



Crown
Commercial
Service

RM 1557vi

G-CLOUD SERVICES 6

FRAMEWORK AGREEMENT

Schedule 2: Call-Off Terms

Effective Date	01/01/2017	Order Reference	[REDACTED]

FROM:

Customer	Department of Health “Customer”
Customer’s Address	[REDACTED]
Invoice Address	
Principal Contact	

TO:

Supplier	[REDACTED]
Supplier’s Address	
Account Manager	

1. TERM
1.1 Commencement Date
This Call-Off Agreement commences on: 01/01/2017

1.2 Expiry Date

This Call-Off Agreement shall expire on:

1.2.1 31/12/2018 unless terminated earlier pursuant to Clause CO-9 of the Call-Off Agreement.

1.3 Services Requirements

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.

1.3.2 G-Cloud Services

Following the upgrade of the Customer's Oracle Hyperion Financial Management and Financial Data Quality Management version 11.1.1.3 to the latest release 11.1.2.4 (such upgrade having been carried out under a separate call off, and such upgraded software being referred to herein as the "Upgraded Software") the Customer and Supplier have agreed that the Supplier will assist the Customer with a review of the Upgraded Software, with a view to creating various enhancements (such enhancements to be carried out under a separate Call-off Agreement). The Supplier will continue to host and support the Upgraded Software on the Supplier's infrastructure ("Hosting Services" and "Support Services" respectively).

The Supplier shall carry out the following Services under this Call-off Agreement:

Professional Services. The Professional Services shall be carried out in accordance with the implementation plan set out in Section 12 of this Call-off Agreement, as may be amended by agreement in writing between the parties:

- Full system review. An in-depth analysis of processes, pain points, enhancement requests based on the upgraded system.
- Agree a prioritised and costed roadmap of system enhancements and process improvements

Hosting Services. The Supplier shall host the Upgraded Software using the following infrastructure, or such other infrastructure of equivalent specification as the Supplier, in its sole discretion, deems appropriate:

The terms relating to the Hosting Service are more particularly set out in Section 12.3

Support Services: The Supplier shall provide Support Services in respect of the Upgraded Software and the Hosting Services. The terms relating to the Support Services are more particularly set out in Section 12.4

1.3.2.1 Lot1 IaaS	N/A;
1.3.2.2 Lot 2 PaaS	N/A;
1.3.2.3 Lot 3 SaaS	6319925912141824 and / or
1.3.2.4 Lot 4 Specialist G-Cloud Services	4709375788711936
1.3.2.5 G-Cloud Additional Services	N/A.

2. PRINCIPAL LOCATIONS

2.1 Principal locations where the services are being performed

The onsite element of the work will principally take place in the Quarry House, Leeds, office of the Department of Health.

The Services may also be performed from the Supplier's offices, detailed above, and from the Supplier's and/or the Hosting Supplier's premises.

3. STANDARDS

3.1 Quality Standards

The quality standards in the delivery of the service will be commensurate with those previously agreed within the service delivery response document fully appended under section 12.3 of this agreement for reference in addition to;



2014 - ISO



2014 - ISO



2014 01 07 Quality,



2014_03 CFP



AUP - UKFast.pdf

9001-2008 certificate 14001-2004 certificatSecurity and EnvironrCertificate PAS 2060

3.2 Technical Standards

The Technical standards in the delivery of the service will be commensurate with those previously agreed within the service delivery response document fully appended under section 12.3 of this agreement for reference in addition to;



UKFAST-PCI-
PROOF-2014.pdf



UKFast_Security_Sta
tament_Nov_2014.pc



ISO27001-2013
Scope of Applicability



ISO Registration
8396 - ISO27001-201



Cloud Security
Principles.docx

4. ONBOARDING

4.1 On-boarding

The Services to be provided hereunder include a description of all on-boarding that forms part of the Implementation Services.

