

---

**TYPH/BBMF/701073392 Call Off Order Form and Call Off Terms for Products and/or Services (non ICT)**

---

**PART 1 – TYPH/BBMF/701073392 CALL OFF ORDER FORM**

**SECTION A**

This Call Off Order Form is issued in accordance with the provisions of the Framework Agreement for the provision of **Shell Aeroshell 2XN Oil Additive** dated **22 October 2020**

The Supplier agrees to supply the Products and/or Services specified below on and subject to the terms of this Call Off Contract.

For the avoidance of doubt this Call Off Contract consists of the terms set out in this Call Off Order Form and the Call Off Terms.

Order Number	TYPH/BBMF/701073392
From	<b>BBMF Project Team Defence Equipment &amp; Support Typhoon BBMF Commercial Bldg 160, RAF Coningsby, Lincolnshire, LN4 4SY</b>
To	<b>Certas Energy UK Limited 302 Bridgewater Place Birchwood Park Birchwood Warrington Cheshire, WA3 6XG</b>

**SECTION B**

**1. CALL OFF CONTRACT PERIOD**

<b>1.1.</b>	<b>Commencement Date:</b> 01 October 2020
<b>1.2.</b>	<b>Expiry Date:</b> End date of Initial Period: <b>31 March 2025</b> End date of Extension Period: <b>NOT APPLICABLE</b> Minimum written notice to Supplier in respect of extension: <b>NOT APPLICABLE</b>

**2. PRODUCTS AND/OR SERVICES**

<b>2.1.</b>	<b>Products and/or Services required:</b> In Call Off Schedule 2 (Products and/or Services)
-------------	--

**3. IMPLEMENTATION PLAN**

<b>3.1.</b>	<b>Implementation Plan:</b> Not applied
-------------	--

#### 4. CONTRACT PERFORMANCE

<b>4.1.</b>	<b>Standards:</b> Clause 13 (Standards and Quality); <b>AND</b> MIL-6529C Type 1(US) (NATO code C-608) <b>AND</b> Supplier to hold valid and in-date 'Cyber Essentials' certification (or Authority approved equivalent)
<b>4.2</b>	<b>Service Levels/Service Credits:</b> Not applied <b>Service Credit Cap</b> (Call Off Schedule 1 (Definitions)): Not applied <b>Customer periodic reviews of Service Levels</b> (Clause 15.7.1 of the Call Off Terms): Not applied
<b>4.3</b>	<b>Critical Service Level Failure:</b> Not applied
<b>4.4</b>	<b>Performance Monitoring:</b> Not Applied
<b>4.5</b>	<b>Period for providing Rectification Plan:</b> In Clause 41.2.1(a) of the Call Off Terms

#### 5. PERSONNEL

<b>5.1</b>	<b>Key Personnel:</b> Refer to DEFFORM 111
<b>5.2</b>	<b>Relevant Convictions</b> (Clause 29.2 of the Call Off Terms): Not Applicable

#### 6. PAYMENT

<b>6.1</b>	<b>Call Off Contract Charges</b> (including any applicable discount(s), but excluding VAT): In Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing) The Customer will NOT be liable for any costs incurred by the Supplier in meeting the requirements of DEFCON 522
<b>6.2</b>	<b>Payment terms/profile</b> (including method of payment e.g. Government Procurement Card (GPC) or BACS): In Annex 2 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)
<b>6.3</b>	<b>Reimbursable Expenses:</b> Not permitted

<b>6.4</b>	<b>Customer billing address</b> (paragraph 7.6 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): Refer to DEFFORM 111
<b>6.5</b>	<b>Call Off Contract Charges fixed for</b> (paragraph 8.2 of Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): <b>3 (Three)</b> Call Off Contract Years from the Call Off Commencement Date
<b>6.6</b>	<b>Supplier periodic assessment of Call Off Contract Charges</b> (paragraph 9.2 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)) will be carried out on: <b>30<sup>th</sup> June</b> of each Call Off Contract Year during the Call off Contract Period
<b>6.7</b>	<b>Supplier request for increase in the Call Off Contract Charges</b> (paragraph 10 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): Not Permitted

## 7. LIABILITY AND INSURANCE

<b>7.1</b>	<b>Estimated Year 1 Call Off Contract Charges:</b> The sum of £ <b>12,500</b>
<b>7.2</b>	<b>Supplier's limitation of Liability</b> (Clause 39.2.1 of the Call Off Terms); In Clause 39.2.1 of the Call Off Terms
<b>7.3</b>	<b>Insurance</b> (Clause 40.3 of the Call Off Terms): Not Applicable

## 8. TERMINATION AND EXIT

<b>8.1</b>	<b>Termination on material Default</b> (Clause 44.2.1(c) of the Call Off Terms): In Clause 44.2.1(c) of the Call Off Terms
<b>8.2</b>	<b>Termination without cause notice period</b> (Clause 44.8.1 of the Call Off Terms): In Clause 44.8.1 of the Call Off Terms
<b>8.3</b>	<b>Undisputed Sums Limit:</b> In Clause 45.1.1 of the Call Off Terms
<b>8.4</b>	<b>Exit Management:</b> Not applied

## 9. SUPPLIER INFORMATION

<b>9.1</b>	<b>Supplier's inspection of Sites, Customer Property and Customer Assets:</b> Where the supplier has not delivered to the site previously a site inspection should be arranged prior to contract commencement date.  Where a Supplier conducts a Site inspection and completes a Site visit report which raises any issues or concerns, a copy of this report should be provided to the Customer.
<b>9.2</b>	<b>Commercially Sensitive Information:</b> Supplier to Inform the Customer of any Commercially Sensitive Information.

