



Crown
Commercial
Service

RM 1557vii

G-CLOUD 7

Call-Off Agreement and Call-Off Terms

Secure Digital Publisher SAAS Licence and Development

CQC DD 005

Schedule 2: Call-Off Terms

Effective Date	01/04/2016	Order Reference	CQC DD 005
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FROM:

Customer	Care Quality Commission (CQC) "Customer"
Customer's Address	Care Quality Commission, 3 rd Floor, 151 Buckingham Palace Road, London, SW1W 9SW
Invoice Address	Care Quality Commission, T70 Payables F175, Phoenix House, Topcliffe Lane, Wakefield, West Yorkshire, WF3 1WE
Principal Contact	Name: Simon Meredith Address: Care Quality Commission, 3 rd Floor, 151 Buckingham Palace Road, London, SW1W 9SW E-mail: simon.meredith@cqc.org.uk

TO:

Supplier	Axis12 Ltd "Supplier"
Supplier's Address	The Ivories, Unit 14, 6/18 Northampton Street, London, N1 2HY
Account Manager	Name: [REDACTED] Address: The Ivories, Unit 14, 6/18 Northampton Street, London, N1 2HY Phone: [REDACTED] e-mail: [REDACTED]

1. TERM**1.1 Commencement Date**

This Call-Off Agreement commences on: 01/04/2016

1.2 Expiry Date

This Call-Off Agreement shall expire on:

1.2.1 31/03/2017; or

1.2.2 the second (2) anniversary of the Commencement Date; whichever is the earlier, unless terminated earlier pursuant to Clause CO-9 of the Call-Off Agreement.

The Customer shall have the right to extend the agreement up to a period of 12 months. The Customer will specify the number of months required for the extension in writing prior to the Expiry Date (31/03/2017) in the event the extension is required.

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

1.3.2.3 Lot 3 SaaS Services- Service: Cross platform publisher in a box on the cloud

This agreement contains two key Service Requirements relating to the provision of Secure Digital Publisher; these two Requirements are:

1. SaaS Licence Renewal
2. Call-Off Development Requirements

1. SaaS Licence Renewal

Detailed Licence Requirements (split into Parts a – d)

a) **Service:** Renewal of the SaaS Licence is required, which entitles CQC to use the Secure Digital Publishing (SOP) tool for post Wave 2 inspection reports across all sectors.

Schedule and duration of Part (a)

This Licence is for one year beginning April 1st 2016 (with the provision to extend as per Point 1.2 of this Order Form) at a total cost of [REDACTED] /year payable in four quarterly instalments of [REDACTED]

b) **Service:** To Increase the capacity of the infrastructure for the SOP and (interim) ESB system. To support the increased volumes expected during Wave 3. The Customer has stated that Central Processing Unit (CPU) and Memory must be scaled to support a loading of 50 concurrent users on the live infrastructure. The following is therefore required:

SOP Hosting@ [REDACTED]

ESB Hosting | Support @ [REDACTED]

Key Deliverables of Part (b):

Key deliverables relating to the above are as follows:

- [REDACTED]
- [REDACTED]

Support for Part (b):

Support required (Included within SaaS costs+ ESB Costs) is as follows:

- Application monitoring
- Monitoring of hardware availability and performance
- Security updates and testing to be provided to support resilience
- 1 day(s) per month support for ESB configuration.

Schedule and duration of Part (b)

This licence is for one year beginning April 1st 2016 (with the provision to extend as per Point 1.2 of this Order Form) at a total cost of [REDACTED] /year payable in four quarterly amounts of [REDACTED]

c) **Service:** Building resilience and DR into the production infrastructure of the SOP. To ensure that the SOP infrastructure is resilient enough to support Wave 3 authoring, and in the event of failure, the continuation of infrastructure vital to SOP we require the following;

Key Deliverables of Part (c):

Key deliverables relating to the above are as follows:

████████████████████
 ████████████████████
 ██████████

Support for Part (c):

Support required (Included within SaaS costs) is as follows:

- Application monitoring
- Monitoring of hardware availability and performance
- Regular security updates and testing to be provided to support resilience

Schedule and duration of Part (c)

This licence is for one year (with the provision to extend as per Point 1.2 of this Order Form) beginning April 1st 2016 at a total cost of ██████████ payable in four quarterly amounts of ██████████.

d) Service: Build development and test environments for SOP. To support the ongoing development and testing of publishing templates for SOP functionality, the Customer requires the following environments:

Devffest Hosting@ ██████████ per month

Key Deliverables of Part (d):

Key deliverables relating to the above are as follows:

████████████████████
 ████████████████████
 ████████████████████
 ██████████

Support for Part (d):

Support required (Included within SaaS costs) is as follows:

- Application monitoring
- Monitoring of hardware availability and performance
- Regular security updates and testing to be provided to ensure resilience

Schedule and duration of Part (d)

This licence (with the provision to extend as per Point 1.2 of this Order Form) is for one year beginning April 1st 2016 at a total cost of ██████████ payable in four quarterly amounts of ██████████.

2. Call-Off Development Requirements

Service: The Customer may require the Supplier to provide services for Development relating to Secure Digital Publisher on a call-off basis. Services are to be provided at the Customers request based on pre-agreed day-rates stipulated within Table 1 of this Section 1.3.2.3.

Further Customer Context: The Customer (CQC) has been requested internally to provide a number of changes and enhancements to Secure Digital Publisher to support evolving policy and meet the inspection report requirements specified by the organisation. This is broken down into three inspectorates; Primary Medical Services (PMS), Hospitals and Adult Social Care.

Development Resource Required: The Customer may require Development assistance to be undertaken by developers of an appropriate skill level to meet the requirements of the work. The Customer requests that the Supplier provides rates for services based on the supply of Standard Technical Development assistance; subject

to the level of complexity of the requirement these rates may vary and in such event should be agreed on a case-by-case basis in writing.

