

Schedule 1: G-Cloud 5 - Call-Off Terms

Date	30/01/2015	Order Reference	Contract ref L0743
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FROM:

Customer	H M Treasury "Customer"
Customer's Address	HM Treasury Room 1 Horse Guards Road, London, SW1A 2HQ
Invoice Address	REDACTED
Principal Contact	Name: REDACTED Address HM Treasury Room 1 Horse Guards Road, London, SW1A 2HQ Phone: REDACTED e-mail: REDACTED

TO:

Supplier	Badenoch and Clark "Supplier"
Supplier's Address	Millennium Bridge House, London, EC4Y 8AX
Account Manager	Name REDACTED Phone: REDACTED e-mail: REDACTED

1. TERM
<p>1.1 Commencement Date</p> <p>This Call-Off Agreement commences on: 03/02/2015</p> <p>1.2 Expiry Date</p> <p>This Call-Off Agreement shall expire on:</p> <p>1.2.1 31/03/15 with the option to extend up to the maximum term allowed under the G-Cloud agreements to</p> <p>1.2.2 the second (2) anniversary of the Commencement Date; whichever is the earlier, unless terminated earlier pursuant to Clause 4 of the Call-Off Agreement.</p> <p>1.3 Services Requirements</p> <p>1.3.1 This order is for the G-Cloud Services outlined below. It is mutually recognised that the volume of these services utilized by Customer may vary from time to time during the course of this Call-Off Agreement, subject</p>

always to the terms of the Call-Off Agreement.

1.3.2 G-Cloud Services

- 1.3.2.4 Lot 4 Specialist Cloud Services
- Programme and Project Services to manage the transformation from a single supplier to a tower model with multiple suppliers. To manage residual migration work following main migration to ensure the services are delivered as per HM Treasury's contract with their IT towers suppliers. Initially **REDACTED** days. The project and programme management service will be delivered by staff suitably knowledgeable about HM Treasury's organisation and programme and has experience working on a project of a similar nature.

2. PRINCIPAL LOCATIONS

2.1 Principal locations where the services are being performed

1 Horse Guard Road

London SW1A 2HQ

3. STANDARDS

3.1 Quality Standards

N/A

3.2 Technical Standards

N/A

4. ONBOARDING

4.1 On-boarding

N/A

5. CUSTOMER RESPONSIBILITIES

5.1 Customer's Responsibilities

None

5.2 Customer's equipment

None

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

REDACTED per day inclusive of agency fees- exclusive of VAT – also to include a maximum of **REDACTED** per month expenses.

Indicate preferred payment profile by selecting one from:

6.1.1 Monthly in arrears

6.2 Invoice format

The Supplier shall issue electronic invoices Monthly in arrears. 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:**

REDACTED - Commercial Lead

7.2 Mediation Provider

Centre for Effective Dispute Resolution.

8. LIABILITY

Subject to the provisions of Error! Reference source not found. 'Liability' of the Call-Off Agreement:

The annual aggregate liability of either Party for all defaults resulting in direct loss of or damage to the property of the other Party under or in connection with this Call-Off Agreement shall in no event exceed 1 Million.

The annual aggregate liability under this Call-Off Agreement of either for all defaults shall in no event exceed the greater of £100,000 and/ or one hundred and twenty five per cent £125% of the Charges payable by the Customer to the Supplier

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 **Error! Reference source not found.** of the Call-Off Contract.

10.2 Termination Without Cause

At least thirty (30) Working Days in accordance with Clause **Error! Reference source not found.** of the Call-Off Contract.

11. AUDIT AND ACCESS

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

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

For and on behalf of the Supplier:

Name and Title	
Position	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
Position	
Signature	
Date	

G-CLOUD SERVICES CALL-OFF TERMS

HM Treasury

- and -

Badenoch and Clark

relating to

the provision of G-Cloud Services.