## 10. OTHER CALL OFF REQUIREMENTS

<b>10.1</b>	<b>Recitals</b> (in preamble to the Call Off Terms): Recital A
<b>10.2</b>	<b>Call Off Guarantee (Clause 4 of the Call Off Terms):</b> Not required
<b>10.3</b>	<b>Security:</b> In Call Off Schedule 7 (Security)
<b>10.4</b>	<b>ICT Policy:</b> All Defence contractors are expected to demonstrate that they have sufficient security measures in place to protect MOD identifiable information. This is known as Cyber Essentials. Further to DEFCON 658 the Cyber Risk Level of the Contract is 'very low' as defined in Def Stan 05-138. The reference code for this risk assessment is 'RAR-PUAS94FY'. To comply with the Cyber DEFCON (Edition 10/17) your company will need to complete a Supplier Assurance Questionnaire (SAQ) to demonstrate your company has security controls appropriate to the Cyber Risk Profile.  Follow this link <a href="https://supplier-cyber-protection.service.gov.uk/dcpp">https://supplier-cyber-protection.service.gov.uk/dcpp</a> and register for an account. You will need the risk assessment code 'RAR-PUAS94FY'
<b>10.5</b>	<b>Testing:</b> Not applied
<b>10.6</b>	<b>Business Continuity &amp; Disaster Recovery:</b> In Call Off Schedule 8 (Business Continuity and Disaster Recovery)  <b>Disaster Period:</b> For the purpose of the definition of "Disaster" in Call Off Schedule 1 (Definitions) the "Disaster Period" shall be <b>2 (Two) months</b> .
<b>10.7</b>	<b>Failure of Supplier Equipment (Clause 34.8 of the call off Terms):</b> Not applied
<b>10.8</b>	<b>Protection of Customer Data:</b> Clause 37.2.3 of the Call Off Terms
<b>10.9</b>	<b>Notices</b> (Clause 59.6 of the Call Off Terms): Customer's postal address and email address: <b>Refer to DEFFORM 111</b> Supplier's postal address and email address: <b>Refer to Section A of the Call-off Order Form</b>
<b>10.10</b>	<b>Transparency Reports</b> Not Applied
<b>10.11</b>	<b>Alternative and/or additional provisions (including any Alternative and/or Additional Clauses under Call Off Schedule 14):</b> In Clause 2.2.3 of Call-off Schedule 14 MOD ("Ministry of Defence") Additional or Alternative Clauses  <b>AND</b> In Call-off Schedule 16
<b>10.12</b>	<b>Call Off Tender:</b> Schedule 15 is not used

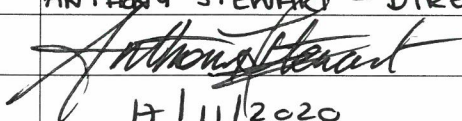
#### FORMATION OF CALL OFF CONTRACT

BY SIGNING AND RETURNING THIS CALL OFF ORDER FORM (which may be done by electronic means) the Supplier agrees to enter a Call Off Contract with the Customer to provide the Products and/or Services in accordance with the terms Call Off Order Form and the Call Off Terms.

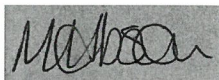
The Parties hereby acknowledge and agree that they have read the Call Off Order Form and the Call Off Terms and by signing below agree to be bound by this Call Off Contract.

In accordance with paragraph 7 of Framework Schedule 5 (Call Off Procedure), the Parties hereby acknowledge and agree that this Call Off Contract shall be formed when the Customer acknowledges (which may be done by electronic means) the receipt of the signed copy of the Call Off Order Form from the Supplier within two (2) Working Days from such receipt.

For and on behalf of the Supplier:

Name and Title	ANTHONY STEWART - DIRECTOR
Signature	
Date	17/11/2020

For and on behalf of the Customer:

Name and Title	Ms Amanda Hobson – DES Typhoon BBMF Comrcl 3a1 DE&S Typhoon/BBMF Commercial Officer
Signature	
Date	22 October 2020

## TABLE OF CONTENT

<b>A.</b>	<b>PRELIMINARIES.....</b>	<b>9</b>
	1. DEFINITIONS AND INTERPRETATION.....	9
	2. DUE DILIGENCE .....	10
	3. REPRESENTATIONS AND WARRANTIES .....	11
	4. CALL OFF GUARANTEE .....	12
<b>B.</b>	<b>DURATION OF CALL OFF CONTRACT .....</b>	<b>12</b>
	5. CALL OFF CONTRACT PERIOD .....	13
<b>C.</b>	<b>CALL OFF CONTRACT PERFORMANCE .....</b>	<b>13</b>
	6. IMPLEMENTATION PLAN .....	13
	7. PRODUCTS AND/ OR SERVICES .....	15
	8. PURCHASING PROCEDURE LOT 1 AND LOT 2.....	16
	9. SERVICES.....	17
	10. PRODUCTS.....	19
	11. INSTALLATION WORKS .....	23
	12. CUSTOMER RESPONSIBILITIES.....	24
	13. STANDARDS AND QUALITY .....	25
	14. TESTING .....	25
	15. SERVICE LEVELS AND SERVICE CREDITS.....	25
	16. CRITICAL SERVICE LEVEL FAILURE .....	26
	17. BUSINESS CONTINUITY AND DISASTER RECOVERY .....	27
	18. DISRUPTION.....	27
	19. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE.....	28
	20. CONTINUOUS IMPROVEMENT.....	28
<b>D.</b>	<b>CALL OFF CONTRACT GOVERNANCE.....</b>	<b>28</b>
	21. PERFORMANCE MONITORING .....	29
	22. REPRESENTATIVES .....	29
	23. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA.....	29
	24. CHANGE .....	31
<b>E.</b>	<b>PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS .....</b>	<b>33</b>
	25. CALL OFF CONTRACT CHARGES AND PAYMENT .....	33
	26. PROMOTING TAX COMPLIANCE .....	37
	27. BENCHMARKING .....	37
<b>F.</b>	<b>SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS.....</b>	<b>38</b>
	28. KEY PERSONNEL.....	38
	29. SUPPLIER PERSONNEL .....	39
	30. NOT USED .....	41
	31. SUPPLY CHAIN RIGHTS AND PROTECTION .....	41
<b>G.</b>	<b>PROPERTY MATTERS.....</b>	<b>45</b>
	32. CUSTOMER PREMISES .....	45