Anticipated Work: Due to the Call-Off nature of this Development requirement the exact Development work and days required will be specified at the Customers’ Discretion at the point of Call-off and the Customer will aim to provide at least two weeks written notice when requesting the Development services. It is however anticipated that projects of the following nature will be required:

Table 1: Indicative Development Projects (this list is subject to change and not exhaustive of potential Development required over the life-cycle of the Contract)

Project	Inspectorate	Details
Hospitals Reports Reporting Improvement	Hospitals	Possibly new templates
Hospitals and PMS Under Review Flag	Hospitals	NEW URT and allow INS2 reports to be published via DPUB
Independent Doctors Report and Slimming Clinics template	Primary Medical Services	New template or enhancement of current one
Update to new Core Service	Hospitals	New non-core service in template on left hand nav called Specialist Rehabilitation for provider and location.
Patient Transport Services (PTS)	Hospitals	Possibly new template required/ or some other way of displaying reports that doesn't replace the actual provider report
Mental Health visit reports	Mental Health	Possibly New template required or use of old report uploader.

Day-Rates: The Services will be provided at the following day-rates (rates are provided based on the supply of Standard Technical Development assistance; subject to the level of complexity of the requirement these rates may vary and in such event should be agreed on a case-by-case basis in writing by both the Customer and Supplier):

Discounted Volume Bands for Development Days Worked (1 day equals standard 9am-5pm)	Day Rate ex VAT (£)
██████████	██████████
██████████	██████████
██████████	██████████
██████████	██████████

A review of the days worked will occur at the Expiry Date of this agreement and The Customer will be credited for any days worked which fall within the discounted price-bands.

2. PRINCIPAL LOCATIONS

2.1 Principal locations where the services are being performed

Services will be performed at either of the following addresses:

Customer premises: Care Quality Commission, 3rd Floor, 151 Buckingham Palace Road, London, SW1W 9SW

Supplier premises: The Ivories, Unit 14, 6/18 Northampton Street, London, N1 2HY

3. STANDARDS

3.1 Quality Standards

The Supplier must adhere to the Quality standards required by the Customer. These standards will be discussed throughout completion of each individual Development requirement.

3.2 Technical Standards

The Supplier must adhere to the Technical standards required by the Customer. These standards will be discussed throughout completion of each Development requirement. The Supplier will be required to work with the Buyer's existing systems and interfaces.

The Customer may request that the Supplier provides information relating to the following Key Performance Indicators (KPI's) designed to monitor performance of the Services and may review such KPI's on a quarterly basis:

1. Supplier response time from receipt of request of Development Services- Maximum time for delivery 2 weeks following receipt of request.
2. Proof provided by Supplier of support deployed relating to the Licence Element of this agreement.

4. ONBOARDING

4.1 On-boarding

Not applicable as this is a continuation of the previous contract.

5. CUSTOMER RESPONSIBILITIES

5.1 Customer's Responsibilities

The Customer will be responsible for:

- Ensuring that any support requested under the SaaS Licence Element of the requirement is specified and cascaded to the Supplier in advance of the requested start-date.
- Specifying the development and days-work required on a call-off basis ensuring that the Supplier has sufficient notice to deploy resource.
- Making the necessary arrangements to ensure the Supplier can work in the Customer's premises if required.

5.2 Customer's equipment

The Customer will provide access to the necessary equipment including any laptops and servers required to conduct the services outlined in Point 1.3 of this Order Form.

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).

The total price for the SaaS Licence Element of the Agreement is: [REDACTED]

The price for the Development requirement is based on the following day rates to be deployed on a call-off basis:

Discounted Volume Bands for Development Days Worked (1 day equals standard 9am-5pm)	Day Rate ex VAT (£)
[REDACTED]	[REDACTED]

Payment will be made Quarterly in arrears for the Licence requirement.

Payment will be made Monthly in arrears for the Development requirement.

6.2 Invoice format

The Supplier shall issue paper invoices Quarterly in arrears for the Licence requirement and Monthly in arrears for the Development requirement as per the break-down provided within point 1.3.2.3 of this Order Form. 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:

Director Level (Finance director or equivalent).

7.2 Mediation Provider

Centre for Effective Dispute Resolution.

8. LIABILITY

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

8.1 The annual aggregate liability of either Party for all defaults resulting in direct loss of or damage to the property of the other Party (including technical infrastructure, assets, equipment or IPR but excluding any loss or damage to the Customer Data or Customer Personal Data) under or in connection with this Call-Off Agreement shall in no event exceed £1,000,000.

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.

8.3 The annual aggregate liability under this Call-Off Agreement of either Party for all defaults shall in no event exceed the greater of one hundred and twenty five percent (125%) per cent 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

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

10.2 Termination Without Cause

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

11. AUDIT AND ACCESS

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

12. PERFORMANCE OF THE SERVICES AND DELIVERABLES

12.1 Implementation Plan and Milestones (including dates for completion)

Please see Point 1.2 Below

12.2 The Implementation Plan detailing the key Milestones for this Agreement are as follows

Table 2: SaaS Licence Requirement Milestones:

Implementation Milestone	Anticipated Completion Date
1. Completion and review of services delivered under Part (a) detailed	31/06/2016 (and the last day of

within Section 1.3.2.3 of this Order Form and subsequent payment by the Customer if satisfied Milestone complete.	Each quarter thereafter until Expiry Date)
2. Completion and review of services delivered under Part (b) detailed within Section 1.3.2.3 of this Order Form and subsequent payment by the Customer if satisfied Milestone complete.	31/06/2016 (and the last day of Each quarter thereafter until Expiry Date)
3. Completion and review of services delivered under Part (c) detailed within Section 1.3.2.3 of this Order Form and subsequent payment by the Customer if satisfied Milestone complete.	31/06/2016 (and the last day of Each quarter thereafter until Expiry Date).
4. Completion and review of services delivered under Part (d) detailed within Section 1.3.2.3 of this Order Form and subsequent payment by the Customer if satisfied Milestone complete.	31/06/2016 (and the last day of Each quarter thereafter) until Expiry Date).

