



Crown
Commercial
Service

RM 1557vii

G-CLOUD 7

Call-Off Agreement and Call-Off Terms

Schedule 2: Call-Off Terms

Effective Date	15/12/2016	Order Reference	X86 HPE VPCC Phase 2
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FROM:

Customer	Department for Work and Pensions (DWP) "Customer"
Customer's Address	Technology – Hosting Category Commercial Directorate Finance Group Department for Work and Pensions
Invoice Address	SSCL Accounts Payable Team Room 6124 Tomlinson House Norcross Blackpool FY5 3TA
Principal Contact	REDACTED

TO:

Supplier	EntServ UK Limited
Supplier's Address	Cain Road, Bracknell, Berkshire, RG12 1HN
Account Manager	REDACTED

1. TERM
<p>1.1 Commencement Date</p> <p>Subject to Section 10.3 below, this Call-Off Agreement commences on 01 May 2017.</p> <p>1.2 Expiry Date</p> <p>This Call-Off Agreement shall expire on:</p> <p>1.2.1 the second (2) anniversary of the Commencement Date; unless terminated earlier pursuant to Clause CO-9 of the Call-Off Agreement.</p> <p>1.3 Services Requirements</p> <p>1.3.1 This Order is for the G-Cloud Services outlined below, where such Service shall host X86 Applications. It is acknowledged by the Parties that the volume of the G-Cloud Services utilized by Customer under this Call-Off</p>

Agreement may vary from time to time during the course of this Call-Off Agreement, subject always to the terms of the Call-Off Agreement. The total anticipated spend via this Call-Off Agreement is not expected to exceed £7,639,160 based on projected usage volumes. However, actual spend will be derived from actual project consumption. The first Service Request from this Call-Off Agreement will be as follows:

REDACTED

1.3.2 G-Cloud Services

Lot 1 IaaS Services

HP Enterprise Services UK Ltd – *Government Virtual Private Cloud Compute for Official PSN (VPCC-OPSN)* Infrastructure as a Service (IaaS) described within the overall G-Cloud Supplier service definition document below (service ID G7.7640965026948661)



7640965026948661-
service-definition-doc

The current version of the Supplier Terms is attached for information:



01b - HP Agreement
Cover Page Standard

By way of clarification to the Supplier G-Cloud documents;

- For the provision of this Call-Off Agreement in its entirety, the Supplier shall comply with HMG Baseline Personnel Security Standard Version 6.08/01/2015 attached below in respect of all persons who are employed or engaged by the Supplier in provision of Services under this this Call-Off Agreement, unless an alternative agreement of Personnel Security is already in place between the Department and the Supplier. The HMG Baseline Personnel Security Standard Version 6.0 08/01/2015 do not require a security check as such but a package of pre-employment checks covering identity, employment history, nationality/immigration status and criminal records designed to provide a level of assurance.



guide-for-dwp-contr
actors-bpss.pdf

In the event that any change is required to the Services provided under this Call-Off Contract in connection with the General Data Protection Regulation (GDPR) or equivalent legislation, such change is outside the scope of the Services and shall be subject to agreement of a Variation.

The following will not be provided or shall be amended under this Call-Off Agreement as part of the Services:

- Automated server provisioning service shall not be available in its entirety;
- CSA STAR service shall not apply in its entirety;
- "HP Helion-G VPC for Official Internet" shall not apply in its entirety;
- "HPE Secure Access Services" shall not apply in its entirety;
- ISO27001 shall not apply in its entirety;
- Managed Services Portal shall not apply in its entirety and shall be replace with a mutually agreed mechanism;
- Messaging & collaboration service shall not be available in its entirety;