33.	CUSTOMER PROPERTY .....	46
34.	SUPPLIER EQUIPMENT .....	47
35.	LPG INSTALLATIONS – POINT AT WHICH THE SITE RESUMES RESPONSIBILITY.....	47
H.	INTELLECTUAL PROPERTY AND INFORMATION.....	48
36.	INTELLECTUAL PROPERTY RIGHTS .....	48
37.	SECURITY AND PROTECTION OF INFORMATION .....	54
38.	PUBLICITY AND BRANDING.....	61
I.	LIABILITY AND INSURANCE.....	62
39.	LIABILITY .....	62
40.	INSURANCE.....	64
J.	REMEDIES AND RELIEF.....	65
41.	CUSTOMER REMEDIES FOR DEFAULT .....	65
42.	SUPPLIER RELIEF DUE TO CUSTOMER CAUSE.....	66
43.	FORCE MAJEURE .....	68
K.	TERMINATION AND EXIT MANAGEMENT.....	69
44.	CUSTOMER TERMINATION RIGHTS.....	70
45.	SUPPLIER TERMINATION RIGHTS .....	72
46.	TERMINATION BY EITHER PARTY.....	72
47.	PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION...	72
48.	CONSEQUENCES OF EXPIRY OR TERMINATION .....	73
L.	MISCELLANEOUS AND GOVERNING LAW .....	74
49.	COMPLIANCE .....	74
50.	ASSIGNMENT AND NOVATION .....	75
51.	WAIVER AND CUMULATIVE REMEDIES.....	76
52.	RELATIONSHIP OF THE PARTIES .....	76
53.	PREVENTION OF FRAUD AND BRIBERY .....	76
54.	SEVERANCE.....	78
55.	MISTAKES IN INFORMATION .....	78
56.	FURTHER ASSURANCES .....	78
57.	ENTIRE AGREEMENT .....	78
58.	THIRD PARTY RIGHTS.....	79
59.	NOTICES .....	79
60.	LEGISLATIVE CHANGE .....	80
61.	DISPUTE RESOLUTION .....	81
62.	GOVERNING LAW AND JURISDICTION.....	81
	CALL OFF SCHEDULE 1: DEFINITIONS.....	82
	CALL OFF SCHEDULE 2: PRODUCTS AND/OR SERVICES .....	107
	ANNEX 1: THE PRODUCTS.....	108
	ANNEX 2: THE PRODUCTS.....	109

<b>CALL OFF SCHEDULE 3: CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING .....</b>	<b>110</b>
<b>ANNEX 1: CALL OFF CONTRACT CHARGES.....</b>	<b>116</b>
<b>ANNEX 2: PAYMENT TERMS/PROFILE – NOT USED.....</b>	<b>117</b>
<b>CALL OFF SCHEDULE 4: IMPLEMENTATION PLAN.....</b>	<b>118</b>
1. INTRODUCTION.....	ERROR! BOOKMARK NOT DEFINED.
<b>CALL OFF SCHEDULE 5: TESTING.....</b>	<b>119</b>
Annex 1: SATISFACTION CERTIFICATE.....	Error! Bookmark not defined.
<b>CALL OFF SCHEDULE 6: SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING.....</b>	<b>120</b>
<b>ANNEX 1 TO PART A: SERVICE LEVELS AND SERVICE CREDITS TABLE</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>ANNEX 1 TO PART B: PERFORMANCE MONITORING</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
1. PRINCIPAL POINTS.....	ERROR! BOOKMARK NOT DEFINED.
<b>CALL OFF SCHEDULE 7: SECURITY .....</b>	<b>121</b>
ANNEX 1: Security Policy .....	126
<b>ANNEX 2: SECURITY MANAGEMENT PLAN.....</b>	<b>127</b>
<b>CALL OFF SCHEDULE 8: BUSINESS CONTINUITY AND DISASTER RECOVERY .....</b>	<b>128</b>
<b>CALL OFF SCHEDULE 9: EXIT MANAGEMENT .....</b>	<b>135</b>
<b>CALL OFF SCHEDULE 10: STAFF TRANSFER – NOT USED .....</b>	<b>136</b>
<b>CALL OFF SCHEDULE 11: DISPUTE RESOLUTION PROCEDURE .....</b>	<b>137</b>
<b>CALL OFF SCHEDULE 12: VARIATION FORM .....</b>	<b>143</b>
<b>call off SCHEDULE 13: TRANSPARENCY REPORTS.....</b>	<b>144</b>
ANNEX 1: LIST OF TRANSPARENCY REPORTS .....	Error! Bookmark not defined.
<b>CALL OFF SCHEDULE 14: ALTERNATIVE AND/OR ADDITIONAL CLAUSES.....</b>	<b>145</b>
<b>Call Off Schedule 15: Call Off Tender .....</b>	<b>146</b>
<b>CALL OFF SCHEDULE 16: MOD ADDITIONAL CLAUSES .....</b>	<b>147</b>
<b>SUPPLIER’S DELIVERY REPRESENTATIVE.....</b>	<b>150</b>
<b>CALL OFF SCHEDULE 17: SMR and SMI.....</b>	<b>Error! Bookmark not defined.</b>



## PART 2 – TYPH/BBMF/701073392 CALL OFF TERMS

### TERMS AND CONDITIONS

#### RECITALS

- A. Where recital A has been selected in the Call Off Order Form, the Customer has followed the call off procedure set out in paragraph 1.2 of Framework Schedule 5 (Call Off Procedure) and has awarded this Call Off Contract to the Supplier by way of direct award.
- B. Where recitals B to E have been selected in the Call Off Order Form, the Customer has followed the call off procedure set out in paragraph 1.3 of Framework Schedule 5 (Call Off Procedure) and has awarded this Call Off Contract to the Supplier by way of further competition.
- C. The Customer issued its Statement of Requirements for the provision of the Products and Services on the date specified at paragraph 10.1 of the Call Off Order Form.
- D. In response to the Statement of Requirements the Supplier submitted a Call Off Tender to the Customer on the date specified at paragraph 10.1 of the Call Off Order Form through which it provided to the Customer its solution for providing the Products and/or Services.
- E. On the basis of the Call Off Tender, the Customer selected the Supplier to provide the Products and/or Services to the Customer in accordance with the terms of this Call Off Contract.