5. CUSTOMER RESPONSIBILITIES

5.1 Customer's Responsibilities

5.1.1 At all times, throughout the term of this Call-off Agreement, the Customer shall comply with all obligations set out herein and in all other documents referred to herein, or as agreed in writing between the parties, including but not limited to:

- a) providing reasonable access to the Customer's premises and to relevant personnel;
- b) taking decisions and making information available as requested by The Supplier either within the time-scales reasonably required by The Supplier or in the absence of a required timescale as soon as reasonably practicable following the request being made;
- c) appointing an authorised person who is able to make binding decisions for the Customer with regard to this Call-off Agreement, including authorising any change to the Services;
- d) providing all materials reasonably required by The Supplier to enable The Supplier to perform its obligations under this Call-off Agreement;
- e) ensuring that there is a legitimate licence for every copy of a software programme (e.g. Oracle) in use and that such licences permit use by The Supplier as required to perform the Services and comply with such licence terms and conditions and providing a copy of such licence to The Supplier and safely storing all disks, manuals, hard copy licence agreements and/or documentation relating to such software;
- f) providing reasonable facilities which may be required by The Supplier pursuant to this Call-off Agreement;
- g) notifying The Supplier if it becomes aware of any unauthorised use of all or part of the Services.
- h) keep Supplier informed of any change to the Customer's address and such other information as may effect the payment of Charges due;
- i) immediately cease to use any Internet Protocol Addresses allocated by the Supplier and acknowledge that Supplier may reallocate the Internet Protocol Addresses to a third party upon termination of the Call-off Agreement;
- j) refrain from announcing by any means any and all Internet addresses allocated to or by the Customer as part of an autonomous system;
- k) refrain from doing or allowing anything to be done which jeopardises the Hosting Services or any network to which it is from time to time connected.

5.1.2 The Customer shall not transfer its right to use the Hosting Services nor sublicense any deliverables provided in connection with the Hosting Services to any third party.

5.1.3 The Customer shall not (and shall not allow any third party to):

- a) use the Services in an unlawful manner or in contradiction of published legislation and regulations governing the Internet or accepted Internet practices and practices of any connected networks, or to transfer any illegal material (including but not limited to material which may be deemed to be offensive, abusive, indecent, defamatory, obscene, menacing, in contempt of Court or in breach of copyright, confidentiality, privacy or other rights);
- b) divulge any passwords that allow the Customer to have access to the Services to a third party and shall use all reasonable endeavours to keep all passwords confidential and inaccessible to third parties;
- c) use or permit the use of the Services other than in accordance with the relevant Documentation.
- d) remove any product identification, copyright, trademark, or other notices from the Hosting Services or any deliverables provided in connection with the Hosting Services;
- e) sell, provide, lease, lend, distribute over the internet the Hosting Services or any deliverables provided in connection with the Hosting Services;
- f) transfer any illegal material via the Hosting Services;
- g) send menacing, offensive, abusive or annoying messages whilst using the Hosting Services via the Supplier or any sub-contractor;

- h) load or use all or any part of the Hosting Services (whether or not modified or incorporated into or with other products or services) on or with any other machine or system other than as expressly authorised by The Supplier.

5.1.3 The Customer shall not disassemble, decompile, or otherwise reverse engineer all or any part of the Hosting Services.

5.1.4 The Supplier shall use reasonable endeavours to keep any passwords provided by the Customer confidential, however the Customer shall adopt a secure password policy involving regular changes of passwords and the use of non-obvious passwords. The Customer shall inform The Supplier as soon as possible thereafter as to the change in password(s).

5.1.5 The Customer shall comply with the Acceptable Use Policy. If, in the opinion of The Supplier, the Customer has violated the Acceptable Use Policy, The Supplier may suspend the provision of all or part of the Services to the Customer and may restrict or block Internet traffic to or from the Services.