- Public Services Network (PSN) shall not apply in its entirety for the purpose of this Call-Off Agreement. If requested to do so by the Customer and mutually agreed between the Parties if applicable, the Supplier shall ensure that the G-Cloud Services adhere to the conditions and obligations identified in the PSN Code of Practice;
 - Service Catalogue shall not be available in its entirety for the purpose of this Call-Off Agreement and will be replaced with "a mutually agreed mechanism";
 - Service Volume Discounts shall not apply for the purpose of this Call-Off Agreement;
 - Staff security shall be provided in accordance with the above clarification regarding HMG Baseline Personnel Security Standard Version 6.08/01/2015;
 - Upgrade, refresh and/or replacement of hardware and/or operating systems to the environment;
 - "Virtual Private Cloud" references shall not apply in its entirety;
 - "Virtual Private Cloud Customer Portal" shall not be available in its entirety for the purpose of this Call-Off Agreement; and,
 - "Virtual Private Cloud Supplier Managed Portal" shall not be available in its entirety for the purpose of this Call-Off Agreement.
- 'Term' Paragraph 1- Enterprise Services Agreement-Cover Page for the purpose of this Call-Off Agreement. The initial Term shall commence on the date at Paragraph 1.1 of this Call-Off Agreement.
 - 'Eligible Purchasers' Paragraph 3 - Enterprise Services (ES) Agreement-Cover Page for the purpose of this Call-Off Agreement; This Agreement only enables Eligible Purchasers to place Orders for Services under this Agreement. No services will be ordered by Customer Authorised Representatives who are not also Eligible Purchasers. The Customer may issue a revised version of the authorised Eligible Purchasers to the Supplier at any time during the period of the Call-Off Agreement that supersedes any previously issued versions. The document agreed by the Parties setting out the Eligible Purchasers at the date of signature of this Call Off Agreement is;
REDACTED
 - 'Customer Requested Changes' Paragraph 4 - Enterprise Services (ES) Agreement-ES Standard Terms for the purpose of this Call-Off Agreement; Changes are priced at the charged rates agreed on the Commencement Date of this Call-Off Agreement at section 6. The Supplier may not decline to quote requested changes without discussion between the Customer and Supplier. Change requests or change control documents, once signed by the parties' Eligible Purchasers, amend and supplement this Call-Off Agreement effective as of the agreed date in line with the standard Variation Procedure - CO-21.
 - 'Place of Operations' Paragraph 5 Enterprise Services (ES) Agreement-ES Standard Terms for the purpose of this Call-Off Agreement; The Supplier may relocate the service centre(s) to another UK based service centre in agreement with the Customer in line with the standard Variation Procedure - CO-21.
 - 'Points of Contact' Paragraph 6 Enterprise Services (ES) Agreement-ES Standard Terms for the purpose of this Call-Off Agreement. Points of Contact will be REDACTED
 - VPCC-OPSN Page 1 Paragraph 5 "Erskine Support Centre" shall not apply in its entirety and shall be replaced with the following wording "UK regional delivery centres".
 - VPCC-OPSN Page 1 Paragraph 5 "proprietary" shall not apply in its entirety and shall be replaced with the following wording "Supplier".
 - VPCC-OPSN Page 1 Paragraph 6 does not apply in its entirety.
 - VPCC-OPSN Page 9 "Microsoft Windows Server Versions (English and Japanese support)" bullet point 2 "Microsoft Window Server 2012 Standard Edition (64-bit)" shall not apply in its entirety.

