

Order Form / Call-Off Terms

**Contract No ICT2017/003**

**Department for Education**

**And**

**Total Enterprise Solutions**

Relating to the provision of G Cloud Services

Version 1.0 For Signature

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Schedule 2: Call-Off Terms

Effective Date	22 February 2017	Order Reference	ICT2017/003
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FROM:

Customer	The Secretary of State for Education "Customer"
Customer's Address	Sanctuary Buildings, Great Smith Street, London, SW1P3BT
Invoice Address	<p>Electronic invoices in uneditable PDF format should be sent to:  <a href="mailto:AccountsPayable.EFAFINANCE@education.gov.uk">AccountsPayable.EFAFINANCE@education.gov.uk</a></p> <p>Electronic invoices should be addressed to:</p> <p>Financial Operations                  Department for Education                  Cheylesmore House                  5 Quinton Rd                  Coventry                  CV1 2WT</p> <p>See additional guidance on submitting invoices at Section 6.2</p>
Principal Contact	<p><b>Olusegun Ojoawo</b>                  Senior Contract Manager</p> <p>Finance and Contract Team (FACT)</p> <p>IT Group, Group Operations, Strategy and Resources Directorate                  Department for Education</p> <p>9<sup>th</sup> Floor, 53-55 Butts Road, Earlsdon Park                  Coventry CV1 3BH</p> <p>Telephone: 02476660137                  Extension: 710137 Mob: 07464648848</p> <p>Email: <a href="mailto:Olusegun.OJOAWO@education.gov.uk">Olusegun.OJOAWO@education.gov.uk</a></p> <p>Web: <a href="http://www.gov.uk/dfc">www.gov.uk/dfc</a></p>

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TO:

Supplier	<b>Total Enterprise Solutions</b> "Supplier" Service ID 7341886202118015
Supplier's Address	Grosvenor Court, Wheelhouse Rd, Lea Hall Enterprise Park, Rugeley WS15 1LH
Account Manager	<p><b>Andy Lees / Director</b>                  +44 7824 356 682 / <a href="mailto:andrew.lees@totalenterprisesolutions.co.uk">andrew.lees@totalenterprisesolutions.co.uk</a></p> <p><b>Total Enterprise Solutions Office: 0345 257 8241</b>                  Grosvenor Court, Wheelhouse Rd, Lea Hall Enterprise Park, Rugeley WS15 1LH</p>

<b>1.</b>	<b>TERM</b>
<b>1.1</b>	<p><b>Commencement Date</b></p> <p>This Call-Off Agreement shall be deemed effective from: 01 March 2017</p>
<b>1.2</b>	<p><b>Expiry Date</b></p> <p>This Call-Off Agreement shall expire on the date which is 12 months after the commencement date in 1.1 (this being the 1<sup>st</sup> March 2018) unless:</p> <ul style="list-style-type: none"> <li>• extended by the Customer by a period of up to 12 months in which case the Call-Off Agreement shall expire on the last day of the extended period (this being 1<sup>st</sup> March 2019); or</li> <li>• the Call-Off Agreement has been terminated earlier pursuant to Clause CO-9 of the Call-Off Agreement.</li> </ul> <p>1.2.1 Notice of the Customer's intention to extend the contract beyond 1<sup>st</sup> Mar 2018 shall be given to the Supplier in writing no later than 31<sup>st</sup> Oct 2017</p>
<b>1.3</b>	<p><b>Services Requirements</b></p> <p>1.3.1 This Order is for the G-Cloud Services outlined below. It is acknowledged by the Parties that the volume of the G-Cloud Services utilized by Customer may vary from time to time during the course of this Call-Off Agreement, subject always to the terms of the Call-Off Agreement.</p> <p>1.3.2 G-Cloud Services</p> <p>1.3.2.1 Lot1 IaaS N/A</p>

1.3.2.2 Lot 2 PaaS	N/A
1.3.2.3 Lot 3 SaaS	N/A
1.3.2.4 Lot 4 Specialist G Cloud Services	<p>Provide delivery services and support for high level scope items listed below as per Service Definition ID 5622-1499-9520-053</p> <ul style="list-style-type: none"> <li>• Upgrade the existing Navision estate to the latest version</li> <li>• Consolidation of LEGACY NAV functionality, Chart of Accounts, Portal, process and data into NEW NAV</li> <li>• Legacy NAV Reporting available in CONSOLIDATED NAV</li> <li>• Consolidation of VASIS functionality, Chart of Accounts, Portal, process and data into CONSOLIDATED NAV</li> <li>• Legacy VASIS Reporting available in NEW NAV</li> <li>• Consolidation of CODA functionality, Chart of Accounts, process and data into NEW NAV</li> <li>• Legacy CODA Reporting available in NEW NAV</li> <li>• Availability of historical data (rules to be determined) in existing Master Data Repository (MDR)</li> <li>• Enhancements</li> <li>• Support and Maintenance</li> </ul>
1.3.2.5 G-Cloud Additional Services	

<b>2. PRINCIPAL LOCATIONS</b>
<p><b>2.1 Principal locations where the services are being performed</b></p> <p>The Supplier is expected to be on the site agreed with the Customer as and when required : DfE Office locations : London, Coventry, Sheffield Darlington, Nottingham and Manchester</p> <p>Choice of premises shall be determined by the Customer, in consultation with the Supplier and may take into account the Customer's intention to keep overall cost of Travel and Subsistence for all parties to a practical minimum.</p>

<b>3. STANDARDS</b>
<p><b>3.1 Quality Standards</b></p> <p>The Supplier warrants that it will carry out the services with reasonable care and skill and that all services supplied hereunder shall be of satisfactory quality and fit for the particular purpose for which they are supplied with reference to the Customer's requirements and in line with G-Cloud 7 offerings.</p> <p>ISO 9001:2008</p>
<p><b>3.2 Technical Standards</b></p> <p>Prince 2 and ITIL methodologies</p>
<p><b>3.3 Special Clauses</b> Please refer to Annex A</p>
<p><b>3.4 Standards for Consultancy Day Rate cards</b></p>

- **Consultant's Working Day** – 8 hours exclusive of travel and lunch.
- **Working Week** – Monday to Friday excluding national holidays
- **Office Hours** - 09:00 – 17:00 Monday to Friday
- **Travel and Subsistence** – Included in day rate within M25. Payable at department's standard T&S rates outside M25. (see para 6.1.1)
- **Mileage** – As above (see para 6.1.1.)
- **Professional Indemnity Insurance** – included in day rate.
- **Confidentiality Agreement** - to be signed prior to work package commencing

**4. ONBOARDING**

**4.1 On-boarding**

4.2 The Customer and Supplier shall attend a start-up meeting with representatives of the Customer within seven working days of commencement (date, time and venue to be notified by the customer). At this meeting, the agenda will include but not be limited to: discussion and agreement on activity to implement the service within the DfE, future contract management arrangements; project documentation and deliverables; service delivery KPIs; requirements for reporting of Management Information; and a forward schedule of meeting dates.

4.3 As a minimum, the Supplier's Account Manager for the DfE shall attend and fully participate in agreed contract and service review meetings chaired by the Customer. The agenda for this meeting will be issued to participants at least three (3) working days in advance of the meeting and include a monthly Service Report produced by the Supplier. Frequency of meetings will be monthly, with the potential to increase should the service degrade / risk increase.

4.4 The detailed content of the Service report shall include as a minimum: progress against delivery of all work packages, forward and retrospective resource plan, risks and issues log, financial reporting, incidents and service failure log; quality assurance.

