penalty for civil fraud or evasion
<b>Term</b>	The term of this Framework Agreement as specified in Section 1 (The appointment).
<b>Terms of Participation</b>	Are the terms set out in paragraph 5 of the Invitation to Tender.
<b>Working Days</b>	Any day other than a Saturday, Sunday or public holiday in England and Wales.
<b>Year</b>	A contract year.



## Schedule 4 – Processing Data

### Status of the Controller

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA. A Party may act as:
  - (a) “Controller” in respect of the other Party who is “Processor”;
  - (b) “Processor” in respect of the other Party who is “Controller”;
  - (c) “Joint Controller” with the other Party;
  - (d) “Independent Controller” of the Personal Data where the other Party is also “Controller”,  
in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

### Where one Party is Controller and the other Party its Processor

2. Where a Party is a Processor, the only processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.
3. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
4. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged Processing and the purpose of the Processing;
  - (b) an assessment of the necessity and proportionality of the Processing in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
5. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
  - (a) Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clauses 8.83 and 8.86 of this Framework Agreement, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that :
    - (i) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));

- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this Framework Agreement Schedule 4, Clauses 8.57 (*Data protection*), 8.79 (*confidentiality*) and 8.18 – 8.27 (*Freedom of Information Act*);
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
  - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
6. Subject to paragraph 7 of this Framework Agreement Schedule 4, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
7. The Processor's obligation to notify under paragraph 6 of this Framework Agreement Schedule 4 shall include the provision of further information to the Controller in phases, as details become available.
8. Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6 of this Framework Agreement Schedule 4 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

- (d) assistance as requested by the Controller following any Data Loss Event; and/or
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
9. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Framework Agreement Schedule 4. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the Processing is not occasional;
  - (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
10. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
11. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
12. Before allowing any Sub-processor to Process any Personal Data related to the Contract, the Processor must:
- (a) notify the Controller in writing of the intended Subprocessor and Processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Subprocessor which give effect to the terms set out in this Framework Agreement Schedule 4 such that they apply to the Subprocessor; and
  - (d) provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
13. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
14. The CCS may, at any time on not less than 30 Working Days' notice, revise this Framework Agreement Schedule 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The CCS may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### **Where the Parties are Joint Controllers of Personal Data**

16. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with GDPR Article 26 based on the terms set out in Annex 2 to this Framework Agreement Schedule 4 (*Processing Data*).

### **Independent Controllers of Personal Data**

17. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
18. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
19. Where a Party has provided Personal Data to the other Party in accordance with paragraph 7 of this Framework Agreement Schedule 4 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

20. The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
21. The Parties shall only provide Personal Data to each other:
- (a) to the extent necessary to perform their respective obligations under the Contract;
  - (b) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the GDPR); and
  - (c) where it has recorded it in Annex 1 (*Processing Personal Data*).
22. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
23. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
24. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract (“**Request Recipient**”):
- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - (b) where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
    - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
    - (ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
25. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - (b) implement any measures necessary to restore the security of any compromised Personal Data;
  - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
26. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).

27. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
28. Notwithstanding the general application of paragraphs 2 to 15 of this Framework Agreement Schedule 4 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 16 to 27 of this Framework Agreement Schedule 4.

## Annex 1 - Processing Personal Data

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

- 1.1 The contact details of the CCS's Data Protection Officer are: **[Insert]** Contact details]
- 1.2 The contact details of the Supplier's Data Protection Officer are: **[Insert]** Contact details]
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The CCS is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 2 to paragraph 15 and for the purposes of the Data Protection Legislation, the CCS is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> <li>• <b>[Insert]</b> <i>the scope of Personal Data for which the purposes and means of the Processing by the Supplier is determined by the CCS]</i></li> </ul> <p><b>The Supplier is Controller and the CCS is Processor</b></p> <p><i>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the CCS is the Processor in accordance with paragraph 2 to paragraph 15 of the following Personal Data:</i></p> <ul style="list-style-type: none"> <li>• <b>[Insert]</b> <i>the scope of Personal Data which the purposes and means of the Processing by the CCS is determined by the Supplier]</i></li> </ul> <p><b>The Parties are Joint Controllers</b></p> <p><i>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <ul style="list-style-type: none"> <li>• <b>[Insert]</b> <i>the scope of Personal Data which the purposes and means of the Processing is determined by the both Parties together]</i></li> </ul> <p><b>The Parties are Independent Controllers of Personal Data</b></p> <p><i>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <ul style="list-style-type: none"> <li>• <i>Business contact details of Supplier Personnel for which the Supplier is the Controller,</i></li> <li>• <i>Business contact details of any directors, officers, employees, agents, consultants and contractors of CCS (excluding the Supplier Personnel) engaged in the performance of the CCS's duties under the Contract) for which the CCS is the Controller,</i></li> <li>• <b>[Insert]</b> <i>the scope of other Personal Data provided by one Party who is Controller to the other Party who will separately determine the nature and purposes of its Processing the Personal Data on receipt e.g. where (1) the Supplier has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the CCS cannot dictate the way in which Personal Data is processed by the Supplier, or (3) where the Supplier comes to the transaction with Personal Data for which it is already Controller for use by the CCS]</i></li> </ul>