- VPCC-OPSN Page 9 "Microsoft Windows Server Versions (English and Japanese support)" bullet point 4 "Microsoft Windows Server 2008 SP2 Standard & Enterprise Editions (32-and 64-bit) shall not apply in its entirety.
- VPCC-OPSN Page 9 "Red Hat Enterprise Linux (RHEL) Server (English and Japanese support)" bullet point 1 "RHEL Server 5.9 (32- and 64-bit) – Supported only on Virtual Servers (see the NOD for RHEL5 Physical Servers End of Support)" shall not apply in its entirety and shall be replaced with "RHEL Server 7".
- VPCC-OPSN Page 9 "SUSE Linux Enterprise Server (SLES) (English and Japanese support)" shall not apply in its entirety.
- VPCC-OPSN Page 9 "HP-UX (supported on HPE Integrity Blades physical servers)" shall not apply in its entirety.
- VPCC-OPSN Page 9 subparagraph 5 "Microsoft Windows Server Versions" bullet point 2 "Microsoft Windows Server 2012 Standard Edition (64-bit) English" shall not apply in its entirety.
- VPCC-OPSN Page 9 subparagraph 5 "Microsoft Windows Server Versions" bullet point 4 "Microsoft Windows Server 2008 Standard & Enterprise Editions (32 and 64-bit) (English and Japanese support)" shall not apply in its entirety.
- VPCC-OPSN Page 9 subparagraph 5 "Red Hat Enterprise Linux (RHEL) Server (English and Japanese support) bullet point 1 "RHEL Server 5 (32 and 64-bit) – virtual servers only" shall not apply in its entirety and shall be replaced with "RHEL Server 7).
- VPCC-OPSN Page 9 subparagraph 5 "SUSE Linux Enterprise Server (SLES) (English and Japanese support)" shall not apply in its entirety.
- VPCC-OPSN Page 10 subparagraph 5 "HP-UX (supported on HPE Integrity Blades physical servers) shall not apply in its entirety.
- VPCC-OPSN Page 10 subparagraph 5 "OS Versions Tuned for SAP Servers:" shall not apply in its entirety.
- VPCC-OPSN Page 10 "SAN Storage Services" first sentence remove "from the service catalogue" and replace with the following wording "via a mutually agreed mechanism".
- VPCC-OPSN Page 10 "SAN Storage Services" remove paragraphs 2, 3 and 4 in their entirety.
- VPCC-OPSN Page 10 "Backup, Recovery, and Archive Services" shall be replaced in its entirety with the following "Shall be agreed "via a mutually agreed mechanism.
- VPCC-OPSN Page 12 "Virtual Appliance Support" for the purpose of this Call-Off Agreement shall not apply in its entirety.
- VPCC-OPSN Page 12 "Microsoft Hypervisor V" for the purpose of this Call-Off Agreement shall not apply in its entirety.
- VPCC-OPSN Page 12 "High Availability Clustering Compute Services" for the purpose of this Call-Off Agreement shall not apply in its entirety.
- VPCC-OPSN Page 14 "PSN" does not apply in its entirety.
- VPCC-OPSN Page 14 "RLI" does not apply in its entirety.
- VPCC-OPSN Page 14 "Network Switch-as-a-Service" does not apply in its entirety.

- VPCC-OPSN Page 14 "Additional Firewall Rules" does not apply in its entirety.
- VPCC-OPSN Page 14 "Internet Protocol Addresses" does not apply in its entirety.
- VPCC-OPSN Page 14 "Network Switch-as-a-Service" does not apply in its entirety.
- VPCC-OPSN Page 14 "Customer Provided IP Address (or Bring Your Own IP – BYOIP)" does not apply in its entirety.
- VPCC-OPSN Page 14 "Information Assurance" does not apply in its entirety.
- VPCC-OPSN Page 15 "Application Security" shall not apply in its entirety.
- VPCC-OPSN Page 15 "Computing Services Features" bullet point 2 "Built on HPE Converged Infrastructure:" shall not apply in its entirety.
- VPCC-OPSN Page 16 "Multi-Factor authentication for Cloud Operation Staff" shall not apply in its entirety.
- VPCC-OPSN Page 16 "Security Information and Event Management (SIEM) on Hypervisors" shall not apply in its entirety.
- VPCC-OPSN Page 16 "Network Intrusion Detection and Prevention" shall not apply in its entirety.
- VPCC-OPSN Page 16 "ITIL Process Alignment" remove the following wording "AT101 SOC2 reports are being implemented across HPE Helion Managed Virtual Private Cloud data centres. It is an assurance report that provides and auditor's opinion on the design and operating effectiveness of the environment."
- VPCC-OPSN Page 17 "Base Reporting" shall not apply in its entirety and shall be replaced as follows "On a per Service Measurement Period (SMP) basis by a mutually agreed mechanism a service report providing the availability of the production platform only.