CALL-OFF AGREEMENT TERMS AND CONDITIONS

THIS CONTRACT is made on the 30th day of January 2015

BETWEEN

- (1) HM Treasury of 1 Horse Guards Road, London SW1A 2HQ (the “**Customer**”); and
- (2) Badenoch and Clark, a company registered in the UK of Millennium Bridge House, London, EC4Y 8AX (the “**Supplier**”).

IT IS AGREED AS FOLLOWS:**CO-1 OVERRIDING PROVISIONS**

- CO-1.1 The Supplier agrees to supply the G-Cloud Services in accordance with the Call-Off Terms, including Supplier’s own terms and conditions as identified in Framework Schedule 1 (G-Cloud Services) and incorporated into any 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 conditions) 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 Supplier’s terms and conditions as set out in the Framework Schedule 1 (G-Cloud Services); and
- CO-1.2.5 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 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
- the Authority may terminate this 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 Term 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 will duly observe all their obligations under the DPA which arise in connection with the Framework 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 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 an independent auditor appointed by the supplier but acceptable to the Customer or Customer Representative (subject to the reasonable and appropriate confidentiality undertakings) can be used to undertake the activities in Clause CO-3.5.1 where the restrictions in Clause CO 3.6 allow.

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-3.6.2.1 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-3.6.2.2 comply with any reasonable instructions notified to it by the Authority or Contracting Body concerned and either:

CO-3.6.2.3 incorporate standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) or warrant that the obligations set out in the Supplier Terms provide Adequate protection for Personal Data.

CO-3.7 The Supplier shall not perform its obligations under this Call-Off Agreement in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.

CO-3.8 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to 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 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, Code of Practice on Access to Government Information 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 The Supplier acknowledges and agrees that for the purpose of ensuring consistent behaviour between the Customers and Suppliers to this Call-Off Agreement, information relating to Orders placed by a Contracting Body, including pricing information and the terms of any Call-Off Agreement may
 - CO-4.6.1 be published by the Authority, subject to this Clause CO-4; and
 - CO-4.6.2 may be shared with Other Contracting Bodies from time to time. The Authority shall notify the recipient of such information that its contents are confidential.
- CO-4.7 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-4.8 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-4.9 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-4.10 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 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 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's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the 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-6.5.3 applies the Customer shall, in accordance with any recommendations of the 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 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 specified in the relevant paragraph of the Order Form.

CO-9.3 Termination on Change of Control

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

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

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

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

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

CO-9.4 Termination by Supplier

CO-9.4.1 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums, the Supplier may terminate this Call-Off Agreement subject to giving the length of notice as specified in relevant paragraph 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 Without prejudice to the provisions of Clause CO-9.3.1 or Clause CO-9.5, 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 the contract.
- 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 the 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) of the other Party, shall be subject to the financial limits set out in the relevant paragraph 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 the greater of a sum equivalent to the financial limit set out in the relevant paragraph of the order form or a sum equivalent to one hundred and twenty five per cent (125%) of the Charges paid or payable to the Supplier in the Year of this Call-Off Agreement, as calculated as at the date of the event giving rise to the claim under consideration (or if such event occurs in the first twelve (12) Months of the Call-Off Agreement Period, the amount estimated to be paid in the first twelve (12) Months of the Call-Off Agreement Period).

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-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 the relevant paragraph 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 the 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 the relevant paragraph 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 Contract Charges at the prevailing rate as applicable.

CO-13.6 The Supplier shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation 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 Contract. Any amounts due under this Clause CO-13 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 Contract 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-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-19 (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 DISPUTE RESOLUTION

- CO-19.1 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-19.2 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-19.3 If the dispute cannot be resolved by mediation the Parties may refer it to arbitration.
- CO-19.4 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 2: Call-Off Ordering Procedure

S2-1 BACKGROUND

- S2-1.1 All Call-Offs from this Framework Agreement will be conducted using Catalogues from within the Catalogue.
- S2-1.2 All Call-Offs from this Framework Agreement will apply the award criteria stipulated in this Framework Schedule.