**4.2 Off-Boarding (Exit Plan) and Transition**

4.2.1 The Exit Plan for this Call-Off Contract is to be produced within 3 months following contract signatures by both parties.

4.2.2 The Supplier will work with the Customer to ensure an orderly transition of the Services to a replacement supplier (if necessary) within agreed timeframes

**5. CUSTOMER RESPONSIBILITIES**

**5.1 Customer's Responsibilities**

Will be discussed and agreed specific to each work package.

The Customer will work with the Supplier in order that any required resources and documentation can be made available in order to support the achievement of activities and production of deliverables.

During System Testing, in the event that:

- a) what is deemed to be an unacceptably low coverage of systems tests executed

- b) what is deemed to be an unacceptably high number of system test defects

the Customer will call a pause to system testing until confidence that the system has been developed and unit tested to an acceptable level can be gained.

During User Acceptance Testing, in the event that:

- a) what is deemed to be an unacceptably high level of defects is found, or
- b) what is deemed to be an unacceptably slow rate of defect resolution

The Customer will withdraw resources and call a pause in User Acceptance Testing until confidence that the system has been developed and system tested to an acceptable level can be gained.

The customer will provide equipment at their premises to allow TES employees to access relevant environments required for project delivery.

The customer will sponsor all TES employees involved in project delivery and support through SC vetting and clearance.

**5.2 Customer's equipment**

There is no initial expectation that DfE equipment will be issued as part of this agreement. In the event that equipment is issued this will be recorded through the work package, and DfE special terms will apply.

**6. PAYMENT**

**6.1 Payment profile and method of payment**

Charges payable by the Customer (including any applicable discount but excluding VAT), payment profile and method of payment (e.g. Government Procurement Card (GPC) or BACS

Payment Rates in accordance with Suppliers service description:



TES SFIA Rate Card



TES Pricing

**Payment Profile**

It is proposed that payments be made via a split across TES time sheeting and a retention payment that will be held by the customer. The split is as follows:

- 75% Time Sheeting

- 25% Retention

Where the retention payment shall be made across two milestones.

- Release Walkthrough
- Go Live

**Time Sheeting**

Time sheets will be submitted against the daily rate of £800 per day and a 25% discount will be applied for the retention payments.

**Retention Payments**

**Walkthrough**

The Walkthrough is defined as the summary end-to-end review of critical system functions. Undertaken post UAT and prior to end user training, the purpose of the Walkthrough is to demonstrate that the system meets the defined requirements of the business, using the success criteria as defined in the PID as a guide. Ultimately the result of the Walkthrough will be a Go Live "go/ no go" decision. The first part of the 25% retention will be triggered at this point and an invoice for 12.5% of the release value will be raised.

**Go Live**

Go Live is defined as the point in time the system is released into operation in the Production environment. The second part of the 25% retention will be triggered at this point and an invoice will be raised for 12.5% of the release value.

Project Plan & Resource Requirements					
				75%	25%
RELEASE 1	Start Date	Finish	Dfe Approval	Timesheet	Retention
Upgrade NEW NAV to NAV 2016 (2017)	01/03/17	01/06/17		£25,200.00	£8,400.00
Move Budget Ledger to Store / Contracts ?	01/03/17	01/09/17		£72,000.00	£24,000.00
Data Migration	01/04/17	01/07/17		£25,200.00	£8,400.00
Implement TES Procurement in New NAV	01/05/17	01/10/17		£43,200.00	£14,400.00
Create Budget Template functionality in New NAV	01/05/17	01/10/17		£32,400.00	£10,800.00
Create "On Hold" functionality in New NAV	01/07/17	01/09/17		£7,200.00	£2,400.00
Move Reporting Portal to New NAV	01/06/17	01/10/17		£18,000.00	£6,000.00
VASIS Functionality in New NAV	01/03/17	01/08/17		£32,400.00	£10,800.00
VASIS Portal in New NAV	01/03/17	01/07/17		£18,000.00	£6,000.00
VASIS Reporting in New NAV	01/03/17	01/08/17		£18,000.00	£6,000.00
Migrate SFA CODA to NAV	01/05/17	01/11/17		£75,600.00	£25,200.00
Creation of Data Warehouse / MDR	01/05/17	01/11/17		£32,400.00	£10,800.00
<b>RELEASE 1 SYSTEM TEST AND WALKTHROUGH</b>			31/10/17		£66,600.00
<b>RELEASE 1 GO-LIVE</b>			31/10/17		£66,600.00
RELEASE 2					
Enhancements	01/09/17	01/12/17	31/12/17	£72,000.00	£24,000.00
				£0.00	£0.00
Resource Profiler					

£471,600.00	£157,200.00
	£828,800

All prices EXCLUDE VAT. This is a Fixed Price Contract.

**6.1.2 Payment will be paid Monthly in arrears**

Payment will be made within 30 days of invoicing although DfE is committed to paying suppliers within 10 days of invoice validation. Work will be invoiced on satisfactory completion of agreed work packages. Payment will be made based on agreed day rate, plus expenses in accordance with the Customer’s expense policy or by agreed fixed price engagement. The Supplier shall work with the DfE to minimise the impact on the public purse of T&S associated with the operation of this contract. Unless otherwise provided for under the Supplier’s G-Cloud vii framework offering and/or the Supplier has an office in close proximity of the DfE office where a meeting is to be held (approx. 25 miles radius), where expenditure on T&S is identified as being necessary for the effective operation of the contract, T&S will be paid at the level commensurate with the DfE rate in place at the time the expenditure is incurred. DfE rates in place as at 1<sup>st</sup> March 2017 are listed below:

- Hotel accommodation bed and breakfast – London £110.00 including VAT and elsewhere £75.00 including VAT
- Rail travel shall be restricted to standard class
- Car mileage at the ‘Public Transport Rate’ of 0.25p per mile
- Taxis only payable where their use can be justified against using public transport

No other out of pocket expenses shall be allowable.

**6.2 Invoice format**

The Supplier shall issue electronic invoices, in arrears, on satisfactory completion of agreed work packages. The Customer shall pay the Supplier within thirty (30) calendar days of receipt of a valid invoice, submitted in accordance with this paragraph 6.2 the payment profile set out in paragraph 6.1 above and the provisions of this Call-Off Agreement.

A copy invoice shall simultaneously be emailed to the DfE Customer to enable the Customer to take receipting action.

A valid invoice is one that is:

- Delivered in timing in accordance of the contract
- Is for the correct sum
- Is correct in terms of services/goods supplied
- Has a unique invoice number
- Quotes a valid Purchase Order number
- Includes correct supplier details, date, contact details
- Invoicing will be in £ Sterling and payment will be made by BACS transfer.

invoicing will be in £ Sterling

All queries regarding payments or the settlement of invoices shall be directed to the team or project that placed the Purchase Order. General invoice and payment enquires must not be directed to the Contract Manager

**7. DISPUTE RESOLUTION**

**7.1 Level of Representative to whom disputes should be escalated to:**

For Customer: Darren Bassett

For Total Enterprise Solutions: Andrew Lees

## 7.2 Mediation Provider

Centre for Effective Dispute Resolution.

## 8. LIABILITY

Subject to the provisions of Clause CO 11 'Liability' of the Call-Off Agreement:

8.1 The annual aggregate liability of either Party for all defaults resulting in direct loss of or damage to the property of the other Party (including technical infrastructure, assets, equipment or IPR but excluding any loss or damage to the Customer Data or Customer Personal Data) under or in connection with this Call-Off Agreement shall in no event exceed £1 million.