	<b>[Guidance</b> where multiple relationships have been identified above, please address the below rows in the table for in respect of each relationship identified]
Duration of the Processing	<i>[Clearly set out the duration of the Processing including dates]</i>
Nature and purposes of the Processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under Union or Member State law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

## Annex 2 - Joint Controller Agreement

### 1. Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 2-15 of Joint Schedule 11 (Where one Party is Controller and the other Party is Processor) and paragraphs 7-27 of Joint Schedule 11 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Law in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the **[Supplier/CCS]:**

- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
- (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
- (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
- (e) shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the **[Supplier's/CCS's]** privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

1.3 Notwithstanding the terms of clause 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Law as against the relevant Party as Controller.

### 2. Undertakings of both Parties

2.1 The Supplier and the CCS each undertake that they shall:

- (a) report to the other Party every **[x]** months on:
  - (i) the volume of Data Subject Request (or purported Data Subject Requests) from Data Subjects (or third parties on their behalf);
  - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
  - (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
  - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
  - (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,that it has received in relation to the subject matter of the Contract during that period;
- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under the Contract or is required by Law). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- (e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the

Personal Data and ensure that its Personnel:

- (i) are aware of and comply with their 's duties under this Annex 2 (Data Sharing Agreement) and those in respect of Confidential Information
  - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Law;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
- (i) nature of the data to be protected;
  - (i) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Law, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
- (i) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Law and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Law to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

### 3. Data Protection Breach

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the CCS and its advisors with:

- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
- (b) all reasonable assistance, including:
  - (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
  - (ii) co-operation with the other Party including taking such reasonable steps as are directed by the CCS to assist in the investigation, mitigation and remediation of a Personal Data Breach;
  - (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
  - (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;
- (d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (e) measures taken or proposed to be taken to address the Personal Data Breach; and

(f) describe the likely consequences of the Personal Data Breach.

## 4. Audit

4.1 The Supplier shall permit:

- (a) the CCS, or a third-party auditor acting under the CCS's direction, to conduct, at the CCS's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Law; and/or
- (b) the CCS, or a third-party auditor acting under the CCS's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

4.2 The CCS may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection.

## 5. Impact Assessments

5.1 The Parties shall:

- (a) provide all reasonable assistance to the each other to prepare any data protection impact assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 GDPR.

## 6. ICO Guidance

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The CCS may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

## 7. Liabilities for Data Protection Breach

**[Guidance:** This clause represents a risk share, you may wish to reconsider the apportionment of liability and whether recoverability of losses are likely to be hindered by the contractual limitation of liability provisions]

7.1 If financial penalties are imposed by the Information Commissioner on either the CCS or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

- (a) if in the view of the Information Commissioner, the CCS is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the CCS, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the CCS, then the CCS shall be responsible for the payment of such Financial Penalties. In this case, the CCS will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the CCS and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;
- (b) if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the CCS is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the CCS and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
- (c) if no view as to responsibility is expressed by the Information Commissioner, then the CCS and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be

apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 34 of the Core Terms (*Resolving disputes*).

7.2 If either the CCS or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction (“**Court**”) by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the “**Claim Losses**”):

- (a) if the CCS is responsible for the relevant Personal Data Breach, then the CCS shall be responsible for the Claim Losses;
- (b) if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses; and
- (c) if responsibility for the relevant Personal Data Breach is unclear, then the CCS and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in either clause 7.2 or clause 7.3 shall preclude the CCS and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the CCS.

## 9. Termination

If the Supplier is in material Default under any of its obligations under this Annex 2 (*Joint Controller Agreement*), the CCS shall be entitled to terminate the Contract by issuing a Termination Notice to the Supplier in accordance with Clause 10 (*Ending the contract*).

## 10. Sub-Processing

10.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

- (a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
- (b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Law.

## 11. Data Retention

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Law and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by the Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Law and its privacy policy.