#### A. PRELIMINARIES

##### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Call Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions) or the relevant Call Off Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Call Off Schedule 1 (Definitions) or relevant Call Off Schedule, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Call Off Contract, unless the context otherwise requires:
  - 1.3.1 the singular includes the plural and vice versa;
  - 1.3.2 reference to a gender includes the other gender and the neuter;
  - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - 1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile

transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;

- 1.3.7 references to “**representations**” shall be construed as references to present facts, to “**warranties**” as references to present and future facts and to “**undertakings**” as references to obligations under this Call Off Contract;
  - 1.3.8 references to “**Clauses**” and “**Call Off Schedules**” are, unless otherwise provided, references to the clauses and schedules of this Call Off Contract and references in any Call Off Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Call Off Schedule in which these references appear; and
  - 1.3.9 the headings in this Call Off Contract are for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract.
- 1.4 Subject to Clauses 1.5 and 1.6 (Definitions and Interpretation), in the event of and only to the extent of any conflict between the Call Off Order Form, the Call Off Terms and the provisions of the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 the Framework Agreement, except Framework Schedule 21 (Tender);
  - 1.4.2 the Call Off Order Form;
  - 1.4.3 the Call Off Terms, except Call Off Schedule 15 (Call Off Tender);
  - 1.4.4 Call Off Schedule 15 (Call Off Tender); and
  - 1.4.5 Framework Schedule 21 (Tender).
- 1.5 Any permitted changes by the Customer to the Template Call Off Terms and the Template Call Off Order Form under Clause 5 (Call Off Procedure) of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to them becoming the Call Off Terms and the Call Off Order Form which comprise this Call Off Contract shall prevail over the Framework Agreement.
- 1.6 Where Call Off Schedule 15 (Call Off Tender) or Framework Schedule 21 (Tender) contain provisions which are more favourable to the Customer in relation to (the rest of) this Call Off Contract, such provisions of the Call Off Tender or the Tender shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Call Off Tender or Tender is more favourable to it in this context.

## 2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
  - 2.1.1 the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Call Off Contract;
  - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
  - 2.1.3 it has raised all relevant due diligence questions with the Customer before the Call Off Commencement Date;
  - 2.1.4 it has undertaken all necessary due diligence and has entered into this Call Off Contract in reliance on its own due diligence alone; and

- 2.1.5 it shall not be excused from the performance of any of its obligations under this Call Off Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
- (a) misinterpretation of the requirements of the Customer in the Call Off Order Form or elsewhere in this Call Off Contract;
  - (b) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
  - (c) failure by the Supplier to undertake its own due diligence.

### **3. REPRESENTATIONS AND WARRANTIES**

- 3.1 Each Party represents and warranties that:
- 3.1.1 it has full capacity and authority to enter into and to perform this Call Off Contract;
  - 3.1.2 this Call Off Contract is executed by its duly authorised representative;
  - 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Call Off Contract; and
  - 3.1.4 its obligations under this Call Off Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
- 3.2 The Supplier represents and warrants that:
- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - 3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call Off Contract;
  - 3.2.3 its execution, delivery and performance of its obligations under this Call Off Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
  - 3.2.4 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender, Call Off Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract;
  - 3.2.5 if the Call Off Contract Charges payable under this Call Off Contract exceed or are likely to exceed five (5) million pounds, as at the Call Off Commencement Date it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
  - 3.2.6 it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other

materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Products and/or Services by the Customer;

- 3.2.7 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;
  - 3.2.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Contract;
  - 3.2.9 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
  - 3.2.10 for the Call Off Contract Period and for a period of twelve (12) months after the termination or expiry of this Call Off Contract, the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Products and/or Services without Approval or the prior written consent of the Customer which shall not be unreasonably withheld.
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.
- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.5 For the avoidance of doubt, the fact that any provision within this Call Off Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier which constitutes a material Default.

#### **4. CALL OFF GUARANTEE**

- 4.1 Where the Customer has stipulated in the Call Off Order Form that this Call Off Contract shall be conditional upon receipt of a Call Off Guarantee, then, on or prior to the Call Off Commencement Date or on any other date specified by the Customer, the Supplier shall deliver to the Customer:
  - 4.1.1 an executed Call Off Guarantee from a Call Off Guarantor; and
  - 4.1.2 a certified copy extract of the board minutes and/or resolution of the Call Off Guarantor approving the execution of the Call Off Guarantee.
- 4.2 The Customer may in its sole discretion at any time agree to waive compliance with the requirement in Clause 4.1 by giving the Supplier notice in writing.

#### **B. DURATION OF CALL OFF CONTRACT**

## **5. CALL OFF CONTRACT PERIOD**

- 5.1 This Call Off Contract shall take effect on the Call Off Commencement Date and the term of this Call Off Contract shall be the Call Off Contract Period.
- 5.2 Where the Customer has specified a Call Off Extension Period in the Call Off Order Form, the Customer may extend this Call Off Contract for the Call Off Extension Period by providing written notice to the Supplier before the end of the Initial Call Off Period. The minimum period for the written notice shall be as specified in the Call Off Order Form.