5.2 Customer's equipment

In order to make use of the Services provided hereunder, the Customer shall have the following software and/or hardware infrastructure:

Client Software and Versioning

Administrative User	
Processor Manufacturer & Model	x 86 or x64 bit processor running at 2 GHz or better
Memory	Minimum 2GB
Operating system and Version	Windows 7 Windows 8 Windows 8.1 Windows 10
Installed Software	Microsoft Internet Explorer 9 - 11 Firefox 31.x ESR MS Office 2007, 2010, 2013 where the Hyperion Smart View add-in for Office is required Adobe PDF Reader Adobe Flash Player v10+ .NET 4 (required for Smart View) <i>Oracle EPM Smart View</i> <i>Oracle EPM Financial Reporting Studio</i> <i>Oracle EPM Financial Management Client</i>
Other Information	Internet Explorer 11 or higher is recommended for HFM web performance.
Bandwidth Requirements	Realistic minimum 256 Kb/s bandwidth For certain operations, specifically spreadsheet functionality, higher bandwidth may be required

and all other equipment and software and hardware infrastructure agreed between the parties in writing.

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

Senior Business Consultant £1,100 per day + expenses

The expected maximum value of this agreement is: £320,333 (net of VAT)

Indicate preferred payment profile by selecting one from:

6.1.1 Professional Services - Monthly in arrears

6.1.2 Hosting Services and Support Services – Quarterly in advance

6.2 Invoice format

The Supplier shall issue electronic invoices in accordance with the above payment schedule. 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.

7. DISPUTE RESOLUTION

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

Department of Health Christopher Young Deputy Director – Accounts Branch (GFM Division).

Brovanture Ltd Malcolm Brock Managing Director

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 2 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 [fifty percent (50%)

of the Charges payable by the Customer to the Supplier during the Call-Off Agreement Period.

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

10.1.1 At least ninety (90) Working Days of the date of the written notice specified in Clause CO-9.4 of the Call-Off Agreement with regard to Hosting

10.2 Termination Without Cause

10.2.1 At least ninety (90) Working Days in accordance with Clause CO-9.2 of the Call-Off Agreement with regard to Hosting

10.2.2 At least thirty (30) Working Days in accordance with Clause CO-9.2 of the Call-Off Agreement with regard to consulting and implementation

11. AUDIT AND ACCESS

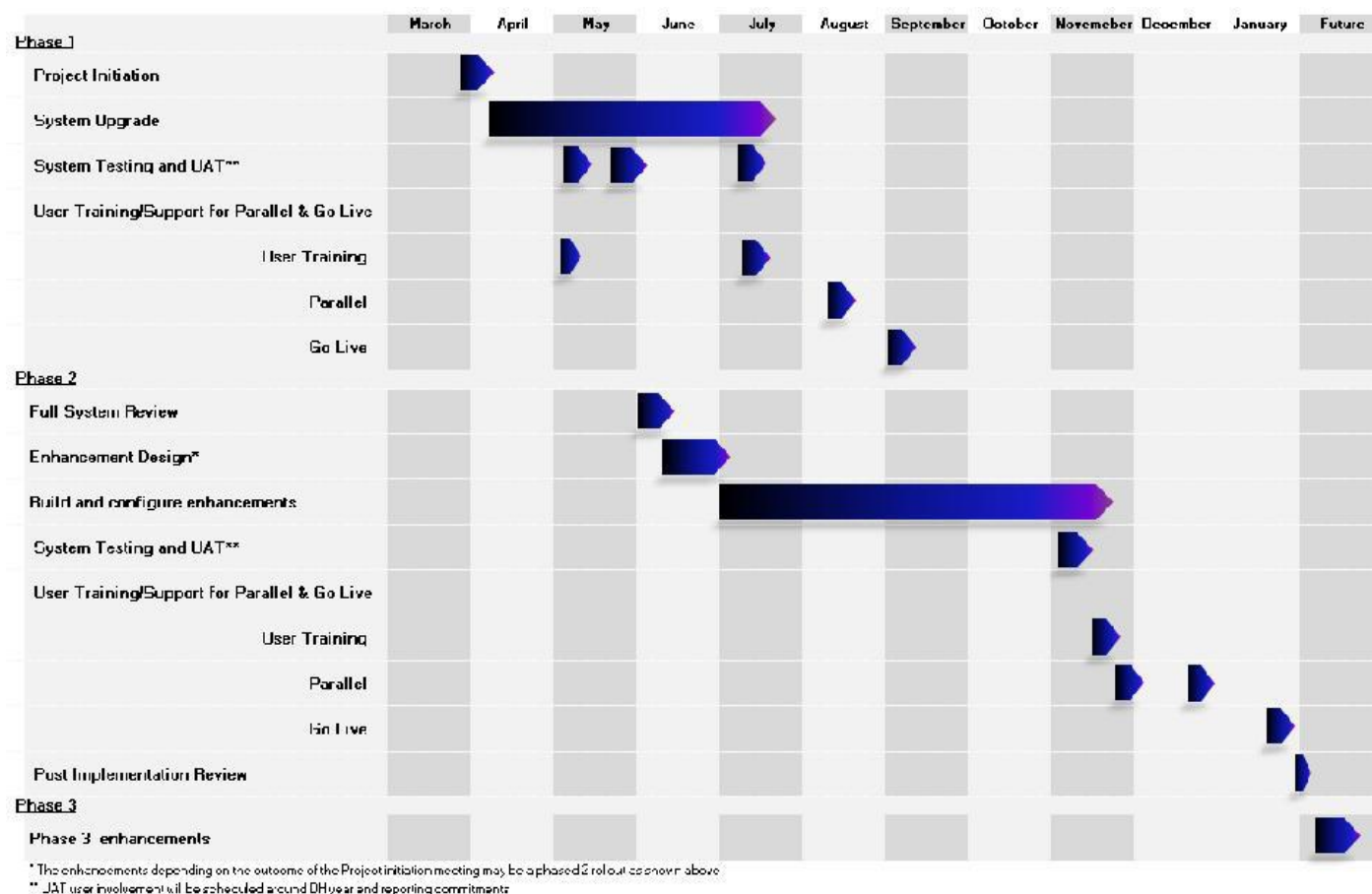
Twelve (12) Months after the expiry of the Call-Off Agreement Period or following termination of this Call-Off Agreement.