S2-2 CATALOGUE – LOTS 1-4

- S2-2.1 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 services on offer in Lots 1-4.
- S2-2.2 The Authority shall create a Catalogue for the services in each Lot that they have awarded a framework agreement. The Catalogues shall include each of the individual services as specified in the Schedule 1 (G-Cloud Services).
- S2-2.3 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.

S2-3 PROCESS – DIRECT AWARD LOWEST PRICE

- S2-3.1 If the Authority or any Contracting Body decides to source the G-Cloud Services through this Framework Agreement then it will award its service requirements in accordance with the procedure in this Framework Schedule 3 (Ordering Procedure) and the requirements of the Regulations and the Guidance.
- S2-3.2 Subject to paragraph S3-3.1 above any Contracting Body ordering the G-Cloud Services under this Framework Agreement shall:
 - S2-3.2.1 Long-Listing
 - S2-3.2.2 in the first instance have to derive a long-list of service offerings which meet their essential minimum requirements.
 - S2-3.2.3 Short-Listing
 - S2-3.2.4 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.
- S2-3.3 Contracting Bodies may at this point directly award to the service with the lowest price.

S2-4 PROCESS – DIRECT AWARD: MOST ECONOMICALLY ADVANTAGEOUS TENDER (MEAT)

- S2-4.1 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.
- S2-4.2 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.

- S2-4.3 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.
- S2-4.4 All short-listed offerings must be evaluated against the same evaluation model.
- S2-4.5 Where a Contract is awarded following the Direct Award process outlined in this Clause 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 3: Management Information Requirements

S3-1 AUTHORITY REPORTING REQUIREMENTS (FRAMEWORK AGREEMENT)

- S3-1.1 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-Sourcing portal.
- S3-1.2 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.
- S3-1.3 The Supplier agrees 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.
- S3-1.4 The Supplier may not make any amendment to the current MI reporting Template without the prior Approval of the Authority.
- S3-1.5 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.
- S3-1.6 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 prior notification and agreement by the Authority.
- S3-1.7 Any errors or omissions may result in the return being rejected and an administration charge being added to the Management Charge invoice.
- S3-1.8 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.
- S3-1.9 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.
- S3-1.10 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.
- S3-1.11 MI Failure is when an MI Report:
- S3-1.11.1 contains any material errors or material omissions or a missing mandatory field; or
 - S3-1.11.2 is submitted using an incorrect MI reporting template; or

S3-1.11.3 is not submitted by the Reporting Date (including where a Nil Return should have been filed); or

S3-1.11.4 then the Authority may deem the failure to submit an MI Report correctly as an “MI Failure”.

S3-1.12 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.

S3-2 ADMIN FEES

S3-2.1 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.

S3-2.2 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.

S3-2.3 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.

S3-2.4 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

Schedule 4: Records and Audit Access

- S4-1.1 The Supplier (which for the purposes of this Clause 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.
- S4-1.2 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.
- S4-1.3 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:
- S4-1.3.1 verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Framework Agreement); and
- S4-1.3.2 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.
- S4-1.4 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.
- S4-1.5 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.
- S4-1.6 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:
- S4-1.6.1 all information requested by the Auditor within the scope of the Audit; and
- S4-1.6.2 access to the Supplier Staff.
- S4-1.7 If an Audit reveals:
- S4-1.7.1 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
- S4-1.7.2 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).

- S4-1.8 Each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under this Clause, save as specified in Clause S5-1.7 of this Schedule 5 of the Framework Agreement.
- S4-1.9 The Supplier may appoint subject to the Authority's Approval, which shall not be unreasonably withheld, an independent auditor appointed by the supplier but acceptable to the Authority to undertake the activities in Clause S5-1.3 of this Schedule 5 of the Framework Agreement where the restrictions in Clause FW-24.4 of the Framework Agreement allow.