## **C. CALL OFF CONTRACT PERFORMANCE**

## **6. IMPLEMENTATION PLAN**

- 6.1 Formation of Implementation Plan
  - 6.1.1 Where an Implementation Plan has not been agreed and included in Call Off Schedule 4 (Implementation Plan) on the Call Off Commencement Date, but the Customer has specified in the Call Off Order Form that the Supplier shall provide a draft Implementation Plan prior to the commencement of the provision of the Products and/or Services, the Supplier's draft must contain information at the level of detail necessary to manage the implementation stage effectively and as the Customer may require. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
  - 6.1.2 The Supplier shall submit the draft Implementation Plan to the Customer for Approval (such decision of the Customer to Approve or not shall not be unreasonably delayed or withheld) within such period as specified by the Customer in the Call Off Order Form.
  - 6.1.3 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
  - 6.1.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in this Call Off Contract and report to the Customer on such performance.
- 6.2 **Control of Implementation Plan**
  - 6.2.1 Subject to Clause 6.2.2, the Supplier shall keep the Implementation Plan under review in accordance with the Customer's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Products and/or Services. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
  - 6.2.2 Changes to the Milestones (if any), Milestone Payments (if any) and Delay Payments (if any) shall only be made in accordance with the Variation Procedure 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 Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).

- 6.2.3 Where so specified by the Customer in the Implementation Plan or elsewhere in this Call Off Contract, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

### 6.3 **Rectification of Delay in Implementation**

- 6.3.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Call Off Contract:
- (a) it shall:
    - (i) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
    - (ii) include in its notification an explanation of the actual or anticipated impact of the Delay;
    - (iii) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
    - (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
  - (b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Implementation Plan, Clause 6.4 (Delay Payments) shall apply.

### 6.4 **Delay Payments**

- 6.4.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Customer such Delay Payments (calculated as set out by the Customer in the Implementation Plan) and the following provisions shall apply:
- (a) the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to Achieve the corresponding Milestone;
  - (b) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
    - (i) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 44 (Customer Termination Rights) except Clause 44.8 (Termination Without Cause); or
    - (ii) the delay exceeds the number of days (the "**Delay Period Limit**") specified in Call Off Schedule 4 (Implementation Plan) for the purposes of this sub-Clause, commencing on the relevant Milestone Date;
  - (c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified by the Customer in the Implementation Plan);
  - (d) no payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments or be deemed to be a waiver of the right of the

Customer to recover any such damages unless such waiver complies with Clause 51 (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Customer's rights to claim Delay Payments; and

- (e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 6.4.1 and Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 39 (Liability).

## **7. PRODUCTS AND/ OR SERVICES**

### **7.1 Provision of the Products and/or Services**

- 7.1.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Products and/or Services and the performance of its obligations under this Call Off Contract.
- 7.1.2 The Supplier shall ensure that the Products and/or Services:
  - (a) comply in all respects with the description of the Products and/or Services in Call Off Schedule 2 (Products and/or Services) or elsewhere in this Call Off Contract; and
  - (b) are supplied in accordance with the provisions of this Call Off Contract (including the Call Off Tender) and the Tender.
- 7.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:
  - (a) all applicable Law;
  - (b) Good Industry Practice;
  - (c) the Standards;
  - (d) the Security Policy;
  - (e) the ICT Policy (if so required by the Customer); and
  - (f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 7.1.3(a) to 7.1.3(e).
- 7.1.4 The Supplier shall:
  - (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Products and/or Services in accordance with this Call Off Contract;
  - (b) subject to Clause 24.1 (Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Products and/or Services;
  - (c) ensure that any Products and/or Services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Products and/or Services shall enable the Deliverables and/or the Products and/or the Services to meet the requirements of the Customer;

- (d) ensure that the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer);
- (e) ensure that the Products and/or Services are fully compatible with any Customer Property or Customer Assets described in Call Off Schedule 4 (Implementation Plan) (or elsewhere in this Call Off Contract) or otherwise used by the Supplier in connection with this Call Off Contract;
- (f) minimise any disruption to the Sites and/or the Customer's operations when providing the Products and/or Services;
- (g) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (h) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Products and/or Services to any Other Supplier and, on the Call Off Expiry Date for any reason, to enable the timely transition of the supply of the Products and/or Services (or any of them) to the Customer and/or to any Replacement Supplier;
- (i) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Products and/or Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
- (j) provide the Customer with such assistance as the Customer may reasonably require during the Call Off Contract Period in respect of the supply of the Products and/or Services;
- (k) deliver the Products and/or Services in a proportionate and efficient manner;
- (l) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and
- (m) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.

7.1.5 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

## **8. PURCHASING PROCEDURE LOT 1 AND LOT 2**

8.1 Where the Customer intends to place individual Purchase Orders under this Call Off Contract from time to time, the Customer, following consultation with the Supplier, shall specify the procedure for repeat ordering of Products



and/or Services under this Call Off Contract (in a separate Call Off Schedule if necessary), which shall include as a minimum the following:

- 8.1.1 [the method for ordering Products and/or Services , whether online or by email or telephone;
  - 8.1.2 the Customer reference number/Purchase Order number;
  - 8.1.3 the required grade/type of Products and/or Services;
  - 8.1.4 the quantity of Products and/or Services required;
  - 8.1.5 the Premises ;
  - 8.1.6 the required date of delivery;
  - 8.1.7 the load size;
  - 8.1.8 restrictions on access and/or delivery;
  - 8.1.9 point of contact for Customer; and
  - 8.1.10 the method by which the Supplier will confirm the Purchase Order.
- 8.2 The Customer may at any time up to 24 hours prior to despatch of the Products and/or Services amend or cancel a Purchase Order by written notice to the Supplier.
- 8.3 If the Supplier receives the written notice in accordance with clause 8.2 at any time up to 24 hours prior to despatch of the Purchase Order, the Supplier shall not be entitled to recovery any costs from the Customer in relation to any amendment or cancellation of a Purchase Order.
- 8.4 If the Customer amends or cancels the Purchase Order within 24 hours prior to despatch of the Purchase Order, the Supplier shall be entitled to reimbursement of its reasonably incurred costs provided that it mitigates such costs and provides evidence of them to the Customer.
- 8.5 Where the amendment or cancellation of a Purchase Order is directly or indirectly due to the Supplier's failure to comply with its obligations under this Call Off Contract, the Customer shall have no liability to the Supplier in respect of it.
- 8.6 For the avoidance of doubt, where the amendment or cancellation of a Purchase Order is directly or indirectly due to the Supplier's failure to comply with its obligations under this Call Off Contract, the Customer shall have no liability to the Supplier in respect of it.
- 8.7 For the avoidance of doubt, a Purchase Order shall be carried out in accordance with the provisions of this Call Off Contract and the Parties agree that any Purchase Order not carried out in this way shall not constitute a valid Purchase Order.
- 8.8 For LPG, Delivery may also be made by automatic top-up procedure. Using data from previous deliveries the Contractor may estimate when a site requires LPG and make arrangements with the Site accordingly for delivery. Where such an arrangement is the norm, no prior order is required from the Contracting Body Site, however the Contractor, prior to leaving the site, in all cases shall obtain a signed delivery note.