12. PERFORMANCE OF THE SERVICES AND DELIVERABLES

12.1 Implementation Plan and Milestones (including dates for completion)

12.2 The Implementation Plan as at the Commencement Date is set out below:

Milestone	Deliverables	Duration	Milestone Date	Customer Responsibilities
	Conduct of the service			
	Service review meetings			



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.

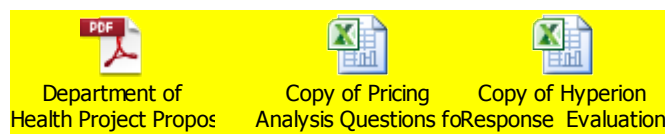
12.2.2 The Customer shall have the right to require that the Supplier includes any reasonable changes or provisions in each version of the Implementation Plan.

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



Operational Management					
Service Component	Service Description				Measure
Operational Service Review meetings	Monthly service review to discuss on going operations, budget and operational milestones delivery; to review; and resolve issues that present. Consider changes to system to remedy complex and or recurrent fundamental issues which cannot be met under normal priorities identified in table below:				Regular attendance by key operational management personnel. Production of minuted actions and timely circulation of such. Resolution of identified actions from previous meetings.
	Priority	Description	First Response	Progress	Fix
	1	Total apparent system loss.	30 mins	1 hour	10 hours (1 working day)

	2	A large number of users unable to access the system as normal. One or more users are unable to carry out critical business processes.	1 hour	5 hours	10 hours (1 working day)		
	3	One or more users are unable to perform some functions within the system. No critical systems/processes affected	10 hours (1 working day)	30 hours (3 working days)	60 hours (6 working days)		
	4	Minor or cosmetic problem with some functions within the system. Does not stop system from performing designed function	10 hours (1 working day)	120 hours (10 working days)	240 hours (24 working days)		
	5	Project/Development Request	50 hours 5 working days	As agreed	As agreed		
Management Information	<p>Regular reports against identified issues to allow signoff of issue response times and deliverables to allow invoices to be assessed and authorised for payment as appropriate.</p> <p>An assessment of system availability should also be presented and considered against agreed key performance indicators (to be established).</p> <p>Other reasonable management information should be supplied upon request and in agreement.</p>						<p>To be defined collaboratively and specifically to particular issues identified and adhering to System Support priority identified (1-5).</p> <p>System should be available</p>

		24 hours a day, seven days a week. In practice, 99% availability is acceptable.
Security Vetting	It is the intention of the department to conduct security checks on each employee of the organisation that will directly have access to information or system infrastructure. Any individual that does not meet the security requirements of the department will be replaced by Brovantage and not allowed access to any part of the information under this call off agreement. This action will be taken without the Department being made liable for any added expense incurred by this staffing change.	Security vetting procedure.