SMP is defined as a period set out in the SMP Calendar as follows:



SMP PERIODS to
2022 amended 08.05

- VPCC-OPSN Page 17 "Security Administration and Policy Compliance Management" shall not apply in its entirety.
- VPCC-OPSN Page 17 "Vulnerability Scanning" shall not apply in its entirety
- VPCC-OPSN Page 17 "Database Management Services (DBMS)" remove the following sentence "You receive logical access to the application environment through private network connections or over the public internet.
- VPCC-OPSN Page 18 "SAP Applications Management Services" shall not apply in its entirety.
- VPCC-OPSN Page 18 "SAP HANA Management Services" shall not apply in its entirety.
- VPCC-OPSN Page 18 "SAP HANA Management Services with HANA TDI appliance" shall not apply in its entirety.
- VPCC-OPSN Page 18 "Middleware Platform Service" shall not apply in its entirety.
- VPCC-OPSN Page 18 "Additional Services" shall not apply in its entirety.

- VPCC-OPSN Page 21 Section 2 'Commencement of Services'; Paragraph 2.1(b) shall not apply in its entirety.
- VPCC-OPSN Page 22 Paragraph 3.1.1(d) "This includes periodic upgrade and/or replacement of hardware as HPE deems appropriate." shall not apply in its entirety.
- VPCC-OPSN Page 23 Paragraph 4.1 shall not apply in its entirety.
- VPCC-OPSN Page 23 Paragraph 4.2 shall not apply in its entirety.
- VPCC-OPSN Page 28 Paragraph 6 'Maintenance Windows' Supplier maintenance windows must be agreed with the Customer Authorised Representatives in advance.
- VPCC-OPSN Page 29 Paragraph 7.1 for the purpose of this Call-Off Agreement Notices given by the Supplier will be provided via a mutually agreed mechanism.
- VPCC-OPSN Page 31 Paragraph 8.1 (d) for the purpose of this Call-Off Agreement; Notices given by the Supplier will be provided via a mutually agreed mechanism.
- VPCC-OPSN Page 32 Paragraph 1.2 "Measuring and Reporting" for the purpose of this Call-Off Agreement; Customer Managed Servers Service Level reports will be provided to the Customer Authorized Representative a pre-agreed date and period.
- VPCC-OPSN Page 32 Paragraph 2.1 "Service Level Commitment" insert the following sentence after the second sentence in the first paragraph as follows "Service Levels commitments for development and test environments where changes are: (i) implemented by the Customer; or (ii) implemented by the Supplier on direction of the Customer which the Supplier has advised against, which then cause a failure to the infrastructure, will not apply."
- VPCC-OPSN Page 32 Paragraph 2.1 for the purpose of this Call-Off Agreement, test and development environments shall fall under the definition 'SL Tier 2 (Option B) and apply during Service Hours. Production systems shall fall under the definition 'SL Tier 4 (Option C) and apply during Service Hours.
- VPCC-OPSN Page 34 'Service Credits'; Paragraph 2.2 for the purpose of this Call-Off Agreement Paragraph 2.2 will be replaced in its entirety as follows REDACTED
- VPCC-OPSN Page 35 Paragraph 2 'Charges Generally' "older technology" shall be taken to mean whereby the Customer declines to implement an upgraded or updated version of any part of the Service following the commencement of the Service. Any resulting Charges will only be implemented following agreement with the Customer and demonstration of increased costs incurred such agreement will not be unreasonably withheld by the Customer.
- VPCC-OPSN Page 35 Paragraph 2.3 'Unit Charge Adjustments'; shall not apply in its entirety;
- VPCC-OPSN Page 36 Paragraph 3 'Minimum Term Commitments' the relevant Service is 'Physical Server' and 'Virtual Server'.
- VPCC-OPSN Page 36 Paragraph 3 'Minimum Term Commitments' replace REDACTED
- VPCC-OPSN Page 37 Paragraph 5 "Termination Charges" replace REDACTED
- VPCC-OPSN Page 38 "Changes in Service" remove the following sentence "In addition, Customer may request operational changes through the Operations Centre (such as, for example, changes to IP addresses, or server reboots)." shall not apply in its entirety.
- VPCC-OPSN Page 39 'Glossary' insert the following wording ""Non-critical Incident" means classification of Incidents at priority 3 or priority 4."
- VPCC-OPSN Page 40 'Glossary' insert the following wording ""Service Hours" means for development and test 9.00 hours to 17.00 hours business days excluding Maintenance Windows, for production" means 24x7x365