8.2 The annual aggregate liability for all defaults resulting in direct loss, destruction, corruption, degradation or damage to the Customer Data or the Customer Personal Data or any copy of such Customer Data, caused by the Supplier's default under or in connection with this Call-Off Agreement shall in no event exceed £1 million of the Charges payable by the Customer to the Supplier during the Call-Off Agreement Period.

8.3 The annual aggregate liability under this Call-Off Agreement of either Party for all defaults shall in no event exceed £2 million.

## 9. INSURANCE

### 9.1 Minimum Insurance Period

Six (6) Years following the expiration or earlier termination of this Call-Off Agreement

9.2 To comply with its obligations under this Call-Off Agreement and as a minimum, where requested by the Customer in writing the Supplier shall ensure that:

- professional indemnity insurance is held by the Supplier and by any agent, Sub-Contractor or consultant involved in the supply of the G-Cloud Services and that such professional indemnity insurance has a minimum limit of indemnity of one million pounds sterling (£1,000,000) for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time;
- employers' liability insurance with a minimum limit of five million pounds sterling (£5,000,000) or such higher minimum limit as required by Law from time to time

## 10. TERMINATION

### 10.1 Undisputed Sums Time Period

At least ninety (90) Working Days of the date of the written notice specified in Clause CO-9.4 of the Call-Off Agreement.

### 10.2 Termination Without Cause

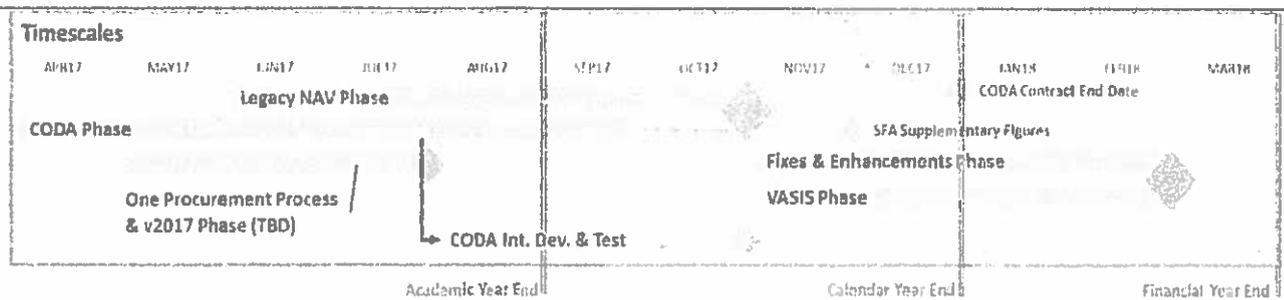
At least thirty (30) Working Days in accordance with Clause CO-9.2 of the Call-Off Agreement.

**11. AUDIT AND ACCESS**

Twelve (12) Months after the expiry of the Call-Off Agreement Period or following termination of this Call-Off Agreement.

**12. PERFORMANCE OF THE SERVICES AND DELIVERABLES**

**12.1 The Implementation Plan as at the Commencement Date is set out below**



As per work package at 12.2 above

12.2.1 If so required by the Customer, the Supplier shall produce within one (1) Month of the Commencement Date a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to Customer’s written approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation transition and/or transformation of the G-Cloud Services.

12.2.2 The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.

12.2.3 The Supplier shall perform its obligations so as to achieve each milestone by the milestone date.

12.2.4 Changes to the milestones shall only be made in accordance with the Variation procedure as set out in Clause CO-21 and provided that the Supplier shall not attempt to postpone any of the milestones using the Variation procedure or otherwise (except in the event of a Customer default which affects the Supplier’s ability to achieve a milestone by the relevant milestone date).

**12.3 Service Levels**

**12.3.1 Key Performance Indicators**

Priority	Sample Scenario	Target Response	Target Update	Resolution Target	Attainment Target
P1	An incident causing a serious impact to the business as a result of the system(s)/service(s) affected and/or the number of people affected by the incident, e.g.  - The incident affects more than 50% of all service users and the service affected is a core business	10 mins	Every 2 hours	4 hours	90%

	service/function and areas outside of DfE are affected or A business unit is disabled completely				
P2	An incident causing a significant impact to the business as a result of the system(s)/service(s) affected and/or the the number of people affected by the incident, e.g.  - The incident affects between 25% and 50% of all service users and the service affected is a core business service/function or  - The incident affects more that 50% of service users, and  - The service affected is a non-core business service	30 mins	Every 4 hours	1 day	90%
P3	An incident causing minimal impact to the business as a result of the system(s)/service(s) affected and the number of people affected by the Incident, i.e.  - The incident affects less than 25% of all service users  - The service affected is a core business service  - A single user is unable to perform their daily core function	1 day	Every Day	3 days	90%
P4	An incident causing negligible Impact to the business as a result of the system(s)/service(s) affected and the number of people affected by the incident, i.e.  - The incident affects a single user regardless of service type, or  - The service affected is not a DfE service.	2 days	On request	5 days	90%
P5	A Service Request that may require submission to CAB or that requires procurement of equipment, i.e.  - Laptop request  - New version of software that needs CAB approval and testing	3 days	On request	15 days	90%

**13. COLLABORATION AGREEMENT**

In accordance with Clause CO-20 of this Call-off Agreement, the Customer does/does not require the Supplier to enter into a Collaboration Agreement.

## **Annex1 - DfE: Special Conditions for Contracts**

### **1. Not Used**

### **2. Ownership of Drawings Specifications and Other Data**

Any drawings, specifications or other data completed or provided in connection with this Contract shall become or, as the case may be, remain the property of the Department and be delivered up to the Department at the times on completion or termination of the Contract.

### **3. Not Used**

### **4. Contractors Standards**

The Contractor shall as far as practicable satisfy the Department that it operates to an acceptable standard such as BS 5750, BS EN ISO 9000 or an equivalent.

### **5. Issued Property**

- 5.1 In this clause "Issued Property" means all items of property belonging to the Department issued to the Contractor for the purposes of the provision of the Services.
- 5.2 Issued Property shall remain the property of the Department and shall be used in the execution of the Contract and for no other purpose whatsoever, save with the prior written approval of the Department. Within a reasonable period the Department shall re-issue Issued Property agreed to be defective or requiring replacement.
- 5.3 The Contractor shall be liable for any damage to Issued Property caused by misuse or negligence by the Contractor but shall not be liable for deterioration in Issued Property resulting from its normal and proper use in the performance of this Contract. The Contractor shall also be responsible for loss, including theft, of the Issued Property.
- 5.4 Issued Property shall include any equipment purchased by the Contractor and subsequently paid for as an identified item by the Department [unless expressly stated otherwise in this Contract

### **6. Contractors Employees and Sub-Contractors**

- 6.1 The Contractor shall give to the Department if so requested a list of all persons who are or may be at any time directly concerned with the performance of this Contract specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the Department may reasonably require.

- 6.2 If the Department notifies the Contractor that it considers that an employee or sub-contractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this Contract, then the Contractor shall, as soon as is reasonably practicable, take all such steps as the Department considers necessary to remedy the situation or, if so required by the Department, shall remove the said employee or sub-contractor from providing the Services and shall provide a suitable replacement (at no cost to the Department).
- 6.3 The Contractor shall take all reasonable steps to avoid changes of employees or sub-contractors assigned to and accepted to provide the Services under the Contract except whenever changes are unavoidable or of a temporary nature. The Contractor shall give at least one month's written notice to the Contract Manager of proposals to change key employees or sub-contractors.