ANNEX A: SELF AUDIT CERTIFICATE

[To be signed by Head of Internal Audit, Finance Director or company's external auditor]

[Note: To be signed by company's auditor]

Dear Sirs,

In accordance with the Framework Agreement entered into on [] 20 [] between [insert Supplier name] and by the Government Procurement 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 5: Interpretations and Definitions

S5-1 INTERPRETATION

S5-1.1 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 Clause Error! Reference source not found. of this Agreement;
Approval	means the prior written consent of the Authority and " Approve " and " Approved " shall be construed accordingly;
Assurance and Accreditation Verification	means the verification process explained in the ITT..
Audit	means an audit carried out pursuant to Schedule 5 (Records and Audit Access) of this Agreement;
Authority Representative	a) means the representative appointed by the Authority from time to time in relation to this Framework Agreement;
Authority's Confidential Information	b) 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	c) 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 and the Call-Off Terms;
Call-Off Agreement Period	means the period of the Call-off Agreement as specified in the relevant paragraph of the Order Form (paragraph 1.1 and 1.2 in example given;
Call-Off Terms	means the terms and conditions (including the Supplier Terms as set out in Schedule 1 (G-Cloud Services) in Framework Schedule 2 (Call-Off Terms);
Catalogue	means the CloudStore 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 the relevant paragraph of the Order Form (paragraph 6.1 in example given, in consideration of the full and proper performance by the Supplier of its

	obligations under the Call-Off Agreement;
Commencement Date	means the date set out in Clause Error! Reference source not found. (Term of Framework Agreement);
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 Error! Reference source not found. 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 Error! Reference source not found. ;
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(s) 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 including Award Criteria);
Direct Ordering Procedure	means the ordering procedure set out in Framework Schedule 3 (Call-Off Ordering Procedure including Award Criteria);
Effective Date	means the date on which the Call-Off Agreement is signed and as set out in the relevant paragraph of the Order Form (paragraph 1.1 in example given);
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	<p>means any event, occurrence or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <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>provide always that:</p> <ul style="list-style-type: none"> i. any industrial dispute relating to the Supplier, the 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 or agreements on the same or similar terms to this Framework Agreement as part of this Framework;
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;
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 Government Procurement 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;
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, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and <p>all other rights having equivalent or similar effect in any country or jurisdiction;</p>
Invitation to Tender ITT	means the invitation to tender for this Framework issued on 29 th July, 2013 ;
Know-How	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;
Law	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;
Lot	means any of the 4 lots specified in the ITT and "Lots" shall be construed accordingly;
Management Charge	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;
Management Information	means the management information specified in Framework Schedule 4 (Management Information Requirements);
Material Breach	means: <ul style="list-style-type: none"> a) a material breach of the Framework Agreement FW 19 and/or breach by the Supplier of the following Clauses in the Framework Agreement : Clause Error! Reference source not found. (Warranties and Representations), Clause Error! Reference source not found. (provision of Management information), Clause Error! Reference source not found. (Management Charge), 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 Error! Reference source not found. (Protection of Information), Clause Error! Reference source not found. (Confidentiality), Clause Error! Reference source not found. (Official Secrets Acts 1911 to 1989);
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 including Award Criteria);
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	<p>means:</p> <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 Legislation 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;
Requests 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 Clause Error! Reference source not found. ;
Service Definition	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 Schedule 1 paragraph 1.1 of this 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;
Special Terms	means any terms which are additional to the terms set out in the Call-Off Agreement which are agreed between a Contracting Body and the Supplier and are specified in the Order;

Sub-Contract	means any contract or agreement or proposed agreement between the Supplier and the 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 each of the Supplier's sub-contractors or any person engaged by the Supplier in connection with the provision of the G-Cloud Services from time to time as may be permitted by this Framework Agreement;
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 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 Error! Reference source not found. (Term of Framework Agreement);
Working Days	means any day other than a Saturday, Sunday or public holiday in England and Wales; and
Year	means a contract year.

S5-1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:

- S5-1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- S5-1.2.2 words importing the masculine include the feminine and the neuter and vice versa;
- S5-1.2.3 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;
- S5-1.2.4 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;
- S5-1.2.5 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;

- S5-1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- S5-1.2.7 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;
- S5-1.2.8 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;
- S5-1.2.9 reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- S5-1.2.10 without prejudice to the Overriding Provisions at the start of 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 of the Framework Schedules.