Table 3: Development Requirement Milestones:

Milestone	Anticipated Completion Date
5. Review of days called-off Monthly and subsequent payment by the Customer if satisfied Milestone complete.	Last day of each month until Expiry Date
6. Review of total days worked throughout Contract life-cycle and the Supplier to credit any discounted rates due to the Customer.	Expiry Date (31/03/2017)

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

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

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

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

12.3 Service Levels

N/A

13. [COLLABORATION AGREEMENT

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

11. Alternative Clauses (select from Schedule 9: Alternative Clauses)

N/A

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	Directo [Redacted]
Signature	[Redacted]
Date	29.09.2 [Redacted]

For and on behalf of the Customer:

Name and Title	
Position	
Signature	
Date	

G-CLOUD SERVICES CALL-OFF TERMS

CARE QUALITY COMMISSION (CQC)

- and –

AXIS12 LIMITED

relating to the provision of G-Cloud Services.

CALL-OFF AGREEMENT TERMS AND CONDITIONS

THIS CONTRACT is made on the 29TH day of September 2016

BETWEEN

- (1) Care Quality Commission of 151 Buckingham Palace Road, London, SW1W 9AZ (the “**Customer**”); (the “**Customer**”); and
- (2) Axis12 Limited, a company registered in England and Wales under company number 07215135 and whose registered office is at Unit 14, The Ivories, 6-18 Northampton Street, London, N1 2HY (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-9.2.1.2 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

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

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

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

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

CO-21 VARIATION PROCEDURE

CO-21.1 The Customer may request in writing a variation to this Call-Off Agreement provided that such variation does not amount to a material change of the Framework Agreement and/or this Call-Off Agreement and is within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

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

CO-21.3 In the event that:

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

CO-22 DISPUTE RESOLUTION

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

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

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

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

Schedule 3: Call-Off Ordering Procedure

S3-1 BACKGROUND

- S3-1.1 All Call-Off Agreements from this Framework Agreement will be conducted using the Digital Marketplace.
- S3-1.2 All Call-Off Agreements from this Framework Agreement will apply the award criteria stipulated in this Framework Schedule 3.

S3-2 CATALOGUE – LOTS 1-4

- S3-2.1 The Catalogue provides the list of products which may be required by Other Contracting Bodies during the Term and any Call-Off Agreements. The products are listed in Schedule 1 (G-Cloud Services) according to the respective G-Cloud Services on offer in Lots 1-4.
- S3-2.2 The Authority shall create a Catalogue for the G-Cloud Services in each Lot where a Framework Supplier has been awarded a place on the Framework Agreement. The Catalogues shall include each of the individual G-Cloud Services as specified in the Schedule 1 (G-Cloud Services).
- S3-2.3 The structure of the Catalogue shall comprise of a number of menu and content pages which set out all relevant details of the G-Cloud Services offered within each Lot.

S3-3 PROCESS – DIRECT AWARD LOWEST PRICE

- S3-3.1 If the Authority or any Contracting Body decides to source the G-Cloud Services through this Framework Agreement then it will award its Call-Off Agreement in accordance with the procedure in this Framework Schedule 3 (Ordering Procedure) and the requirements of the Regulations and the Guidance.
- S3-3.2 The Customer would use a credit reference agency (currently Experian) as the first step in assessing Supplier's economic and financial standing and the report provided by a credit agency will be used to determine the level of financial risk the Supplier would represent. If the Customer determines that the Supplier's financial risk is determined as being above (i.e. worse than) average the Supplier will not be successful in their award.
- S3-3.3 Subject to paragraph S3-3.1, any Contracting Body ordering the G-Cloud Services under this Framework Agreement shall:
- S3-3.3.1 Apply Long-Listing -
- in the first instance and would have to derive a long-list of service offerings which meet their essential minimum requirements.
- S3-3.3.2 Apply Short-Listing -
- Contracting Bodies will then proceed to reduce this list of service offerings down to a short-list. They will short-list those offerings which provide a suitable service within the available budget of the Contracting Body.
- S3-3.4 Contracting Bodies may at this point directly award to the Framework Supplier with the lowest price.

S3-4 PROCESS – DIRECT AWARD: MOST ECONOMICALLY ADVANTAGEOUS TENDER (MEAT)

- S3-4.1 In the event that Contracting Bodies are unable to identify which service best meets their needs purely on the basis of an evaluation of price then all short-listed offerings will be compared to the Customer's service requirements.
- S3-4.2 The Customer would use a credit reference agency (currently Experian) as the first step in assessing Supplier's economic and financial standing and the report provided by a credit agency will be used to determine the level of financial risk the Supplier would represent. If the Customer determines that the Supplier's financial risk is determined as being above (i.e. worse than) average the Supplier will not be successful in their award.

S3-4.3 The evaluation model must apply the following evaluation criteria albeit Contracting Bodies may apply their own weighting to each of the criteria:

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

S3-4.4 Contracting Bodies are permitted to conduct such tests and demonstrations or set service definitions or standards as are necessary to enable them to establish which of the short-listed offerings provides the most economically advantageous solution to their needs. In the first instance, Service Definitions will provide appropriate information.

S3-4.5 All short-listed offerings must be evaluated against the same evaluation model.

S3-4.7 Where a Call-Off Agreement is awarded following the direct award process outlined in this paragraph S3-4 in this Framework Schedule 3 the Contracting Body shall notify all short-listed Suppliers that did not succeed that they have been considered for award, and inform those how their offering(s) performed on the evaluation.