hours excluding Maintenance Windows”.”.

- VPCC-OPSN Page 40 “Unexcused Downtime” remove final paragraph in its entirety and replace with “Unexcused Downtime is measured from the time the outage is detected by HPE or is measured from the time that a service Incident ticket is opened by the customer, whichever is the sooner, until the relevant incident is resolved with respect to the Supplier’s services.”.
- VPCC-OPSN Page 42 “Exhibit G Optional Services – Service Descriptions” shall not apply in its entirety.
- The New Fair Deal (NFD) UK government guidelines are not applicable to this Call-Off Contract.
- The Parties acknowledge that some operating systems, software and/or hardware used in the provision of the Services pursuant to this Call-Off Contract may be within or without appropriate vendor support, or prior to 16 December 2016 have not been refreshed to its latest commercially available version. In the event of any operating system, hardware or software failure, the Supplier shall undertake root cause analysis to assess the cause of any failure. If such root cause analysis demonstrates and it is agreed between the Parties (such agreement not to be unreasonably withheld) that the service failure was caused or arose as a result of:
 - a) the age of the equipment used and/or the associated software not being in manufacturer support or extended support;
 - b) where the age of the equipment used and/or the associated software is in manufacturer support or extended support and there is a hardware failure where Supplier can reasonably demonstrate that there is an extended lead time for, and/or a delay in receipt of, a replacement from the third party supplier to allow resolution of the incident; and/or
 - c) where the age of the equipment used and/or the associated software is in manufacturer support or extended support and there is a software-related incident where Supplier can reasonably demonstrate that there is an extended lead time for, and/or a delay in receipt of, a resolution from the third party supplier to allow resolution of the incident;

then the Supplier shall be relieved from liability (including Service Credits) and the Buyer shall not be entitled to exercise its termination rights, and the Supplier will not be held in Default, in respect of any such service failure, save that:

- i) such relief shall not apply where the Buyer has procured from the Supplier, through an appropriate commercial vehicle, and the Supplier has failed, (due to reasons solely attributable to the Supplier), to deliver any upgrade to the equipment used in the provision of the Services in the timescales agreed within such commercial vehicle; and
 - ii) such relief shall not apply where the applicable third party support is to the same level as that required by the service levels set out in this Call-Off Contract and the Supplier’s third party supplier has acted in default of its service levels.
- The breakdown of charges set out in this Call-Off Agreement shall constitute Commercially Sensitive Information.
- The Customer does not require the Supplier to enter into a Collaboration Agreement for the purpose of this Call-Off Agreement.
- The Customer does not require the Supplier to enter into a Guarantee for the purpose of this Call-Off Agreement.
- During the Call-Off Agreement, in the event of an updated and lower published price by the Supplier in relation to services equivalent to the Services within the Crown Commercial Service G-Cloud 9 Framework, the Supplier will inform the Buyer and there will be an automatic application of the updated pricing within this Call-Off Contract, save that such update to pricing shall not be applied retrospectively and shall apply from the first full SMP following the published price change.
- REDACTED.