System configuration		
Service Component	Service Description	Measure
Hosting location – Business continuity	<p>The Supplier should state how the service can be restored in the event of a serious incident, specifically the Recovery Point Objective (RPO) and Recovery Time Objective (RTO). The RPO should not be earlier than the end of the preceding working day. The RTO should be within 8 working hours of the incident occurring. The Supplier should provide details of how data is backed up and storage or location arrangements to prevent concurrent loss of system and data.</p> <p>Working hours are 8am to 6pm (GMT)</p> <p>The Supplier should outline arrangements for disaster recovery, in the event of an incident that causes major loss or damage to the system or hosting environment.</p> <p>RPO and RTO can be met. Data is backed up within RPO agreement and stored on dedicated external storage. Multiple data centres provide DR capability, the logistics of DR recovery are dependent on the platform design. There are several methods which can be met (physical servers vs virtual etc.)</p> <p>In the event of the hosting provider not maintaining the suitable capacity for the running of the terms of this contract it would be the expectation of the Department that any supplier who is brought in to provide the service will be agreed prior to any movement of data and will be of a comparable nature located within the borders of the UK. The Supplier should state how the service can be restored in the event of a serious incident, specifically the Recovery Point Objective (RPO) and Recovery Time Objective (RTO). The RPO should not be earlier than the end of the preceding working day. The RTO should be within 8 working hours of the incident occurring. The Supplier should provide details of how data is backed up and storage or location arrangements to prevent concurrent loss of system and data.</p> <p>Working hours are 8am to 6pm (GMT)</p>	System operating as defined.

	<p>The Supplier should outline arrangements for disaster recovery, in the event of an incident that causes major loss or damage to the system or hosting environment.</p> <p>RPO and RTO can be met. Data is backed up within RPO agreement and stored on dedicated external storage. Multiple data centres provide DR capability, the logistics of DR recovery are dependent on the platform design. There are several methods which can be met (physical servers vs virtual etc.)</p> <p>In the event of the hosting provider not maintaining the suitable capacity for the running of the terms of this contract it would be the expectation of the Department that any supplier who is brought in to provide the service will be agreed prior to any movement of data and will be of a comparable nature located within the borders of the UK.</p>	
Performance, Response Times	<p>System functions must perform within acceptable time limits relative to the number of concurrent users, complexity of function being performed, and the size of data being processed. Peaks in use due to timing (e.g. high initial use that tapers off) and business cycles must not degrade performance to an unacceptable level. Acceptable levels will be further defined at design stage, however, typical examples of Key Performance Indicators would be data loads from large (350mb) .csv file into FDM, or other feeder system, to be less than two minutes; consolidations to compute within one minute; miss-match reports to compute and produce standard report within 3 minutes.</p> <p>When loaded with expected volumes of data, the system must provide responses to any standard screen enquiry within 8 seconds and produce print files for any consolidation report within 3 minutes.</p>	System performs as specified.
Capacity, Compatibility, Interoperability, Scalability.	The system must be able to run on known current and planned environments (e.g. Windows 10 O/S), and work with other standard software and hardware. Current and forecast use must be planned and provided for in terms of data storage, network bandwidth, known bottlenecks and any other resource use.	System operates as specified.
Accessibility.	EPM has a built-in UI for impaired users. For more information on AA rated accessibility of Oracle product see here: http://www.oracle.com/us/corporate/accessibility/policies/index.html	System operates as specified.
Supportability, Extensibility, Modifiability.	A support contract must be in place to provide for system support and a timetable of availability must be agreed to timetable maintenance (such as software and hardware updates) to ensure these routines are outside loading data activity times. Requests for planned outages should be submitted to DH for approval with a minimum of 4 weeks' notice. It is the intention of the Department to ask for the Supplier to provide a rate card for services that may be outside of the agreement in place to be called off on an ad hoc basis for the usage of the Department with mutual agreement during the conduct of the service.	Maintenance is provided at times agreed with DH.
Testability, Validation.	As part of initial deployment and subsequent changes the test version(s) of the system must be provided that enable testing of system features, data and performance as required. Validation and sign-off must be provided by testers and senior users before deployment(s) to production environment(s) are made.	User sign-off.
Portability.	The system must either be built and deployed in such a way as to be relatively easily moved to any new environment or host, or if not, the	System operates as