7. Not used

8. Not used

9. Not Used

10. Not used

11. Not Used

12. **Departmental Security Standards for Business Services and ICT Contracts**

<p>"BPSS" "Baseline Personnel Security Standard"</p>	<p>a level of security clearance described as pre-employment checks in the National Vetting Policy.</p>
<p>"CESG"</p>	<p>is the UK government's National Technical Authority for Information Assurance. The website is <a href="http://www.cesg.gov.uk/Pages/homepage.aspx">http://www.cesg.gov.uk/Pages/homepage.aspx</a></p>
<p>"CESG IAP" "CESG Information Assurance Policy Portfolio"</p>	<p>means the CESG Information Assurance policy Portfolio containing HMG policy and guidance on the application of 'security assurance' for HMG systems.</p>
<p>"CTAS" "CESG Tailored Assurance"</p>	<p>is an 'information assurance scheme' which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector customers procuring IT systems, products and services, ranging from simple software components to national infrastructure networks.</p>

<p>"CPA" "CESG Product Assurance"</p>	<p>is an 'information assurance scheme' which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry.</p>
<p>"CCSC" "CESG Certified Cyber Security Consultancy"</p>	<p>is CESG's approach to assessing the services provided by consultancies and confirming that they meet CESG's standards. This approach builds on the strength of CLAS and certifies the competence of suppliers to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors.</p>
<p>"CCP" "CESG Certified Professional"</p>	<p>is a CESG scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors.</p>
<p>"CC" "Common Criteria"</p>	<p>the Common Criteria scheme provides assurance that a developer's claims about the security features of their product are valid and have been independently tested against recognised criteria.</p>
<p>"Cyber Essentials" "Cyber Essentials Plus"</p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.</p>
<p>"Data" "Data Controller" "Data Processor" "Personal Data" "Sensitive Personal Data" "Data Subject", "Process" and "Processing"</p>	<p>shall have the meanings given to those terms by the Data Protection Act 1998</p>
<p>"Department's Data" "Department's Information"</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <p>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Contractor by or on behalf of the Department; or</p>

	<p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Department is the Data Controller;</p>
<p>"DfE" "Department"</p>	<p>means the Department for Education</p>
<p>"Departmental Security Standards"</p>	<p>means the Department's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.</p>
<p>"Digital Marketplace / GCloud"</p>	<p>the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.</p>
<p>"FIPS 140-2"</p>	<p>this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled 'Security Requirements for Cryptographic Modules'. This document is the de facto security standard used for the accreditation of cryptographic modules.</p>
<p>"Good Industry Practice" "Industry Good Practice"</p>	<p>means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>"Good Industry Standard" "Industry Good Standard"</p>	<p>means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>"GSC" "GSCP"</p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a></p>
<p>"HMG"</p>	<p>means Her Majesty's Government</p>
<p>"SPF" "HMG Security Policy Framework"</p>	<p>This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government's Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely.</p>

<p>"ICT"</p>	<p>means Information and communications technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution</p>
<p>ISS</p>	<p>this is HMG Information Assurance Standard No. 5 - Secure Sanitisation Issued by CESG</p>
<p>"ISO/IEC 27001" "ISO 27001"</p>	<p>is the International Standard for Information Security Management Systems Requirements</p>
<p>"ISO/IEC 27002" "ISO 27002"</p>	<p>is the International Standard describing the Code of Practice for Information Security Controls.</p>
<p>"ISO 22301"</p>	<p>is the International Standard describing for Business Continuity</p>
<p>"IT Security Health Check" "Penetration Testing"</p>	<p>means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.</p>
<p>"Need-to-Know"</p>	<p>the Need-to-Know principle is employed within HMG to limit the distribution of classified information to those people with a clear 'need to know' in order to carry out their duties.</p>
<p>"OFFICIAL" "OFFICIAL-SENSITIVE"</p>	<p>the term 'OFFICIAL' is used to describe the baseline level of 'security classification' described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services.</p> <p>the 'OFFICIAL-SENSITIVE' caveat is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the Government Security Classification Policy.</p>
<p>"Security and Information Risk Advisor" "CCP SIRA" "SIRA"</p>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the CESG CESG Certified Professional Scheme</p>

- 12.1. The Contractor shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses:
- 12.2. Where the Contractor will provide ICT products or Services or otherwise handle information at OFFICIAL on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - [Action Note 09/14](#) 25 September 2014, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme”. The certification scope must be relevant to the services supplied to, or on behalf of, the Department.
- 12.3. The Contractor shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 12.4. The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service, and will handle this data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- 12.5. Departmental Data being handled in the course of providing the ICT solution or service must be segregated from other data on the Contractor’s or sub-contractor’s own IT equipment to both protect the Departmental Data and enable it to be identified and securely deleted when required. In the event that it is not possible to segregate any Departmental Data then the Contractor and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 12.14.
- 12.6. The Contractor shall have in place and maintain physical security and entry control mechanisms (e.g. door access) to premises and sensitive areas and separate logical access controls (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.
- 12.7. The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- 12.8. Any electronic transfer methods across public space or cyberspace, including third party provider networks must be protected via encryption which has been certified to a minimum of FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- 12.9. Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 12.10 and 12.11 below.
- 12.10. Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver

- and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the Department.
- 12.11. (All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or sub-contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the Department.
- 12.12. Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure waste paper organisation.
- 12.13. When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 12.14. At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed in accordance with the current HMG policy (HMG IS5) using a CESA approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or sub-contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- 12.15. Access by Contractor or sub-contractor staff to Departmental Data shall be confined to those individuals who have a "need-to-know" and the appropriate level of security clearance, as required by the Department for those individuals whose access is essential for the purpose of their duties. All employees with direct or indirect access to Departmental Data must be subject to pre-employment checks equivalent to or higher than the Baseline Personnel Security Standard (BPSS)
- 12.16. All Contractor or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 12.17. The Contractor shall, as a minimum, have in place robust and ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might be, or could lead to, a disruption, loss, emergency or crisis. When a certificate is not available it shall be necessary to verify the ongoing effectiveness of the ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures, to the extent that the Contractor must have tested/exercised these plans within the last 12 months and produced a written report of the test/exercise, outcome and feedback, including required actions.
- 12.18. Any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, or any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service,

shall be investigated immediately and escalated to the Department by a method agreed by both parties.

- 12.19. The Contractor shall ensure that any IT systems and hosting environments that are used to hold Departmental Data being handled, stored or processed in the course of providing this service shall be subject to an independent IT Health Check (ITHC) using a CESG approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 12.20. The Contractor or sub-contractors providing the service will provide the Department with full details of any actual storage outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management or support function from outside the UK. The Contractor or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.
- 12.21. The Department reserves the right to audit the Contractor or sub-contractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor's, and any sub-contractors, compliance with the clauses contained in this Section. The Department have the right to perform such audit once per annum.
- 12.22. The Contractor shall contractually enforce all these Departmental Security Standards for Contractors onto any third-party suppliers, sub-contractors or partners who could potentially access Departmental Data in the course of providing this service.

### 13. Ownership of Rights in the Deliverables and the Specially Written Software

"Intellectual Property Rights" means patents, trade marks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, know-how, rights protecting databases, trade or business names and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom).

"Specially Written Software" means any software written by or on behalf of the Contractor for the Department and supplied to the Department as detailed in Schedule 1.

"Deliverable" means anything delivered or to be delivered under this Contract including the databases, and any reports, manuals and other documentation.

- 13.1 Title to and risk in any tangible property embodying all Deliverables and Specially Written Software shall vest in the Department upon acceptance.
- 13.2 Notwithstanding clause 13.1, the Department shall not acquire title to the Intellectual Property Rights in any deliverables or in any Specially Written Software.
- 13.3 In consideration of the payment of the relevant charges the Contractor hereby grants, or shall procure that the owner of the Intellectual Property Rights in the Deliverables and/or the Specially

Written Software grants, to the Department, a non-exclusive licence to use, reproduce, modify, adapt and enhance the Deliverables and the Specially Written Software. Such licence shall be perpetual and irrevocable.