Schedule 4: Management Information Requirements

S4-1 AUTHORITY REPORTING REQUIREMENTS (FRAMEWORK AGREEMENT)

- S4-1.1 The Authority shall provide the Supplier with a template report by email prior to or shortly after by the first Working Day of each Month ("**Monthly email**"). It is the responsibility of the Authority to provide the Supplier with an up to date template report. Templates from previous Months should not be used as the date will be incorrect and the Authority's system will not accept it. An example of the template report current at the date of this Framework Agreement is available from the e-Tendering Portal.
- S4-1.2 The Authority shall provide guidance notes for completing the template report and shall update them from time to time. The template report should be completed by the Supplier in accordance with the guidance notes. Some fields in the template report are mandatory and these fields will be highlighted in the guidance notes. Returns will not be accepted unless all mandatory fields have been completed by the Supplier.
- S4-1.3 The Supplier undertakes to provide timely, full, accurate and complete Management Information ("**MI**") reports to the Authority which incorporates the data, in the correct format, required by the MI reporting template. The initial reporting template is set out in the Annex to this Framework Schedule 4.
- S4-1.4 The Supplier may not make any amendment to the current MI reporting Template without the prior Approval.
- S4-1.5 The Authority shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Supplier is required to supply to the Authority.
- S4-1.6 The template report should be used to report Orders received, invoices raised during the Month that is being reporting on, regardless of when the work was actually done (e.g. if the invoice was raised in October but the work that was invoiced was done in September the Supplier should report the invoice in October's return not September's). Business should be reported once only as an Order and once again as an invoice, where the Order and the invoice take place in different Months. The Supplier should also inform the Authority of any corrections to previous Months' Management Information. No amendment should be made to the current template report without the prior notification and the Approval.
- S4-1.7 Any errors or omissions may result in the return being rejected and an administration charge being added to the Management Charge invoice.
- S4-1.8 The Supplier must return the template by 7th day of each Month including where there has been no activity in the relevant Month ("nil returns"). Where the 7th day falls on a weekend or public holiday then the nearest Working Day before the 7th day.
- S4-1.9 The completed template should be returned to the sender of the Monthly email or as otherwise communicated to the Supplier from time to time. In the subject line of the return email the Supplier must insert this Framework number, the Supplier's name and the Month that the return relates to.
- S4-1.10 The deadline for the return of the template is the Reporting Date provided for in this Framework Agreement. If a return has not been received by the deadline the Supplier will be contacted by a member of the Authority's data team and an administration charge may be added to the relevant invoice.
- S4-1.11 MI Failure is when an MI Report:
- S4-1.11.1 contains any material errors or material omissions or a missing mandatory field; or
 - S4-1.11.2 is submitted using an incorrect MI reporting template; or
 - S4-1.11.3 is not submitted by the Reporting Date (including where a Nil Return should have been filed); or
 - S4-1.11.4 then the Authority may deem the failure to submit an MI Report correctly as an "**MI Failure**".

S4-1.12 Following an MI Failure the Authority may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided to the Authority. The Supplier shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

S4-2 ADMIN FEES

S4-2.1 If, in any rolling three (3) Month period, two (2) or more MI Failures occur, the Supplier acknowledges and agrees that the Authority shall have the right to invoice the Supplier Admin Fees and (subject to paragraph S4-1.11) in respect of any MI Failures as they arise in subsequent Months.

S4-2.2 If, following activation of the Authority's right to charge Admin Fee(s) in respect of MI Failures pursuant to paragraph S4-2.1, the Supplier submits the Monthly MI Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Authority shall not be prevented from exercising such right again during the Term if the conditions in paragraph S4-2.1 are met.

S4-2.3 The Supplier acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Authority as a result of the Supplier failing to supply Management Information as required by this Framework Agreement.

S4-2.4 Authority shall notify the Supplier if any Admin Fees arise pursuant to paragraph S4-2.1 above and shall be entitled to invoice the Supplier for such Admin Fees which shall be payable in accordance with FW-9 as a supplement to the Management Charge. Any exercise by the Authority of its rights under this paragraph shall be without prejudice to any other rights that may arise pursuant to the terms of the Framework Agreement.

ANNEX A: MI REPORTING TEMPLATE- NOT USED

Schedule 5: Records and Audit Access

- S5-1.1 The Supplier (which for the purposes of this paragraph includes all Sub-Contractors) shall keep and maintain until 12 Months after the date of termination or expiry of this Framework Agreement or of the last Call-Off Agreement (whichever is the later) (or such other period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the G-Cloud Services provided under it, the Call-Off Agreements entered into with Contracting Bodies and the amounts paid by each Contracting Body.
- S5-1.2 The Supplier shall provide the Authority with a completed Self Audit Certificate at the termination (or expiry) of this Framework Agreement for whatever reason. The Self Audit Certificate shall be completed by responsible senior member of the Supplier's management team or by the Supplier's external auditor or company managing director and shall be provided to the Authority no later than three (3) Months after termination or expiry of this Framework Agreement.
- S5-1.3 The Supplier shall afford the Authority, the Authority's representatives, the National Audit Office and/or auditor appointed by the Audit Commission ("**Auditors**") access to the records and accounts referred to, and for the purposes specified, in paragraph S5-1.1 at the Supplier's premises and/or provide copies of the records and accounts, as may be required and agreed with the Authority (or relevant Other Contracting Body) from time to time, in order that the Authority (or relevant Contracting Body) may carry out an inspection of the records and accounts referred to in paragraph S5-1.1 for the following purposes:
- S5-1.3.1 verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Framework Agreement); and
- S5-1.3.2 review any books of accounts kept by the Supplier in connection with the provision of the G-Cloud Services for the purposes of auditing the Charges and Management Charges under the Framework and Call-Off Agreement only.
- S5-1.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) on request during the Term and during the Call-Off Agreement Period and for a period of twelve (12) Months after termination or expiry of the Term or the last Call Off Agreement (whichever is the later) to the Authority (or relevant Contracting Body or Auditors) and its internal and external auditors.
- S5-1.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the G-Cloud Services pursuant to the Call-Off Agreements, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Authority.
- S5-1.6 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:
- S5-1.6.1 all information requested by the Auditor within the scope of the Audit; and
- S5-1.6.2 access to the Supplier Staff.
- S5-1.7 If an Audit reveals:
- S5-1.7.1 an underpayment by the Supplier to the Authority in excess of five (5%) per cent of the total Management Charge due in any monthly reporting and accounting period; and/or
- S5-1.7.2 a Material Breach;
- then the Supplier shall reimburse the Authority its reasonable costs incurred in relation to the Audit and the Authority shall be entitled to exercise its rights to terminate this Framework Agreement pursuant to Clause FW-12 (Termination).
- S5-1.8 Each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under this Schedule, save as specified in paragraph S5-1.7 of this Schedule 5 of the Framework Agreement.