	associated risks this brings should be identified and actioned accordingly.	specified.
Access management.	All changes to user access (additions, removals, changes to access level or rights) must be able to be done by DH system administrators.	System operates as specified.
System Quality.	<p>The design, testing and deployment of the system must produce a system that causes, at most, an acceptably low number of faults or bugs in the production environment(s) to ensure that the production system is available no less than 99% of time. Other quality measures will include monitoring and reporting on system availability and performance.</p> <p>The Supplier will undertake testing in a separate test environment to the new system and for any subsequent changes made either as proposed by the Supplier or commissioned within a request for change process. After the Supplier has completed Supplier system testing, the new version in the test or other non-production environment will be made available for user acceptance testing. Any faults identified will be categorised in terms of impact as High, Medium and Low. All designated High must be resolved, retested and signed off before adoption into the production system. Deployment of any change with unresolved faults designated as Medium may be approved dependant on the number. Cumulative impact and acceptability of any workaround or other mitigation.</p>	System hand over as specified.
Able to support 70 named Hyperion consolidation module users and 10 named FDM, or other feeder system users.	<p>The system should be capable of coping adequately with 70 concurrent named Hyperion consolidation module users to ensure processes do not slow at high traffic times which is current experience. Initially 50 users will be required from implementation.</p> <p>Similarly, 10 FDM, or other feeder system, named users will be required initially.</p> <p>Stress testing should be deployed to ensure the system works effectively and to ensure that at even peak periods, and peak user volumes, performance is not degraded.</p>	System is appropriately scalable.
Able to support current and potential future processing and storage volumes.	<p>The system must support the following current volumes, with balances to be held for all quarters in the current year and all quarters in the previous year, with room for expansion, or capability for reduction to cope with any future change in volumes:</p> <p>Entities held on the consolidation system: 1,700 with scope for up to 3,000.</p> <p>Bodies held on the consolidation system for intercompany balance matching purposes (including bodies with no other accounts held on the system, e.g. local authorities): 1,500 with scope for up to 2,500.</p> <p>Accounts held on the system: 1,700 with scope for up to 3,000.</p> <p>Years of data to be held for historic enquiry / reporting: 7 years.</p>	System is appropriately scalable.
Scalable solution.	It should also be noted that the DH will need to respond to any future changes in legislation and/or reconfiguration of the DH group and related	System is appropriately