13.4 The Contractor shall supply the Department with a copy of the source code of any Specially Written Software.

13.5 The Department shall be entitled to engage a third party to use, reproduce, modify and enhance the Deliverables and the Specially Written Software on behalf of the Department provided that such third party shall have entered into a confidentiality undertaking with the Department.

14. Not used

15. Not used

16. Not used

17. Not used

18. Not used

19. Not used

20. Not used

21. Not used

22. Not used

23. Equality

The Contractor shall at all times provide the service in accordance with the Department's commitment to equal opportunities to all sections of the community including the obligations placed on public bodies by the Equalities Act 2010.

The Contractor shall establish adequate managerial and supervisory arrangements for staff to be made aware of and to comply with the Equalities Act 2010 and the equality specifications within this contract.

The contractor shall provide any information regarding the delivery of its services to ensure the Department meets its statutory obligations.

24. Not Used

25. Not Used

26. Not Used

**27 Not Used****28 TUPE**

- 28.1 The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the award of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Contractor on the commencement of the Contract.
- 28.2 During the period of six months preceding the expiry of the Contract or after the Department has given notice to terminate the Contract or the Contractor stops trading, and within 20 working days of being so requested by the Department, the Contractor shall fully and accurately disclose to the Department for the purposes of TUPE all information relating to its employees engaged in providing Services under the Contract, in particular, but not necessarily restricted to, the following:
- 28.2.1 the total number of staff whose employment with the Contractor is liable to be terminated at the expiry of this Contract but for any operation of law; and
  - 28.2.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed staff do not have to be given); and
  - 28.2.3 full information about the other terms and conditions on which the affected staff are employed (including but not limited to their working arrangements), or about where that information can be found; and
  - 28.2.4 details of pensions entitlements, if any; and
  - 28.2.5 job titles of the members of staff affected and the qualifications required for each position.
- 28.3 The Contractor shall permit the Department to use the information for the purposes of TUPE and of re-tendering. The Contractor will co-operate with the re-tendering of the Contract by allowing the Transferee to communicate with and meet the affected employees and/or their representatives.
- 28.4 The Contractor agrees to indemnify the Department fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 28.2.
- 28.5 The Contractor agrees to indemnify the Department from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which the Contract is terminated and/or transferred to any third party

("Relevant Transfer Date") arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.

28.6 In the event that the information provided by the Contractor in accordance with Clause 28.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify the Department of the inaccuracies and provide the amended information.

28.7 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.

29 Not Used

BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter a legally binding contract with the Customer to provide the G-Cloud Services. The Parties hereby acknowledge and agree that they have read the Call-Off Terms and the Order Form and by signing below agree to be bound by the terms of this Call-Off Agreement.

For and on behalf of the Supplier:

Name and Title	MR ANDREW LEES
Position	Director
Signature	<i>Andrew Lees</i>
Date	8/3/17

For and on behalf of the Customer:

Name and Title	PAUL HODGKINS
Position	HEAD OF FINANCIAL DATA + SYSTEMS
Signature	<i>P. Hodgkins</i> 9/3/17

Date	9/3/17.
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**G-CLOUD SERVICES CALL-OFF TERMS**

The Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London

- and -

Total Enterprise Solutions relating to the provision of G-Cloud Services.

## **CALL-OFF AGREEMENT TERMS AND CONDITIONS**

**THIS CONTRACT** is deemed to be effective from 01 March 2017

### **BETWEEN**

- (1) The Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London (the "Customer"); and
- (2) Total Enterprise Solutions, a company registered in England under company number 05403319 and whose registered office is at Grosvenor Court, Wheelhouse Rd, Lea Hall Enterprise Park, Rugeley WS15 1LH (the "Supplier")

### **IT IS AGREED AS FOLLOWS:**

#### **CO-1 OVERRIDING PROVISIONS**

- CO-1.1 The Supplier agrees to supply the G-Cloud Services and any G-Cloud Additional Services in accordance with the Call-Off Terms, including Supplier's Terms as identified in Framework Schedule 1 (G-Cloud Services) and incorporated into this Call-Off Agreement.
- CO-1.2 In the event of and only to the extent of any conflict or ambiguity between the Clauses of this Call-Off Agreement, the provisions of the Schedules, any document referred to in the Clauses of this Call-Off Agreement (including Supplier's Terms) and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- CO-1.2.1 the Framework Agreement (excluding Framework Schedule 2);
  - CO-1.2.2 the Clauses of this Call-Off Agreement (excluding Supplier Terms);
  - CO-1.2.3 the completed Order Form;
  - CO-1.2.4 the Collaboration Agreement (Framework Schedule 7);
  - CO-1.2.5 the Supplier's Terms as set out in the Framework Schedule 1 (G-Cloud Services); and
  - CO-1.2.6 any other document referred to in the Clauses of this Call-Off Agreement.
- CO-1.3 The Supplier acknowledges and accepts that the order of prevailing provisions in this Call-Off Agreement is as set out in Clause CO-1.2 above.

#### **CO-2 PREVENTION OF BRIBERY AND CORRUPTION**

- CO-2.1 If the Supplier breaches
- CO-2.1.1 Clauses FW-22.1 or FW-22.2 of the Framework Agreement; or,
  - CO-2.1.2 the Bribery Act 2010 in relation to the Framework Agreement
  - CO-2.1.3 the Customer may terminate this Call-Off Agreement.
- CO-2.2 The Parties agree that the Management Charge payable in accordance with Clause FW-9 does not constitute an offence under section 1 of the Bribery Act 2010.

**CO-3 PROTECTION OF INFORMATION**

- CO-3.1 The provisions of this Clause CO-3, shall apply during the Call-Off Agreement Period and for such time as the Supplier holds the Customer Personal Data.
- CO-3.2 The Supplier shall and shall procure that Supplier's Staff comply with any notification requirements under the DPA and both Parties undertake to duly observe all their obligations under the DPA which arise in connection with the Call-Off Agreement.
- CO-3.3 To the extent that the Supplier is Processing the Order Personal Data the Supplier shall:
- CO-3.3.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Order Personal Data (and to guard against unauthorised or unlawful Processing of the Order Personal Data and against accidental loss or destruction of, or damage to, the Order Personal Data; and
  - CO-3.3.2 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;
  - CO-3.3.3 promptly notify the Customer of any breach of the security measures to be put in place pursuant to this Clause; and
  - CO-3.3.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of its obligations under the DPA.
- CO-3.4 To the extent that the Supplier Processes Service Personal Data the Supplier shall:
- CO-3.4.1 Process Service Personal Data only in accordance with written instructions from the Customer as set out in this Call-Off Agreement;
  - CO-3.4.2 Process the Service Personal Data only to the extent, and in such manner, as is necessary for the provision of the G-Cloud Services or as is required by Law or any Regulatory Body;
  - CO-3.4.3 implement appropriate technical and organisational measures to protect Service Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to Service Personal Data and having regard to the nature of the Service Personal Data which is to be protected;
  - CO-3.4.4 take reasonable steps to ensure the reliability of any Supplier Staff who have access to Service Personal Data;
  - CO-3.4.5 ensure that all Supplier Staff required to access Service Personal Data are informed of the confidential nature of the Service Personal Data and comply with the obligations set out in this Clause;
  - CO-3.4.6 ensure that none of the Supplier Staff publish, disclose or divulge Customer's Personal Data to any third party unless necessary for the provision of the G-Cloud Services under the Call-Off Agreement and/or directed in writing to do so by the Customer;
  - CO-3.4.7 notify the Customer within five (5) Working Days if it receives:
    - CO-3.4.7.1 a request from a Data Subject to have access to Service Personal Data relating to that person; or