S5-1.9 Subject to paragraph S5-1.3 of this Schedule, the Supplier may agree to an appointment of an independent auditor selected by the Supplier to undertake the activities in paragraph S5-1.3 of this Schedule 5 provided such selection is Approved by the Authority (and such Approval shall not be unreasonably withheld or delayed).

ANNEX A: SELF AUDIT CERTIFICATE- NOT USED

Dear Sirs,

In accordance with the Framework Agreement entered into on [] 20 [] between [insert supplier name] and the Crown Commercial Service, we confirm the following:

- (1) In our opinion [supplier name] has in place suitable systems for identifying and recording the transactions taking place under the provisions of the above Framework Agreement.
- (2) We have tested the systems for identifying and reporting on framework activity and found them to be operating satisfactorily.
- (3) We have tested a sample of [] [insert number of sample transactions tested] orders and invoices during our audit for the financial year ended [insert financial year] and confirm that they are correct and in accordance with the terms and conditions of the above Framework Agreement.

Signature:

Name:

Position:

Date:

Schedule 6: Interpretations and Definitions

S6-1 INTERPRETATION

S6-1.1 In this Framework Agreement the following expressions have the following meaning:

Adequate	means that the relevant contractual clauses provide sufficient safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights as required by Article 26 (2) Directive 95/46/EC and the DPA;
Admin Fees	means those fees defined in paragraph S4-2 of Schedule 4 (Management Information Requirements) of this Framework Agreement;
Approval	means the prior written consent of the Authority and " Approve " and " Approved " shall be construed accordingly;
Assurance	means the verification process explained in the ITT;
Audit	means an audit carried out pursuant to Schedule 5 (Records and Audit Access) of this Framework Agreement;
Authority Representative	means the representative appointed by the Authority from time to time in relation to this Framework Agreement;
Authority's Confidential Information	means all Authority's Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential");
Authority Personal Data	means the personal data supplied by the Authority to the Supplier and for the purposes of or in connection with this Framework Agreement " Personal Data " shall have the same meaning as set out in the Data Protection Act 1998;
Call-Off Agreement	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of G-Cloud Services made between a Contracting Body and the Supplier comprising of an Order Form the Call-Off Terms and the Collaboration Agreement;
Call-Off Agreement Period	means the period of the Call-Off Agreement as specified in paragraph 1.1 and 1.2 of the Order Form;
Call-Off Terms	means the terms and conditions (including the Supplier Terms) as set out in Framework Schedule 2 (Call-Off Terms);
Catalogue	means the Digital Marketplace or such or any subsequent pan-government catalogue or such other medium as the Authority may determine;
Charges	means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Call-Off Agreement, as set out in paragraph 6.1 of the Order Form, in consideration of the full and proper performance by the Supplier of its obligations under the Call-Off Agreement;
Collaboration Agreement	means an agreement between the Customer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of

	the Customer's Services and to ensure that the Customer receives an efficient end-to-end G-Cloud Services; such agreement to be in the form set out in Framework Schedule 7 (Collaboration Agreement);
Collaboration Supplier	means a Framework Supplier or the Customer contractor, that has entered into a Collaboration Agreement as set out in Framework Schedule 7 (Collaboration Agreement);
Commencement Date	means <ul style="list-style-type: none"> a) For the purposes of the Framework Agreement, commencement date shall be 01/04/2016. b) For the purposes of the Call-Off Agreement, commencement date shall be as set out in paragraph 1.1 of the Order Form;
Commercially Sensitive Information	means information provided by the Supplier to the Authority or to the Customer which is a trade secret but this definition does not include the material proposed to be published by the Authority under Clause FW-27 (Transparency) of this Framework Agreement;
Confidential Information	means the Authority's Confidential Information and/or the Supplier's Confidential Information;
Contracting Bodies	means the Authority and any other person as listed in the OJEU Notice or Regulation 3 of the Public Contracts Regulations 2006, as amended from time to time;
Contracting Body Satisfaction Survey	shall have the meaning set out in Clause FW-10 (Contracting Body Satisfaction Monitoring);
Crown	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
Customer	means the customer as identified in the Order Form;
Customer's Confidential Information	means all Customer Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential");
Customer Data	means data that is owned or managed by the Customer;
Customer Personal Data	means the Order Personal Data and / or Service Personal Data;
Customer Representative	means the representative appointed by the Customer from time to time in relation to this Call-Off Agreement;
Data Controller	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
Data Processor	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;

Data Protection Legislation or DPA	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable legally binding guidance and codes of practice issued by the Information Commissioner;
Data Subject	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
Default	means any breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Supplier in connection with or in relation to this Framework Agreement or the Call-off Agreement and in respect of which the Supplier is liable to the Authority and in relation to the Call-Off Agreement, the Supplier is liable to the Customer;
Direct Award Criteria	means the award criteria to be applied for the award of Call-Off Agreements for G-Cloud Services set out in Framework Schedule 3 (Call-Off Ordering Procedure);
Direct Ordering Procedure	means the ordering procedure set out in Framework Schedule 3 (Call-Off Ordering Procedure);
Effective Date	means the date on which the Call-Off Agreement is signed and as set out in paragraph 1.1 of the Order Form;
Electronic Marketplace	means a web based application which facilitates electronic trade between one or more buying organisations and many suppliers;
Environmental Information Regulations	mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
ERG	means the Efficiency and Reform Group of the Cabinet Office;
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
Force Majeure	means any event, occurrence or cause affecting the performance by either the Customer or the Supplier of its obligations arising from: <ul style="list-style-type: none"> a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected party; b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of government, local government or Regulatory Bodies; d) fire, flood, any disaster and any failure or shortage of power or fuel; e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available;