## **9. SERVICES**

### **9.1 General application**

- 9.1.1 This Clause 9 shall apply if any Services have been included in Annex 1 of Call Off Schedule 2 (Products and/or Services).

### **9.2 Time of Delivery of the Services**

- 9.2.1 The Supplier shall provide the Services on the date(s) specified in the Call Off Order Form (or elsewhere in this Call Off Contract) and the Milestone Dates (if any).

**9.3 Location and Manner of Delivery of the Services**

- 9.3.1 Except where otherwise provided in this Call Off Contract, the Supplier shall provide the Services to the Customer through the Supplier Personnel at the Sites.
- 9.3.2 The Customer may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Customer Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.

**9.4 Undelivered Services**

- 9.4.1 In the event that any of the Services are not Delivered in accordance with Clauses 7.1 (Provision of the Products and/or Services), 9.2 (Time of Delivery of the Services) and 9.3 (Location and Manner of Delivery of the Services) ("Undelivered Services"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.
- 9.4.2 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 7.1, (Provision of the Products and/or Services), 9.2 (Time of Delivery of the Services) and 9.3 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

**9.5 Obligation to Remedy of Default in the Supply of the Services**

- 9.5.1 Subject to Clauses 36.9.2 and 36.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 9.4.2 (Undelivered Services) and 41 (Customer Remedies for Default)), the Supplier shall, where practicable:
- (a) remedy any breach of its obligations in Clauses 7 and 9 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
  - (b) meet all the costs of, and incidental to, the performance of such remedial work.

**9.6 Continuing Obligation to Provide the Services**

- 9.6.1 The Supplier shall continue to perform all of its obligations under this Call Off Contract and shall not suspend the provision of the Services, notwithstanding:
- (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
  - (b) the existence of an unresolved Dispute; and/or

- (c) any failure by the Customer to pay any Call Off Contract Charges,

unless the Supplier is entitled to terminate this Call Off Contract under Clause 45.1 (Termination on Customer Cause for Failure to Pay) for failure by the Customer to pay undisputed Call Off Contract Charges.

## **10. PRODUCTS**

### **10.1 General application**

- 10.1.1 This Clause 10 shall apply if any Products have been included in Annex 2 of Call Off Schedule 2 (Products and/or Services).

### **10.2 Time of Delivery of the Products**

- 10.2.1 The Supplier shall provide the Products on the date(s) specified in the Call Off Order Form (or elsewhere in this Call Off Contract) and the Milestone Dates (if any).
- 10.2.2 Subject to Clause 10.2.3 (Time of Delivery of the Products), where the Products are bulk fuels and are delivered by the Supplier, the point of delivery shall be when the Products are removed from the transporting vehicle and transferred into the Customer's storage tank at the Premises. Where the Products are collected by the Customer, the point of delivery shall be when the Products are loaded on the Customer's vehicle. Where the products are not bulk fuels delivery, the point of delivery shall be when the products are removed from the transporting vehicle onto the Customers site.
- 10.2.3 Where the Customer has specified any Installation Works in the Call Off Order Form, Delivery shall include installation of the Products by the Supplier Personnel at the Sites (or at such place as the Customer may reasonably direct) in accordance with Clause 11 (Installation Works) and the Call Off Order Form.

### **10.3 Location and Manner of Delivery of the Products**

- 10.3.1 Except where otherwise provided in this Call Off Contract, the Supplier shall deliver the Products to the Customer through the Supplier Personnel at the Sites.
- 10.3.2 If requested by the Customer prior to Delivery, the Supplier shall provide the Customer with a sample or samples of Products for evaluation and Approval, at the Supplier's cost and expense.
- 10.3.3 The Products shall be marked, stored, handled and delivered in a proper manner and in accordance the Customer's instructions as set out in the Call Off Order Form (or elsewhere in this Call Off Contract), Good Industry Practice, any applicable Standards and any Law. In particular, the Products shall be marked with the Order number and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Products (and all documents relating thereto) shall bear prominent and adequate warnings.
- 10.3.4 Where the Supplier supplies the Products in drums, barrels cylinders, bottles or other containers, the Supplier shall ensure that the barrels, drums cylinders, bottles or other containers will be of satisfactory quality, fit for their purpose and comply with the Law, any applicable Standards and any other standards.
- 10.3.5 On dispatch of any consignment of the Products the Supplier shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the number of packages,

their weight and volume together with the all other relevant documentation and information required to be provided under any Laws.