	account formation. Therefore incoming software solutions should to be scalable to accommodate these changes.	scalable.
Support		
Service desk availability	<p>The desk is manned from</p> <p>08:00 to 18:00 Monday to Friday.</p> <p>Extended support hours are available by prior arrangement.</p> <p>Support is provided by telephone for which there is a dedicated telephone number (01483 685454) with 6 lines attached to it, email via the support@brovanture.zendesk.com portal and virtualization via Citrix.</p> <p>Helpdesk support is on an annual fixed fee basis and is unlimited.</p>	<p>Support available from appropriately trained Hyperion experienced staff.</p>
<p>Non delivery of any of the areas outlined above –specifically – or within the appended documents above, will incur the non-sign off of milestones (as outlined above) either in part or in whole. This non-compliance will be discussed at the regular management meetings between the parties. This may result in an adjustment to the milestone payments based on an agreed payment scale. This payment scale will be reasonable and upon agreement that service levels or milestones have not been reached to a required standard or at a required date.</p> <p>These will be in line with the wider agreement in the call off contract and CCS Framework agreement.</p>		
<p>12.3 Hosting Services</p> <p>In this Call-off Agreement, in respect of the Hosting Services provided hereunder, the following terms shall have the following meanings:</p> <p>“Hosting Supplier” means the third party hosting service provider engaged by The Supplier to provide some or all of the Hosting Services;</p> <p>“Internet” means the global data network comprising interconnected networks to which The Supplier is connected and provides access to its clients;</p> <p>"Internet Protocol Address" means such sequence of alpha numeric or numeric only characters as are used from time to time by the Customer to identify himself and or his computer or computers to other users of other computers to which The Supplier is from time to time connecting or otherwise forwarding data to and from the Customer;</p> <p>12.3.1 The Supplier shall make the Hosting Services available as soon as reasonably practicable after the Commencement Date.</p> <p>12.3.2 The Supplier grants to the Customer a perpetual, royalty-free, non-exclusive, non-sub-licensable and non-transferable licence to use the Hosting Services for the term of the applicable Accepted Order, subject to the restrictions set forth in this Call-off Agreement, and solely for the Customer's internal purposes. The licence granted hereunder does not entitle the Customer to receive any updates, modifications, or new releases to any deliverables or software.</p> <p>12.3.3 The Supplier and its Hosting Supplier reserve any and all of their copyright, trade marks, trade names, patents and other intellectual property rights created, developed, subsisting or used in or in connection with any the Hosting Services or any deliverables, which shall remain the sole property of The Supplier and/or the Hosting Supplier, as applicable.</p>		

12.3.4 Where third party software is provided to the Customer as part of the Hosting Services, such software shall be provided subject to the Customer's acceptance of the relevant suppliers' software licence(s) for such third party software.

Hosting Services Service Levels

The Supplier shall ensure that the Availability of the Hosting Services in any month is not less than 99%.

Availability for a month shall be calculated following the end of that month using the formula:

$$\text{"Availability"} = \frac{(\text{OH} - \text{D})}{\text{OH}} \times 100$$

Where:

OH = Total Operating Hours of the Infrastructure during the month, where "Operating Hours" are 00.00am to 23.59pm; and

D = Total Downtime during Operating Hours during the month, where "Downtime" means non-availability of one or more of the primary functions of the Infrastructure but excludes any agreed downtime and emergency or scheduled maintenance.

12.4 Support Services

In this Call-off Agreement, in respect of the Support Services provided hereunder, the following terms shall have the following meanings:

"Additional Charges" means additional sums which may be charged under this section 12.4 of this Call-off Agreement in accordance with The Supplier's rates from time to time for work undertaken on a time and materials basis;

"Fault" means either (a) failure of the Upgraded Software to perform in accordance with the Documentation; or (b) a cessation, interruption or degradation of the usual functionality of the Upgraded Software;

"Fault Reporting Co-ordinator" means the person who shall be responsible for reporting Faults to The Supplier and receiving information on the status and resolution of Faults from The Supplier;

"IT Contact" means the person whose contact details are set out in the Schedule, or such other person whose details The Supplier may notify the Customer of from time to time;

"Maintenance Release" means any corrected version of any of the Upgraded Software from time to time issued by the owner or licensor of such Upgraded Software, including but not limited to updates and service packs;

"New Release" shall mean a new version of the Upgraded Software which is publicly marketed and offered for purchase by the owner or licensor of such software in the course of its normal business, being a version which contains such significant differences from the previous versions as to be accepted in the market place as constituting a new product;

"Report" means a report by the Customer of a Fault in accordance with clause 12.4.2;

"Software Documentation" means the user manual for the Upgraded Software, as amended from time to time, which is available on request from the Customer;

"Working Days" means Monday to Friday inclusive with the exception of bank and public holidays in the country in which the Services are to be performed;

"Working Hours" means 08.00 to 18.00 UK time on a Working Day.

12.4.1 The Support provided by The Supplier shall comprise the following:

- a) responding to requests for advice on the use of the Upgraded Software by telephone or email during the Working Hours;
- b) the remote diagnosis of Faults in the Upgraded Software and, where possible, instructions as to the rectification of such Faults by email during the Working Hours;
- c) testing of Maintenance Releases on a system with the same configuration as the Customer's system prior to installation in the Customer's system to ensure compatibility and assess the impact that the Maintenance Release will have on the Customer's system.