	<p>provided always that:</p> <ul style="list-style-type: none"> i. any industrial dispute relating to the Supplier, the Supplier Staff or any other failure in the Supplier or the Sub-Contractor's supply chain; and ii. any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned; <p>shall not constitute a Force Majeure;</p>
Framework	means the framework arrangements established by the Authority for the provision of G-Cloud Services to Contracting Bodies by Framework Suppliers;
Framework Agreement	means the Clauses of this Framework Agreement together with the Framework Schedules and annexes to it;
Framework Suppliers	means the suppliers (including the Supplier) appointed under this Framework Agreement;
Fraud	means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown;
G-Cloud Services	means the cloud services described in Framework Schedule 1 (G-Cloud Services) as defined by the Service Definition, the Supplier Terms and any related Tender documentation, which the Supplier shall make available to the Authority and Other Contracting Bodies and those services which are deliverable by the Supplier under the Collaboration Agreement;
G-Cloud Additional Services	means services ancillary to the G-Cloud Services which are within the scope of the Framework Agreement Schedule 1 (G-Cloud Services) which the Customer may request from time to time;
Good Industry Practice	means standards, practices, methods and procedures conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonable and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
Guarantee	means the deed of guarantee described in the Order Form (Parent Company Guarantee);
Guidance	means any current UK Government Guidance on the Public Contracts Regulations. In the event of a conflict between any current UK Government Guidance and the Crown Commercial Service Guidance, current UK Government Guidance shall take precedence;
Holding Company	shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;
Implementation Plan	means the plan set out in paragraph 12.1 of the Order Form;
Information	has the meaning given under section 84 of the Freedom of Information Act 2000, as amended from time to time;

Intellectual Property Rights or IPR	<p>means:</p> <ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semiconductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and <p>all other rights having equivalent or similar effect in any country or jurisdiction;</p>
Invitation to Tender or ITT	<p>means the invitation to tender for this Framework issued on 6th November 2014;</p>
Know-How	<p>means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the G-Cloud Services but excluding know-how already in the Supplier's or the Authority's possession before the Commencement Date;</p>
Law	<p>means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;</p>
Lot	<p>means any of the 4 lots specified in the ITT and "Lots" shall be construed accordingly;</p>
Management Charge	<p>means the sum paid by the Supplier to the Authority being an amount of 0.5% of all Charges for the G-Cloud Services invoiced to Other Contracting Bodies (net of VAT) in each Month throughout the Term and thereafter until the expiry or earlier termination of any Call-Off Agreement;</p>
Management Information	<p>means the management information specified in Framework Schedule 4 (Management Information Requirements);</p>
Material Breach	<p>means:</p> <ul style="list-style-type: none"> a) a material breach of the Framework Agreement Clause FW-19 and/or breach by the Supplier of the following Clauses in the Framework Agreement: Clause FW-7 (Warranties and Representations), Clause FW-8 (Provision of Management Information), Clause FW-9 (Management Charge), Clause FW-22 (Prevention of Bribery & Corruption), Clause FW-23 (Safeguarding against Fraud), Clause FW-24 (Data Protection & Disclosure), Clause FW-28 (Equality & Diversity), Clause FW-29 (Official Secrets Acts), Schedule 5 (Records and Audits Access); and/or b) a material breach of the Call-Off Agreement and/or breach by the Supplier of any of the following Clauses in the Call-Off Agreement: Clause CO-3 (Protection of Information), CO-4 (Confidentiality), Clause CO-5 (Customer Data), Clause CO-8 (Official Secrets Acts)

	1911 to 1989);
Ministry of Justice Code	means the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000;
Month	means a calendar month and " Monthly " shall be interpreted accordingly;
OJEU Notice	means a contract notice in the Official Journal of the European Union, seeking expressions of interest from potential providers of G-Cloud Services;
Order	means an order for G-Cloud Services placed by a Contracting Body with the Supplier in accordance with the Ordering Procedures;
Order Form	means the form set out in part 1 of Framework Schedule 2 (Call-Off Terms) to be used by a Contracting Body to order G-Cloud Services;
Ordered G-Cloud Services	means G-Cloud Services which are the subject of an Order by a Contracting Body;
Order Personal Data	means the personal data supplied by the Customer to the Supplier in the course of Ordering the G-Cloud Services for purposes of or in connection with this Call-Off Agreement. " Personal Data " shall have the same meaning as set out in the Data Protection Act 1998;
Ordering Procedures	means the ordering and award procedures specified in Framework Schedule 3 (Call-Off Ordering Procedure);
Other Contracting Bodies	means all Contracting Bodies except the Authority;
Parent Company	means any company which is the ultimate Holding Company of the Supplier;
Party	means: <ul style="list-style-type: none"> a) for the purposes of the Framework Agreement, the Authority or the Supplier; b) for the purposes of the Call-Off Agreement, the Supplier or the Customer; and <p>"Parties" shall be interpreted accordingly;</p>
Personal Data	shall have the same meaning as set out in the Data Protection Act 1998;
Processing	has the meaning given to it under the Data Protection Act 1998 as amended from time to time but, for the purposes of this Framework Agreement and Call-Off Agreement, it shall include both manual and automatic processing. " Process " and " Processed " shall be interpreted accordingly;
Regulations	means the Public Contracts Regulations 2006, as amended from time to time;
Regulatory Bodies	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Authority or Other Contracting Body or the Supplier or its Parent Company;