- 10.3.6 The Customer may inspect and examine the manner in which the Supplier supplies the Products at the Sites and, if the Sites are not the Customer Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.
- 10.3.7 Except where otherwise provided in this Call Off Contract, Delivery shall include the unloading, transfer and, where the Customer has specified any Installation Works in the Order Form, installation of the Products by the Staff at the Premises or at such place as the Customer or Customer's duly authorised person shall reasonably direct

#### **10.4 Assessment of Quantity and Quality of the Products**

- 10.4.1 The Supplier agrees and acknowledges that if requested by the Customer prior to Delivery, the Supplier shall provide the Customer (or another person acting on behalf of the Customer) with a sample or samples of Products s for evaluation and Approval, at the Supplier's cost and expense.
- 10.4.2 The Supplier agrees and acknowledges that if the quantity of Liquid Fuel Products for Lot 1 delivered shall be the number of SI Litres delivered into the Customer's tank.
- 10.4.3 The Supplier agrees and acknowledges that if for LPG quantities delivered in bulk for Lot 2, measurement shall be in litres using approved measuring device of the vehicle taken before and after delivery in the presence of a representative of the Site.
- 10.4.4 The Supplier agrees and acknowledges that if the Customer shall have the right to verify the quantity of Products recorded as having been delivered and to check the accuracy of any Equipment provided by the Supplier for measurement of the quantities delivered. Any dispute regarding the measurement of the quantity provided shall be referred to the Dispute Resolution Procedure in accordance with Schedule 1.
- 10.4.5 The Supplier agrees and acknowledges that if all calibrations, measurements and taking of samples shall be carried out in accordance with the Law and Good Industry Practice.
- 10.4.6 The Supplier agrees and acknowledges that if on reasonable notice, the Supplier shall allow the Customer to take samples of the Products at the Premises to test the quality of the Products being supplied by the Supplier. If the sample taken does not comply with the Standards for such Products, the Supplier shall indemnify the Customer for the losses, expenses, costs ("Losses") incurred including without limit the Losses suffered or incurred in conducting such tests, replacing the Products which are not compliant with the Standards and for the cleaning of any affected storage tank.
- 10.4.7 The Supplier agrees and acknowledges that if there is any disagreement as to the quality of the Products supplied to the Customer, the Customer and the Supplier shall accept the results of an agreed independent laboratory (and follow the Dispute Resolution Procedure of the identity of the independent laboratory cannot be agreed)
- 10.4.8 The Supplier agrees and acknowledges that if any product delivered is found to be inferior, contaminated on contrary to the terms of this

agreement (included variance in the quantity ordered) the whole delivery may be rejected and the Supplier will bear the loss of the quantities concerned together with the costs of removal and any necessary (bulk) tank cleaning, rectification and all other costs the Customer may reasonably incur.

- 10.4.9 The Supplier agrees and acknowledges that if the Supplier shall have the right to refuse to deliver liquid fuel and/or liquefied gas in bulk into any Customers' storage tanks if such tanks are found to be in an unsafe condition or in such condition as could be hazardous to the contractors personnel during tank fuelling operations.

10.5 **Spillage and Contamination of the Products**

- 10.5.1 In the event of loss or contamination of the Products at the time of delivery, responsibility for such loss or contamination and for any costs incurred in cleaning up any spillage of the Products shall be as follows:

- (a) Where loss or contamination of the Products has occurred as a result of defects in the Equipment provided by the Supplier (including, without limitation, the delivery vehicles, hoses and hose connections) the Supplier shall be responsible for such loss or contamination;
- (b) Where loss or contamination of the Products has occurred as a result of defects in the Equipment provided by the Customer (including, without limitation, tank gauges and couplings) the Customer shall be responsible for such loss or contamination;
- (c) Where loss or contamination of the Products has occurred as a result of any act, omission or default of the Supplier or any of the Staff, the Supplier shall be responsible for any such loss or contamination.

10.6 **Undelivered Products**

- 10.6.1 In the event that not all of the Products are Delivered in accordance with Clauses 7.1 (Provision of the Products and/or Services), 9.2 (Time of Delivery of the Products ) and 9.3 (Location and Manner of Delivery of the Products) ("**Undelivered Products**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Products that were not so Delivered until such time as the Undelivered Products are Delivered.
- 10.6.2 The customer at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising deem the failure to comply with Clauses 7.1 (Provision of the Products and/or Services), 9.2 (Time of Delivery of the Products) and 9.3 (Location and Manner of Delivery of the Products) and meet the relevant Milestone Date (if any) to be a material Default.

10.7 **Over Delivered Products**

- 10.7.1 The Customer shall be under no obligation to accept or pay for any Products delivered in excess of the quantity specified in the Call Off Order Form (or elsewhere in this Call Off Contract) ("**Over-Delivered Products**").
- 10.7.2 If the Customer elects not to accept such Over-Delivered Products it may, without prejudice to any other rights and remedies of the Customer howsoever arising, give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of

such Over-Delivered Products (including but not limited to the costs of moving and storing the Over-Delivered Products).

- 10.7.3 If the Supplier fails to comply with the Customer's notice under Clause 9.4.2, the Customer may dispose of such Over-Delivered Products and charge the Supplier for the costs of such disposal. The risk in any Over-Delivered Products shall remain with the Supplier.

**10.8 Delivery of the Products by Instalments**

- 10.8.1 Unless expressly agreed to the contrary, the Customer shall not be obliged to accept delivery of the Products by instalments. If, however, the Customer does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its Delivery shall, without prejudice to any other rights or remedies of the Customer howsoever arising, entitle the Customer to terminate the whole or any unfulfilled part of this Call Off Contract for material Default without further liability to the Customer.

**10.9 Risk and Ownership in Relation to the Products**

- 10.9.1 Without prejudice to any other rights or remedies of the Customer howsoever arising:
- (a) risk in the Products shall pass to the Customer at the time of Delivery; and
  - (b) ownership of the Products shall pass to the Customer on the earlier of Delivery of the Products or payment by the Customer of the Call Off Contract Charges;

**10.10 Responsibility for Damage to or Loss of the Products**

- 10.10.1 Without prejudice to the Supplier's other obligations to provide the Products in accordance with this Call Off Contract, the Supplier accepts responsibility for all damage to or loss of the Products if the:
- (c) same is notified in writing to the Supplier within three (3) Working Days of receipt and inspection of the Products by the Customer; and
  - (d) Products have been handled by the Customer in accordance with the Supplier's instructions.
- 10.10.2 Where the Supplier accepts responsibility under Clause 10.5.1, it shall, at its sole option, replace or repair the Products (or part thereof) within such time as is reasonable having regard to the circumstances and as agreed with the Customer.