- CO-3.4.7.2 a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- CO-3.4.8 provide the Customer with full cooperation and assistance in relation to any complaint or request made relating to Service Personal Data, including by:
  - CO-3.4.8.1 providing the Customer with full details of the complaint or request;
  - CO-3.4.8.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
  - CO-3.4.8.3 providing the Customer with any Service Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
  - CO-3.4.8.4 providing the Customer with any information requested by the Data Subject.
- CO-3.5 The Supplier shall:
  - CO-3.5.1 permit the Customer or the Customer's Representative (subject to the reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) or provide to the Customer an independent third party inspection and audit certificate in lieu of the same (unless otherwise agreed between the Parties, the option of providing a certificate in lieu shall not be available at IL3 and above) and shall comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Call-Off Agreement; and/or
  - CO-3.5.2 subject to Clause CO-3.6 agree to an appointment of an independent auditor selected by the Supplier to undertake the activities in Clause CO-3.5.1 provided such selection is acceptable to the Customer or Customer Representative (subject to such independent auditor complying with the reasonable and appropriate confidentiality undertakings).
- CO-3.6 The Supplier shall:
  - CO-3.6.1 obtain prior written consent from the Customer in order to transfer Customer Personal Data to any other person (including for the avoidance of doubt any Sub-Contractors) for the provision of the G-Cloud Services;
  - CO-3.6.2 not cause or permit to be Processed, stored, accessed or otherwise transferred outside the EEA any Customer Personal Data supplied to it by the Customer without the prior written consent of the Customer. Where the Customer consents to such Processing, storing, accessing or transfer outside the European Economic Area the Supplier shall:
    - CO-3.6.3 comply with the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is so processed, stored, accessed or transferred;
    - CO-3.6.4 comply with any reasonable instructions notified to it by the Customer and either:
      - CO-3.6.5 incorporate standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) or warrant that the obligations set out in the Supplier Terms provide Adequate protection for Personal Data.

- CO-3.7 The Supplier shall not perform its obligations under this Call-Off Agreement in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
- CO-3.8 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Customer Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

#### CO-4 CONFIDENTIALITY

- CO-4.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Call-Off Agreement, each Party shall:
- CO-4.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- CO-4.1.2 not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Call-Off Agreement.
- CO-4.2 The Supplier may only disclose the Customer's Confidential Information to the Supplier Staff who are directly involved in the provision of the G-Cloud Services and who need to know the information, and shall ensure that such Supplier Staff are aware of and shall comply with these obligations as to confidentiality.
- CO-4.3 The Supplier shall not, and shall procure that the Supplier Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Call-Off Agreement.
- CO-4.4 The provisions of Clauses CO-4.1 shall not apply to the extent that:
- CO-4.4.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under Clause CO-7 (Transparency) and the FOIA, the Ministry of Justice Code or the Environmental Information Regulations pursuant to Clause CO-6 (Freedom of Information);
- CO-4.4.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- CO-4.4.3 such information was obtained from a third party without obligation of confidentiality;
- CO-4.4.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call-Off Agreement; or
- CO-4.4.5 it is independently developed without access to the other Party's Confidential Information.
- CO-4.5 Nothing in this Call-Off Agreement shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under Clause FW-8 (Provision of Management Information) of the Framework Agreement):
- CO-4.5.1 for the purpose of the examination and certification of the Customer's accounts;
- CO-4.5.2 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
- CO-4.5.3 to any Crown body or any Other Contracting Body. All Crown bodies or Contracting Bodies receiving such Supplier's Confidential Information shall be entitled to further disclose the

Supplier's Confidential Information to other Crown bodies or Other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Body; or

- CO-4.5.4 to any consultant, contractor or other person engaged by the Customer (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting a Cabinet Office or ERG Gateway review or any additional assurance programme.
- CO-4.6 In the event that the Supplier fails to comply with Clauses CO-4.1 to Clause CO-4.4, the Customer reserves the right to terminate this Call-Off Agreement with immediate effect by notice in writing.
- CO-4.7 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Call-Off Agreement, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- CO-4.8 The Supplier will immediately notify the Customer of any breach of security in relation to Customer Confidential Information obtained in the performance of this Call-Off Agreement and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Customer Confidential Information however it may be recorded. This obligation is in addition to the Supplier's obligations under Clauses CO-4.1 to Clause CO-4.4. The Supplier will co-operate with the Customer in any investigation that the Customer considers necessary to undertake as a result of any breach of security in relation to Customer Confidential Information.
- CO-4.9 Subject always to Clause CO-11.4 the Supplier shall, at all times during and after the Call-Off Agreement Period, indemnify the Customer and keep the Customer fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against the Customer arising from any breach of the Supplier's obligations under the DPA or this Clause CO-4 (Confidentiality) except and to the extent that such liabilities have resulted directly from the Customer's instructions.

#### **CO-5 CUSTOMER DATA**

- CO-5.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- CO-5.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call-Off Agreement or as otherwise expressly approved by the Customer.
- CO-5.3 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Supplier security policy.

#### **STATUTORY OBLIGATIONS AND REGULATIONS**

##### **CO-6 FREEDOM OF INFORMATION**

- CO-6.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- CO-6.2 The Supplier shall:
- CO-6.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

- CO-6.2.2 provide the Customer with a copy of all Information, relating to a Request for Information, in its possession or control, in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
- CO-6.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- CO-6.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Call-Off Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information (including Supplier's Confidential Information) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- CO-6.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- CO-6.5 The Supplier acknowledges that the Customer may, acting in accordance with the Ministry of Justice Code, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Supplier or the G-Cloud Services:
- CO-6.5.1 In certain circumstances without consulting the Supplier; or
- CO-6.5.2 following consultation with the Supplier and having taken its views into account;
- provided always that where Clause CO-6.5.1 applies the Customer shall, in accordance with any recommendations of the Ministry of Justice Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- CO-6.5.3 The Supplier acknowledges that the description of information as Commercially Sensitive Information in Framework Schedule 6 (Interpretations and Definitions) is of an indicative nature only and that the Customer may be obliged to disclose it in accordance with this Clause CO-6.

#### **CO-7 TRANSPARENCY**

- CO-7.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call-Off Agreement is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of this Call-Off Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- CO-7.2 Notwithstanding any other term of this Call-Off Agreement, the Supplier hereby gives its consent for the Customer to publish this Call-Off Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Call-Off Agreement, to the general public.
- CO-7.3 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- CO-7.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Call-Off Agreement.

#### **CO-8 OFFICIAL SECRETS ACTS**

- CO-8.1 The Supplier shall comply with and shall ensure that the Supplier Staff comply with, the provisions of:

CO-8.1.1 the Official Secrets Act 1911 to 1989; and

CO-8.1.2 Section 182 of the Finance Act 1989.

CO-8.2 In the event that the Supplier or the Supplier Staff fails to comply with this Clause, the Customer reserves the right to terminate this Call-Off Agreement with immediate effect by giving notice in writing to the Supplier.

#### CO-9 TERM AND TERMINATION

CO-9.1 This Call-Off Agreement shall take effect on the Effective Date and shall expire on:

CO-9.1.1 the date specified in paragraph 1.2 of the Order Form; or

CO-9.1.2 twenty four (24) Months after the Effective Date, whichever is the earlier, unless terminated earlier pursuant to this Clause CO-9.