12.4.2 The Customer may report Faults to The Supplier during the Working Hours by telephone, email or fax to the IT Contact. Such reports shall be made by the Customer as soon as an Fault is detected and shall include sufficient material and information to enable The Supplier to duplicate the problem, including, but not limited to:

- a) a clear and accurate description of the Fault;
- b) the area of the Upgraded Software and business to which it relates;
- c) what function was being performed when the Fault occurred and/or the sequence of events leading up to the occurrence of the Fault;
- d) the error message displayed, if any; and
- e) any other information relating to the Upgraded Software or the Fault which The Supplier requires to perform its obligations hereunder,

and for the avoidance of doubt, the The Supplier shall be entitled not to provide the Services affected by the Fault until the Customer has complied with this clause 12.4.2.

12.4.3 The Supplier's initial approach will be to provide a permanent fix via Oracle,.

12.4.4 In the short term if no permanent fix is available the Supplier may propose a practical workaround to the Fault. The Supplier will provide a risk assessment on this workaround and will obtain the Customer's agreement prior to applying the change

12.4.5 The Customer shall appoint a Fault Reporting Co-ordinator and shall keep The Supplier informed of the name, telephone number and email address of the Fault Reporting Co-ordinator from time to time. The Supplier shall not be liable for any failure or delay in performing its obligations pursuant to this Agreement that results from the Customer's failure to comply with this.

12.4.6 The Support shall not include the diagnosis and rectification of any Fault resulting from:

- a) the improper use operation or neglect of the Upgraded Software or the equipment upon which it is run;
- b) the modification of the Upgraded Software or its merger (in whole or in part) with any other software except as permitted by the Licence;
- c) the failure by the Customer to implement Maintenance Releases or recommendations in respect of or solutions to Faults previously advised by The Supplier;
- d) any repair adjustment alteration or modification of the Upgraded Software by any person other than The Supplier without The Supplier's prior consent;
- e) the use of the Upgraded Software for a purpose for which it was not designed;

nor shall it include:

- f) rectification of lost or corrupted data arising for any reason other than The Supplier's own negligence;
- g) making any amendment to the software application that forms part of the Upgraded Software;
- h) loss or damage caused directly or indirectly by operator error or omission;
- i) a fault in Customer or third party software or applications or any upgrade or new release in respect thereof;
- j) a fault in the equipment or in any other software operating in conjunction with or integrating with the Upgraded Software; or
- k) a fault that cannot be replicated by The Supplier.

12.4.7 The Supplier may agree upon receipt of a request by Customer to provide Support notwithstanding that the Fault results from any of the circumstances, Support to Customer in circumstances which are not covered by this this section 12.4 of this Call-Off Order. The Supplier shall in such circumstances be entitled to levy Additional Charges monthly in arrears and shall be paid by the Customer (together with value added tax thereon) within 14 days of receipt of an invoice in respect of such Additional Charges.

12.4.8 The Supplier or the licensor of all or any part of the Upgraded Software may provide Customer with Maintenance Releases and New Releases from time to time during the term of provision of the Support Services at its sole discretion. Customer shall promptly follow all instructions provided in respect of the Maintenance Releases and New Releases.

12.4.9 All email contact with The Supplier should be to the following email address unless Customer is notified to the contrary by The Supplier Ian.May-Miller@brovanture.com

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	
Position	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
----------------	--

Position	
Signature	
Date	

DRAFT

G-CLOUD SERVICES CALL-OFF TERMS

Department of Health - and -

Brovanture Ltd

relating to

the provision of G-Cloud Services.

DRAFT

CALL-OFF AGREEMENT TERMS AND CONDITIONS

THIS CONTRACT is made on the [] day of [] 20[]

BETWEEN

- (1) [insert name of CUSTOMER] of [insert address] (the “Customer”); and
- (2) Brovanture Ltd a company registered in the United Kingdom under company number 05582633 and whose registered office is at The White House, 2 Meadow, Godalming, Surrey, GU73HN (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 Collaboration Agreement must be executed between the Parties.**

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.