- For the purposes of this Call-Off Agreement, the Parties acknowledge and agree to the following Sub-contractors:
 - REDACTED

2. PRINCIPAL LOCATIONS

2.1 Principal locations where the services are being performed

The Services will be provided in their entirety within the United Kingdom

3. STANDARDS

3.1 Quality Standards

ISO9001

3.2 Technical Standards

Security: Information Systems Security Standards (ISSS) V3.2 2/05/2009

Environmental : ISO14001

4. ONBOARDING

4.1 On-boarding

Not applicable

5. CUSTOMER RESPONSIBILITIES

5.1 Customer's Responsibilities

5.1.1 The Customer is responsible for all data on the server and for ensuring that its usage complies with the terms and conditions and acceptable use policy and the Data Protection Act. For PSN connected services the PSN Code of Connection must also be adhered to.

5.1.2 The Customer is responsible for procuring and ensuring that all software licences for the Applications running on the server is licenced and permits the Supplier to provide the Services unless otherwise agreed in writing between the parties

5.1.3 The Customer is responsible for any Customer accreditation or compliance requirement specific to the solution (including any PSN compliance).

5.1.4 Customer to provide Purchase Order as described in Section 6 of this Call-Off Agreement.

5.1.5 The Customer is responsible for the charges, management and procurement of any external Wide Area Network (WAN) connectivity to the Customer environment within the HPE Datacentres for the duration of this Call-Off Agreement.

5.1.6 The Customer is responsible for any upgrade of end of life assets including but not limited to software licence charges.

5.2 Customer's equipment

5.2.1 Not relevant for the purpose of this Call-Off Agreement

5.3 Change in Law

For the purposes of this Call-Off Agreement a 'Specific Change in Law' means a change in the Law that relates specifically to the business of the Customer.

5.3.1 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Call-Off Agreement nor be entitled to an increase in the Charges as the result of:

- (a) a general change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is expressly set out in this Call-Off Agreement.

5.3.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 5.3.1(b)), the Supplier shall:

- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Charges and/or the Call-Off Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to achieve agreed Service Levels and/or to meet the Service Performance Levels; and
- (b) provide the Customer with evidence:
 - (i) that the Supplier has taken all reasonable steps to minimise any increase in costs or taken all reasonable steps to maximise any reduction in costs, including in respect of the costs of its Subcontractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the service improvement provisions, has been taken into account in amending the Charges.

5.3.3 If a Specific Change in Law occurs where the change which is required to the Services is a change which applies to other customers of the Supplier, the Customer shall only be required to pay an amount which represents a fair allocation of the total costs of such change across all of the Supplier's affected customers for IS/IT services.

5.3.4 Any variation in the Services and/or the Charges and/or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 5.3.1(b)) shall be implemented in accordance with the Variation procedure at section CO-21.

6. PAYMENT

6.1 Payment profile and method of payment

The specific Supplier Call-Off Agreement Service Charges will be identified at the point in which the Customer initiates a service or raises a Service Request by a mutually agreed mechanism resulting in an agreed execution of a

Service between the Customer and the Supplier. These Charges will be created from the Pricing Service document attached below.

REDACTED

Each Service approved by the Supplier and Customer will not exceed the published Pricing Service documents attached below. Any Recurring Day Rate charges in the published Pricing document identified as being hourly metered will be reported on and charged using the equivalent Hourly Unit Charge.

No indexation will be applied to Charges for the duration of the Call-Off Agreement.

The monthly resource consumption is in daily increments based on the SMP Unit Charges

During the agreed 10 Working Day 'billing window' following the end of each SMP; the Supplier will make available an 'auditable document' that clearly identifies all individual Charges incurred for the previous SMP resource consumption which are 'set daily' Charges as set out in the HP G-Cloud 7 Pricing document attached below. This document is provided for demonstrative purposes only and is not binding on the parties. All sections in the document attached below from Service Volume Discount onwards shall be disappplied and the relevant sections interpreted as per section 1.3.2 below.