CO-9.2 Termination without Cause

CO-9.2.1 The Customer shall have the right to terminate this Call-Off Agreement at any time by giving the length of written notice to the Supplier as set out in paragraph 10.2 of the Order Form.

CO-9.3 Termination on Change of Control

CO-9.3.1 The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("Change of Control") and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate the Call-Off Agreement by notice in writing with immediate effect within six (6) Months of:

CO-9.3.1.1 being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

CO-9.3.1.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where a written approval was granted prior to the Change of Control.

CO-9.3.2 For the purposes of Clause CO-9.3.1, any transfer of shares or of any interest in shares by its affiliate company where such transfer forms part of a bona fide reorganisation or restructuring shall be disregarded.

CO-9.4 Termination by Supplier

CO-9.4.1 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay and allow the Customer five (5) calendar days to settle undisputed invoice. If the Customer fails to pay such undisputed sums within allotted additional 5 calendar days, the Supplier may terminate this Call-Off Agreement subject to giving the length of notice as specified in paragraph 10.1 of the Order Form.

CO-9.5 Termination on Insolvency

CO-9.5.1 The Customer may terminate this Call-Off Agreement with immediate effect by notice in writing where the Supplier:

- CO-9.5.1.1 being an individual, or where the Supplier is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, and:
  - CO-9.5.1.2 shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport so to do, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986, or any similar event occurs under the law of any other jurisdiction; or
  - CO-9.5.1.3 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within fourteen (14) calendar days; or
  - CO-9.5.1.4 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
  - CO-9.5.1.5 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- CO-9.5.2 being a company, passes a resolution, or the Court makes an order that the Supplier or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Supplier or its Parent Company (or an application for the appointment of an administrator is made or notice to appoint an administrator is given in relation to the Supplier or its Parent Company), or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Supplier or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123(1)(a) and is for an amount of less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction.
- CO-9.6 Termination on Material Breach
- CO-9.6.1 The Customer may terminate this Call-Off Agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a Material Breach of any obligation under this Call-Off Agreement and if:
    - CO-9.6.1.1 the Supplier has not remedied the Material Breach within thirty (30) Working Days (or such other longer period as may be specified by the Customer) of written notice to the Supplier specifying the Material Breach and requiring its remedy; or
    - CO-9.6.1.2 the Material Breach is not, in the opinion of the Customer capable of remedy.
- CO-9.7 Termination for repeated Default
- CO-9.7.1 If there are two or more Defaults (of a similar nature) that will be deemed a breach for Material Breach. Where the Customer considers that the Supplier has committed a repeated Default in relation to this Call-Off Agreement or any part thereof (including any part of the G-

Cloud Services) and believes that the Default is remediable, then the Customer shall be entitled to serve a notice on the Supplier:

CO-9.7.1.1 specifying that it is a formal warning notice;

CO-9.7.1.2 giving reasonable details of the breach; and

CO-9.7.1.3 stating that such breach is a breach which, if it recurs or continues, may result in a termination of this Call-Off Agreement or that part of the G-Cloud Services affected by such breach.

CO-9.7.2 If, thirty (30) Working Days after service of a formal warning notice as described in Clause CO-9.7, the Supplier has failed to demonstrate to the satisfaction of the Customer that the breach specified has not continued or recurred and that the Supplier has put in place measures to ensure that such breach does not recur, then the Customer may deem such failure to be a Material Breach not capable of remedy for the purposes of Clause CO-9.6.1.2.

CO-9.8 The termination (howsoever arising) or expiry of this Call-Off Agreement pursuant to this Clause 9 shall be without prejudice to any rights of either the Customer or the Supplier that shall have accrued before the date of such termination or expiry.

CO-9.9 Save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination (howsoever arising) or expiry of this Call-Off Agreement.

#### **CO-10 CONSEQUENCES OF SUSPENSION, TERMINATION AND EXPIRY**

CO-10.1 Where a Customer has the right to terminate a Call-Off Agreement, it may elect to suspend this Call-Off Agreement and its performance.

CO-10.2 Notwithstanding the service of a notice to terminate this Call-Off Agreement or any part thereof, the Supplier shall continue to provide the Ordered G-Cloud Services until the date of expiry or termination (howsoever arising) of this Call-Off Agreement (or any part thereof) or such other date as required under this Clause CO-10.

CO-10.3 Within ten (10) Working Days of the earlier of the date of expiry or termination (howsoever arising) of this Call-Off Agreement, the Supplier shall return (or make available) to the Customer:

CO-10.3.1 any data (including (if any) Customer Data), Customer Personal Data and Customer Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Customer (in which event the Customer will reimburse the Supplier's pre-agreed and reasonable data conversion expenses), together with all training manuals, access keys and other related documentation, and any other information and all copies thereof owned by the Customer, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Framework Schedule FW-5, or such period as is necessary for such compliance (after which time the data must be deleted); and

CO-10.3.2 any sums prepaid in respect of Ordered G-Cloud Services not provided by the date of expiry or termination (howsoever arising) of this Call-Off Agreement.

CO-10.4 The Customer and the Supplier shall comply with the exit and service transfer arrangements as per the Supplier's terms and conditions identified in Framework Schedule 1 (G-Cloud Services).

CO-10.5 Subject to Clause CO-11 (Liability), where the Customer terminates this Call-Off Agreement under Clause CO-9.2 (Termination without Cause), the Customer shall indemnify the Supplier against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable loss

by the Supplier by reason of the termination of this Call-Off Agreement, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause CO-9.2 (Termination without Cause).

#### CO-11 LIABILITY

- CO-11.1 Nothing in this Clause CO-11 shall affect a Party's general duty to mitigate its loss.
- CO-11.2 Nothing in this Call-Off Agreement shall be construed to limit or exclude either Party's liability for:
- CO-11.2.1 death or personal injury caused by its negligence or that of its staff;
  - CO-11.2.2 bribery, Fraud or fraudulent misrepresentation by it or that of its staff;
  - CO-11.2.3 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
  - CO-11.2.4 any other matter which, by Law, may not be excluded or limited.
- CO-11.3 Nothing in this Call-Off Agreement shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Call-Off Agreement or by negligence on the part of the Customer, or the Customer's employees, servants or agents.
- CO-11.4 Subject always to Clause CO-11.2, the aggregate liability of either Party under or in connection with each Year of this Call-Off Agreement (whether expressed as an indemnity or otherwise):
- CO-11.4.1 for all defaults resulting in direct loss to the property (including technical infrastructure, assets, IPR or equipment but excluding any loss or damage to the Customer Personal Data or Customer Data ) of the other Party, shall be subject to the financial limits set out in paragraph 8.1 of the Order Form;
  - CO-11.4.2 and in respect of all other defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall not exceed a sum equivalent to the financial limit set out in paragraph 8.3 of the Order Form .
- CO-11.5 Subject always to Clause CO-11.4 the Customer shall have the right to recover as a direct loss:
- CO-11.5.1 any additional operational and/or administrative expenses arising from the Supplier's Default;
  - CO-11.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default; and
  - CO-11.5.3 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Supplier.
- CO-11.6 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Call-Off Agreement.
- CO-11.7 Subject to Clauses CO-11.2 and Clause CO-11.5, in no event shall either Party be liable to the other for any:

- CO-11.7.1 loss of profits;
- CO-11.7.2 loss of business;
- CO-11.7.3 loss of revenue;
- CO-11.7.4 loss of or damage to goodwill;
- CO-11.7.5 loss of savings (whether anticipated or otherwise); and/or
- CO-11.7.6 any indirect, special or consequential loss or damage.