Relevant Person	means any employee, agent, servant, or representative of the Authority, any other public body or person employed by or on behalf of the Authority, or any other public body;
Reporting Date	means the 7 th day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Parties;
Request(s) for Information	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
Self Audit Certificate	means the certificate in the form as set out in Annex to the Framework Schedule 5 (Self Audit Certificate) to be provided to the Authority in accordance with paragraph S5-1.2 of Schedule 5 (Records and Audit Access);
Service Definition(s)	means the definition of the Supplier's G-Cloud Services provided as part of their Tender that includes, but is not limited to, those items listed in Schedule 1 (G-Cloud Services) of this Framework Agreement;
Service Descriptions	means the description of the Supplier service offering as published on the Catalogue;
Service Personal Data	means the personal data supplied by the Customer to the Supplier in the course of the use of the G-Cloud Services for purposes of or in connection with this Call-Off Agreement. " Personal Data " shall have the same meaning as set out in the Data Protection Act 1998;
Sub-Contract	means any contract or agreement or proposed agreement between the Supplier and the Sub-Contractor in which Sub-Contractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the G-Cloud Services or any part thereof;
Sub-Contractor	means any third party engaged by the Supplier from time to time under a Sub-Contract (permitted pursuant to the Framework Agreement and the Call-Off Agreement) and its servants or agents in connection with the provision of the G-Cloud Services from time to time;
Subsidiary	has the meaning given to it in section 1159 of the Companies Act 2006;
Supplier's Confidential Information	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information (whether or not it is marked as "confidential");
Supplier Representative	means the representative appointed by the Supplier from time to time in relation to this Framework Agreement;
Supplier Terms	means the terms and conditions pertaining to the G-Cloud Services and as set out in Schedule 1 (G-Cloud Services) set in the form supplied as part of the Supplier's Tender;
Supplier Staff	means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and Sub-Contractors used in the performance of

	its obligations under this Framework Agreement or any Call-Off Agreements;
Tender	means the response submitted by the Supplier to the Invitation to Tender;
Term	means the term of this Framework Agreement as specified in FW-3 (Term of Framework Agreement);
Variation	has the meaning given to it in Clause CO-21 (Variation Procedure);
Working Days	means any day other than a Saturday, Sunday or public holiday in England and Wales; and
Year	means a contract year.

S6-1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:

S6-1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

S6-1.2.2 words importing the masculine include the feminine and the neuter and vice versa;

S6-1.2.3 the words "include", "includes" "including" "for example" and "in particular" and words of similar effect shall not limit the general effect of the words which precede them;

S6-1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

S6-1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

S6-1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;

S6-1.2.7 references in this Framework Agreement to any Clause or Framework Schedule without further designation shall be construed as a reference to the Clause or sub-Clause or Schedule to this Framework Agreement so numbered;

S6-1.2.8 references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Framework Schedule to this Framework Agreement so numbered;

S6-1.2.9 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;

S6-1.2.10 where definitions or interpretations are expressly set out in Collaboration Agreement Schedule 7 (Collaboration Agreement), then the definitions and interpretations specified therein shall apply only in the context of the Collaboration Agreement; and

S6-1.2.11 without prejudice to the overriding provisions as detailed in Clause CO-1 of the Framework Schedule 2 (Call-Off Terms) in the event and to the extent only of any conflict between the Clauses and the remainder of the Framework Schedules, the Clauses shall prevail over the remainder.

Schedule 7: Collaboration Agreement- Not Used

Schedule 8: Implementation Plan

The Implementation Plan detailing the key Milestones for this Agreement are as follows:

SaaS Licence Requirement Milestones:

Implementation Milestone	Anticipated Completion Date
1. Completion and review of services delivered under Part (a) detailed within Section 1.3.2.3 of this Order Form and subsequent payment by the Customer if satisfied Milestone complete.	31/06/2016 (and the last day of Each quarter thereafter until Expiry Date)
2. Completion and review of services delivered under Part (b) detailed within Section 1.3.2.3 of this Order Form and subsequent payment by the Customer if satisfied Milestone complete.	31/06/2016 (and the last day of Each quarter thereafter until Expiry Date)
3. Completion and review of services delivered under Part (c) detailed within Section 1.3.2.3 of this Order Form and subsequent payment by the Customer if satisfied Milestone complete.	31/06/2016 (and the last day of Each quarter thereafter until Expiry Date).
4. Completion and review of services delivered under Part (d) detailed within Section 1.3.2.3 of this Order Form and subsequent payment by the Customer if satisfied Milestone complete.	31/06/2016 (and the last day of Each quarter thereafter) until Expiry Date).

Development Requirement Milestones:

Milestone	Anticipated Completion Date
5. Review of days called-off Monthly and subsequent payment by the Customer if satisfied Milestone complete.	Last day of each month until Expiry Date
6. Review of total days worked throughout Contract life-cycle and the Supplier to credit any discounted rates due to the Customer.	Expiry Date (31/03/2017)

Schedule 9: Alternative Clauses- Not Used

S9-1 INTRODUCTION

S9-1.1 This Schedule specifies the alternative Clauses applying to Scottish Contracting Bodies that may be requested in the Order Form and, if requested in the Order Form, shall apply to this Call-Off Agreement.

S9-2 CLAUSES SELECTED

S9-2.1 The Customer may, in the Order Form, request the following alternative Clauses:

S9-2.1.1 Scots Law (see paragraph S10-2.1.2 of this Schedule);

S9-2.1.2 SCOTS LAW

Law and Jurisdiction (Clause CO-18.1)

References to England and Wales in the original Clause CO-18.1 (Law and Jurisdiction) of this Call-Off Agreement shall be replaced with Scotland.

Reference to England and Wales in Working Days definition within Schedule 6 shall be replaced with Scotland.

References to the Contracts (Rights of Third Parties) Act 1999 shall be removed in Clause CO-17.1.

Reference to the Freedom of Information Act 2000 within definition for FOIA in Schedule 6 – Definitions to be replaced with Freedom of Information (Scotland) Act 2002.

Reference to the Supply of Goods and Services Act 1982 shall be removed in Clause CO-11.2.3.

References to “tort” shall be replaced with “delict” throughout.

S9-2.2 The Customer may, in the Order Form, request the following alternative Clauses:

S9-2.2.1 Northern Ireland Law (see paragraph S10-2.4, 2.5, 2.6 and 2.7 of this Schedule);

S9-2.3 Discrimination.