REDACTED

During the agreed 10 Working Day 'billing window' following the end of each SMP; the Supplier will send the invoice and associated management information documentation to the Customers Invoice Assurance Team's Central in-box below that clearly identifies the individual costs to be billed in the SMP for the delivered G-Cloud Service.

Billing windows will commence on the first (1st) Monday after the end of every SMP; for a period of ten (10) Working Days thereafter.

REDACTED

At the SAME time the Supplier will send a duplicate paper invoice to SSCL Accounts Payable Team, Room 6124, Tomlinson House, Norcross, Blackpool FY5 3TA clearly indicating costs that do/do not attract VAT.

Method of payment: via BACS by SMP in arrears.

Supplier expenses are not anticipated for the delivery of this Call-Off Service. Should the Customer or Supplier anticipate any necessary spend on travel and/or subsistence expenses, these charges are to be agreed in advance and approved by the Customer prior to being incurred.

Volume and other discounts shall not apply to this Call-Off Contract unless agreed via a Variation.

6.2 Invoice format

The Invoice format will follow the standard Supplier invoice format inclusive of the Purchase Order number mirroring the necessary associated management documentation agreed between the Customer and Supplier. The Customer will pay the Supplier within thirty (30) calendar days of receipt of a valid invoice, submitted in accordance with this paragraph, the payment profile set out above and the provisions of this Call-Off Agreement.

7. DISPUTE RESOLUTION

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

REDACTED

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 REDACTED
- 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 50% of the Call-Off Agreement Charges payable by the Customer to the Supplier during the Call-Off Agreement term.
- 8.3 The annual aggregate liability under this Call-Off Agreement of either Party for all other defaults shall in no event exceed REDACTED

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 from 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.

10.3 Termination by the Supplier

Notwithstanding the Commencement Date, the provision of the Services under this Call-Off Agreement shall not commence unless the Parties have acknowledged in writing that REDACTED

10.4 Termination by Customer

For the purposes of the definition "Material Breach", this shall apply solely in respect of a material default of the Call-Off Agreement.

The parties acknowledge and agree that a termination in accordance with section CO-21.3(b)(ii) shall be a termination as referred to in section CO-9.2.1.

10.5 Disengagement

In the event of termination or expiry of the Call-Off Agreement, Disengagement will be managed via the Variation process set out in section CO-21.

Off-boarding shall be in accordance with Section 30 'Disengagement' of the Enterprise Services Agreement document.

The off boarding plan for this Call-Off Agreement is embedded below and shall be reviewed and agreed by both parties annually from the commencement of the term, if there is a material change to the Call-Off Agreement or within five (5) working days from the date of Customer's written notice for termination to the Supplier.

The below list has been identified as 'key' activities however is not exhaustive and where appropriate should be expanded and agreed to meet the requirements of the Customer and Supplier.

<u>Key Activity</u>	<u>Owner</u>
1. Issue exit notice	- Customer
2. Appoint Exit Manager	- Supplier
- To liaise with the Customer and any designated service providers to facilitate handover of service.	
3. Agree detailed off boarding plan with new supplier	- Joint
4. TUPE consultations	- Joint
5. 3 rd party supplier notifications	- Supplier
6. General knowledge transfer activities	
a) Provision of documentation	- Supplier
- Subject to IP restrictions, this will include systems and technical descriptions and work instructions	
b) Transfer of data in an agreed medium of transfer to new provider	- Supplier
- This will involve the provision of any Customer Data to enable the new provider to undertake the service	
- Allow Customer / 3 rd party transition Supplier to conduct necessary activities required in the existing (Source) environment (via Supplier/incumbent) e.g. install appropriate software used for "migration"	
- Provide to Customer at no cost a copy of the scripts and code covered by the licence granted by the Supplier as set out in section 6.5 of this Call-Off Contract.	
7. Service sign-off	- Customer
8. Equipment decommissioning and removal	- Supplier

Disengagement Plan:



X86 Disengagement
Plan.mpp

Disengagement charges shall be agreed between the Parties prior to the commencement of the Disengagement process.