CO-11.8 The annual aggregate liability for all defaults resulting in direct loss, destruction, corruption, degradation or damage to the Customer Data or the Customer Personal Data or any copy of such Customer Data, caused by the Supplier's default under or in connection with this Call-Off Agreement shall be subject to the financial limits set out in paragraph 8.2 of the Order Form.

## **CO-12 INSURANCE**

- CO-12.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under this Call-Off Agreement, including death or personal injury, loss of or damage to property or any other loss (including the insurance policies specified in the relevant paragraph of the Order Form). Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Call-Off Agreement Period and for the minimum insurance period as set out in paragraph 9 of the Order Form.
- CO-12.2 The provisions of any Insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Call-Off Agreement.

## **CO-13 PAYMENT, VAT AND CALL-OFF AGREEMENT CHARGES**

- CO-13.1 In consideration of the Supplier's performance of its obligations under this Call-Off Agreement, the Customer shall pay the Charges in accordance with the Clause CO-13.2 to CO-13.8.
- CO-13.2 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within the time period specified in paragraph 6 of the Order Form.
- CO-13.3 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the G-Cloud Services supplied and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- CO-13.4 Where the Supplier enters into a Sub-Contract it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.
- CO-13.5 The Supplier shall add VAT to the Charges at the prevailing rate as applicable.
- CO-13.6 The Supplier shall fully indemnify the Customer on demand and keep the Customer fully indemnified on a continuing basis against any liability, including without limitation against any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call-Off Agreement. Any amounts due under this Clause CO-13.6 shall be paid by the Supplier to the

Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

CO-13.7 The Supplier shall not suspend the supply of the G-Cloud Services unless the Supplier is entitled to terminate this Call-Off Agreement under Clause CO-9.4 for Customer's failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).

CO-13.8 In the event of a disputed invoice, the Customer shall make payment in respect of any undisputed amount in accordance with the provisions of Clause CO-13 of this Call-Off Agreement and return the invoice to the Supplier within ten (10) Working Days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The Supplier shall respond within ten (10) Working Days of receipt of the returned invoice stating whether or not the Supplier accepts the Customer's proposed amendments. If it does then the Supplier shall supply with the response a replacement valid invoice.

CO-13.9 The Supplier shall accept the Government Procurement Card as a means of payment for the G-Cloud Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.

#### CO-14 GUARANTEE

CO-14.1 Where the Customer has specified in the Order Form that this Call-Off Agreement shall be conditional upon receipt of a Guarantee from the guarantor, the Supplier shall deliver to the Customer an executed Guarantee from the guarantor, on or prior to the Commencement Date; and deliver to the Customer a certified copy of the passed resolution and/or board minutes of the guarantor approving the execution of the Guarantee.

#### CO-15 FORCE MAJEURE

CO-15.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Call-Off Agreement to the extent that such delay or failure is a result of Force Majeure.

CO-15.2 Notwithstanding Clause CO-15.1, each Party shall use all reasonable endeavours to continue to perform its obligations under the Call-Off Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Call-Off Agreement for a period in excess of one hundred and twenty (120) calendar days, either Party may terminate this Call-Off Agreement with immediate effect by notice in writing to the other Party.

#### CO-16 TRANSFER AND SUB-CONTRACTING

CO-16.1 The Supplier shall not assign, novate, sub-contract or in any other way dispose of this Call-Off Agreement or any part of it without the Customer's prior written approval which shall not be unreasonably withheld or delayed. Sub-Contracting any part of this Call-Off Agreement shall not relieve the Supplier of any obligation or duty attributable to the Supplier under this Call-Off Agreement.

CO-16.2 The Supplier shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

CO-16.3 The Customer may assign, novate or otherwise dispose of its rights and obligations under the Call-Off Agreement or any part thereof to:

CO-16.3.1 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

CO-16.3.2 any private sector body which substantially performs the functions of the Customer

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Call-Off Agreement.

#### **CO-17 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

CO-17.1 A person who is not party to this Call-Off Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Call-Off Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

#### **CO-18 LAW & JURISDICTION**

CO-18.1 This Call-Off Agreement and/or any non-contractual obligations or matters arising out of or in connection with it, shall be governed by and construed in accordance with the Laws of England and Wales and without prejudice to the dispute resolution procedures set out in Clause FW-14 or CO-22 (Dispute Resolution) 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.

#### **CO-19 ADDITIONAL G-CLOUD SERVICES**

CO-19.1 The Customer may require the Supplier to provide the Additional G-Cloud Services. The Supplier acknowledges that the Customer is not obliged to take any Additional G-Cloud Services from the Supplier and that there is nothing preventing the Customer from receiving services that are the same as or similar to the Additional G-Cloud Services from any third party.

CO-19.2 The Supplier shall provide Additional G-Cloud Services in accordance with any relevant Implementation Plan(s) and the Supplier shall monitor the performance of such Additional G-Cloud Services against the Implementation Plan(s).

#### **CO-20 COLLABORATION AGREEMENT**

CO-20.1 Where the Customer has specified in paragraph 13 of the Order Form that the Customer requires the Supplier to enter into a Collaboration Agreement, [the Supplier shall deliver to the Customer an executed Collaboration Agreement [Collaboration Agreement must be executed between the Parties], on or prior to the Commencement Date].

CO-20.2 In addition to its obligations under any Collaboration Agreement, the Supplier shall:

CO-20.2.1 work pro-actively with each of the Customer's contractors in a spirit of trust and mutual confidence;

CO-20.2.2 in addition to its obligations under the Collaboration Agreement the Supplier shall cooperate with the Customer's contractors of other services to enable the efficient operation of the ICT services; and

CO-20.2.3 assist in sharing information with the Customer's contractors for the purposes of facilitating adequate provision of the G-Cloud Services and/or Additional G-Cloud Services.

#### **CO-21 VARIATION PROCEDURE**

CO-21.1 The Customer may request in writing a variation to this Call-Off Agreement provided that such variation does not amount to a material change of the Framework Agreement and/or this Call-Off Agreement and

is within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "Variation".

CO-21.2 The Supplier shall notify the Customer immediately in writing of any changes proposed or in contemplation in relation to G-Cloud Services or their delivery by submitting Variation request. For the avoidance of doubt such changes would include any changes within the Supplier's supply chain.

CO-21.3 In the event that:

- (a) Either Party is unable to agree (agreement shall not be unreasonably withheld or delayed) to or provide the Variation;
- (b) the Customer may:
  - (i) agree to continue to perform its obligations under this Call-Off Agreement without the Variation; or
  - (ii) terminate this Call-Off Agreement by giving thirty (30) written days notice to the Supplier.

#### CO-22 DISPUTE RESOLUTION

CO-22.1 The Customer and the Supplier shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Call-Off Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Customer Representative and the Supplier Representative.

CO-22.2 If the dispute cannot be resolved by the Parties pursuant to this Clause, the Parties shall refer it to mediation unless the Customer considers that the dispute is not suitable for resolution by mediation.

CO-22.3 If the dispute cannot be resolved by mediation the Parties may refer it to arbitration.

CO-22.4 The obligations of the Parties under this Call-Off Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation or arbitration pursuant to this Clause and the Supplier and Supplier's Staff shall continue to comply fully with the requirements of this Call-Off Agreement at all times.

**Schedule 3: Not Used**

Schedule 4: Not Used

**Schedule 5: Not Used**

**Schedule 6: Not Used**

Schedule 7 :Not Used

**Schedule 8: Not Used**

Schedule 9 :Not Used

**Schedule 10: Not Used**