S9-2.3.1 The Supplier shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation, including, in particular, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (Northern Ireland) Order 1976 and 1988, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the Equal Pay Act (Northern Ireland) 1970, the Disability Discrimination Act 1995, the Race Relations (Northern Ireland) Order 1997, the Employment Relations (Northern Ireland) Order 1999 and Employment Rights (Northern Ireland) Order 1996 Employment Equality (Age) Regulations (Northern Ireland) 2006; Part-time Workers (Prevention of less Favourable Treatment) Regulation 2000; Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, The Disability Discrimination (Northern Ireland) Order 2006, The Employment Relations (Northern Ireland) Order 2004, The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006, The Employment Relations (Northern Ireland) Order 2004 and The Work and Families (Northern Ireland) Order 2006; and shall use his best endeavours to

ensure that in his employment policies and practices and in the delivery of the services required of the Supplier under this Call-Off Agreement he has due regard to the need to promote equality of treatment and opportunity between:

- a. persons of different religious beliefs or political opinions;
- b. men and women or married and unmarried persons;
- c. persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave)
- d. persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);
- e. persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);
- f. persons of different ages; and
- g. persons of differing sexual orientation

S9-2.3.2 The Supplier shall take all reasonable steps to secure the observance of Clause S10-2.3.1 by all Supplier Staff.

S9-2.4 Equality Policies and Practices

S9-2.4.1 The Supplier shall introduce and shall procure that any Sub-Contractor shall also introduce and implement an equal opportunities policy in accordance with guidance from and to the satisfaction of the Equality Commission. The Supplier shall review such policies on a regular basis (and shall procure that its Sub-Contractors do likewise) and the Customer shall be entitled to receive upon request by it a copy of any such policy.

S9-2.4.2 The Supplier shall take all reasonable steps to ensure that all of the Supplier Staff comply with its equal opportunities policies (referred to in Clause [S10-2.3] above). These steps shall include:

- (a) the issue of written instructions to staff and other relevant persons;
- (b) the appointment or designation of a senior manager with responsibility for equal opportunities;
- (c) training of all staff and other relevant persons in equal opportunities and harassment matters; and
- (d) the inclusion of the topic of equality as an agenda item at team, management and staff meetings,

and the Supplier shall procure that its Sub-Contractors do likewise (in relation to their equal opportunities policies).

S9-2.4.3 In the event of:

- (a) the Equality Commission notifying the Supplier of an alleged breach by it or any Sub-Contractor (or any of their shareholders and/or directors) of the Fair Employment and Treatment (Northern Ireland) Order 1998; and/or
- (b) any finding of unlawful discrimination (or any offence under the Legislation mentioned in Clause S10-2.3 above) being made against the Supplier or its Sub-

Contractors during the Call-Off Agreement Period by any Industrial or Fair Employment Tribunal or Court,

the Supplier shall inform the Customer as soon as reasonably practicable and shall take such steps (including the dismissal or replacement of any relevant staff or Sub-Contractor(s)) as the Customer directs and shall seek the advice of the Equality Commission in order to prevent any such offence or repetition of the unlawful discrimination as the case may be.

S9-2.4.4 The Supplier shall monitor (in accordance with guidance issued by the Equality Commission) the composition of its workforce and applicants for employment and shall provide an annual report on the composition of such workforce and applicants to the Customer. If such monitoring reveals under-representation or lack of fair participation of particular groups, the Supplier shall review the operation of its relevant policies and take affirmative/positive action where appropriate. The Supplier shall impose on its Sub-Contractors obligations similar to those undertaken by it in this clause S10-2.4 and shall procure that those Sub-Contractors comply with such obligations.

S9-2.4.5 The Supplier shall provide such information as the Customer may from time to time request (including information requested to be provided by any Sub-Contractors) for the purpose of assessing the Supplier's compliance with its obligations under clauses S10-2.4.1 to S10-2.4.5 of this Call-Off Agreement.

S9-2.5 Equality

S9-2.5.1 The Supplier shall, and shall procure that each Sub-contractor shall, in performing its/their obligations under this Call-Off Agreement (and other relevant agreements), comply with the provisions of Section 75 of the Northern Ireland Act 1998, as if they were a public authority within the meaning of that section.

S9-2.5.2 The Supplier further acknowledges that the Customer must, in carrying out its functions, have due regard to the need to promote equality of opportunity as contemplated by the Northern Ireland Act 1998 and the Supplier shall use all reasonable endeavours to assist (and to ensure that relevant Sub-Contractor assists) the Customer in relation to same.

S9-2.6 Health and Safety

S9-2.6.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Call-Off Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer premises and which may affect the Supplier in the performance of its obligations under the Call-Off Agreement.

S9-2.6.2 While on the Customer premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Staff and other persons working there.

S9-2.6.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Call-Off Agreement on the Customer premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

- S9-2.6.4 The Supplier shall comply with the requirements of the Health and Safety at Work (Northern Ireland) Order 1978 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Supplier Staff and other persons working on the Customer premises in the performance of its obligations under the Call-Off Agreement.
- S9-2.6.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work (Northern Ireland) Order 1978) is made available to the Customer on request.
- S9-2.7 Criminal Damage
- S9-2.7.1 The Supplier shall maintain such standards of vigilance and will take all such precautions as are advised by the Criminal Damage (Compensation) (Northern Ireland) Order 1977 ("Compensation Order") or as may from time to time be recommended by the police or the Northern Ireland Office (or, if replaced, their successors) and will compensate the Customer for any loss arising directly from a breach of this obligation (including any diminution of monies received by the Customer under any insurance policy).
- S9-2.7.2 If during the Call-Off Agreement Period any assets (or any part thereof) is or are damaged or destroyed by any circumstance giving rise to a claim for compensation pursuant to the provisions of the Compensation Order ("CDO Event") the following provisions of this clause S10-2.7 shall apply.
- S9-2.7.3 The Supplier shall make (or shall procure that the appropriate organisation make) all appropriate claims under the Compensation Order as soon as practicable after the CDO Event and shall pursue any such claim diligently and at its cost. If appropriate, the Customer shall also make and pursue a claim diligently under the Compensation Order. Any appeal against a refusal to meet any claim or against the amount of the award will be at the cost of the Customer and the Supplier shall (at no additional cost to the Customer) provide such assistance as the Customer reasonably requires with such appeal.
- S9-2.7.4 The Supplier will apply any compensation paid under the Compensation Order in respect of damage to the relevant assets towards the repair, reinstatement or replacement of the assets affected.