11. AUDIT AND ACCESS

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

- 'Customer Audits' Paragraph 14 Enterprise Services (ES) Agreement-ES Standard Terms for the purpose of this Call-Off Agreement. Upon request, within forty-five (45) working days' notice Customer's auditors and regulatory auditors may have access to the Supplier's support team to audit the Customer's dedicated environments, Customer's systems, data, controls, and other matters pertinent to Customer's business. Customer may conduct one (1) audit per year if requested. The Supplier will provide the necessary audit support reasonably required without Charge. Follow-up investigations as a result of identifying any non-compliances from any of the aforementioned audits shall not be considered to be a new audit. Any additional audits requests beyond the agreed number of one (1) shall be chargeable by the Supplier and agreed with the Customer in line with the standard Variation Procedure - CO-21.
- 'Audit Procedures' Paragraph 15 Enterprise Services (ES) Agreement-ES Standard Terms for the purpose of this Call-Off Agreement. Customer's named auditors will be shared with the Supplier for their approval and if the Supplier considers acting reasonably that such auditor is a Competitor then the Customer shall make alternative arrangements and will be agreed between the Supplier and the Customer.
- 'HPE Audits' Paragraph 16 Enterprise Services (ES) Agreement-ES Standard Terms for the purpose of this Call-Off Agreement. The Supplier will share any Supplier initiated industry compliance auditor's certificates with the Customer which are relevant to the Services provided under this Call-Off Agreement at no charge, subject to any confidentiality obligations owed by the Supplier to third parties.

12. PERFORMANCE OF THE SERVICES AND DELIVERABLES

12.1 Incident Management

As set out in the HP G-Cloud Service Definition documents embedded at section 1.3 - Service requirements.

VPCC-OPSN Page 30 Paragraph 7.2.2 'Incident Management' for the purposes of this Call-Off Agreement the Target Resolution Times from receipt of an incident shall be:

- Priority 1; Resolved within six (6) Service Hours
- Priority 2; Resolved within twenty four (24) Service Hours of the Incident being assigned
- Priority 3; Resolved within three (3) business days of the Incident being assigned
- Priority 4; Resolved within seven (7) business days of the Incident being assigned

Failure to meet Target Resolution Times does not constitute a Fault for the purposes of calculation of Service Credits

Exhibit C Service Levels VPCC-OPSN & VPCC-OI; for the purposes of the Services, the Recovery Time Objective shall be <4 hours and the Recovery Point Objective shall be <15 minutes using standard 2dc VM configuration. Application architecture and end to end performance will affect the recovery times achievable.

Service Level reporting shall be by SMP rather than by month.

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	REDACTED
Position	VP & Account Executive
Signature	
Date	15 December 2016

For and on behalf of the Customer:

Name and Title	REDACTED
Position	Commercial Director, Technology
Signature	
Date	15 December 2016

G-CLOUD SERVICES CALL-OFF TERMS

Department for Work and Pensions (DWP)

- and -

HP Enterprise Services Ltd

relating to

the provision of G-Cloud Services.

CALL-OFF AGREEMENT TERMS AND CONDITIONS

THIS CONTRACT is made on the 1st day of March 2016

BETWEEN

Department for Work and Pensions of Phase 2, 2nd Floor, West Wing, Pink Zone, Peel Park, Brunel Way, Blackpool FY4 5ES (the "**Customer**"); and
Hewlett Packard Enterprise Services UK Ltd a company registered in England under company number 53419 and whose registered office is at Cain Road, Bracknell, Berkshire, RG12 1HN (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 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 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.