**10.11 Warranty of the Products**

- 10.11.1 The Supplier hereby guarantees the Products for the Warranty Period against faulty materials and workmanship.
- 10.11.2 If the Customer shall within such Warranty Period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Products as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies of the Customer howsoever arising) promptly remedy such faults or defects (whether by repair or replacement as the Customer shall elect) free of charge.

**10.12 Obligation to Remedy Default in the Supply of the Products**

- 10.12.1 Subject to Clauses 36.9.2 and 36.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer

howsoever arising (including under Clauses 9.4.2 (Undelivered Products) and 41 (Customer Remedies for Default)), the Supplier shall, where practicable:

- (e) remedy any breach of its obligations in this Clause 10 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
- (f) meet all the costs of, and incidental to, the performance of such remedial work.

#### **10.13 Continuing Obligation to Provide the Products**

10.13.1 The Supplier shall continue to perform all of its obligations under this Call Off Contract and shall not suspend the provision of the Products, notwithstanding:

- (g) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
- (h) the existence of an unresolved Dispute; and/or
- (i) any failure by the Customer to pay any Call Off Contract Charges,

unless the Supplier is entitled to terminate this Call Off Contract under Clause 45.1 (Termination on Customer Cause for Failure to Pay) for failure to pay undisputed Call Off Contract Charges.

to Pay) for failure to pay undisputed Call Off Contract Charges.

### **11. INSTALLATION WORKS**

11.1 This Clause 11 shall apply if any Products have been included in Annex 2 of Call Off Schedule 2 (Products and/or Services) and the Customer has specified Installation Works in the Call Off Order Form.

11.2 Where the Supplier reasonably believes it has completed the Installation Works it shall notify the Customer in writing. Following receipt of such notice, the Customer shall inspect the Installation Works and shall, by giving written notice to the Supplier:

11.2.1 accept the Installation Works, or

11.2.2 reject the Installation Works and provide reasons to the Supplier if, in the Customer's reasonable opinion, the Installation Works do not meet the requirements set out in the Call Off Order Form (or elsewhere in this Call Off Contract).

11.3 If the Customer rejects the Installation Works in accordance with Clause 11.2, the Supplier shall immediately rectify or remedy any defects and if, in the Customer's reasonable opinion, the Installation Works do not, within five (5) Working Days of such rectification or remedy, meet the requirements set out in the Call Off Order Form (or elsewhere in this Call Off Contract), the Customer may terminate this Call Off Contract for material Default.

11.4 The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Customer in accordance with Clause 11.2. Notwithstanding the acceptance of any Installation Works in accordance with Clause 11.2 (Installation Works), the Supplier shall remain solely responsible for ensuring that the Products and the Installation Works conform to the specification in the Call Off Order Form (or elsewhere in this Call Off

Contract). No rights of estoppel or waiver shall arise as a result of the acceptance by the Customer of the Installation Works.

- 11.5 Throughout the Call Off Contract Period, the Supplier shall have at all times all licences, approvals and consents necessary to enable the Supplier and the Supplier Personnel to carry out the Installation Works.

## 12. CUSTOMER RESPONSIBILITIES FOR THE BULK SUPPLY OF FUEL

- 12.1 The Customer shall identify to the Supplier the correct storage tank for receipt of the Bulk Fuel Products at the Premises and ensure that the storage tank has sufficient capacity and can receive and store safely the quantity of the Bulk Fuel Products ordered. If the storage tank has insufficient capacity and cannot receive and store safely the quantity of Product ordered, the reasonable costs incurred by the Supplier in the rejected delivery shall be borne by the Customer (subject to the Supplier mitigating such cost where reasonable and supplying detailed information of the costs incurred)
- 12.2 The Customer shall ensure that the Supplier has access to the Premises to make deliveries on the delivery date (or relevant Milestone Date) specified in the Order Form. If the Supplier cannot gain access to the Premises on the delivery date it shall inform the Customer's Representative immediately.
- 12.3 If the Customer's Representative cannot arrange access to the Premises within one hour of being informed in accordance with Clause 12.2, the Supplier shall agree with the Customer's Representative a revised delivery date which shall be within two days of the original delivery date (or relevant Milestone Date). The reasonable costs incurred by the Supplier in such re-delivery shall be borne by the Customer (subject to the Supplier mitigating such costs where reasonable and supplying detailed information of the costs incurred).
- 12.4 If the Customer has not complied with any of its obligations set out in this Clause 12.4, the Supplier shall inform the Customer as soon as becoming aware of such failure and the Customer shall endeavour to rectify any such failure. If the Customer does not rectify such failure within a reasonable timescale, the Supplier shall be entitled to refuse to deliver the Products and such non-delivery shall not be deemed to be a breach of this Call Off Contract by the Supplier.
- 12.5 If the Supplier would have provided the Bulk Fuel Products in accordance with this Call Off Contract (including the Service Levels) but has failed to do so as a result of a Customer Cause the Supplier shall:
- 12.5.1 In measuring the performance of any affected Service against Service Levels be treated as though the relevant Service had met the relevant Service Level to the extent that the Service Level Failure is due to any Customer Cause
- 12.5.2 Not be treated as being in breach of this Agreement to the extent that non performance or breach is due to any Customer Cause; and
- 12.5.3 Where as a result of the Customer Cause, the Supplier and the Customer have agreed a way to provide the Bulk Fuel Products and/or Services in accordance with this Call Off Contract by working around the Customer Cause ("**Work Around Solution**") the Supplier shall provide the Work Around Solution and shall be entitled to be paid for all reasonable costs incurred in so doing where:
- (a) such costs are in excess of the Call Off Contract Charges it has been paid because it has been treated as though it has supplied the Products in accordance with this Call Off Contract; and



- (b) they have been agreed by the Customer when discussing the scope of the Work Around Solution under this Clause 12.5.3.
- 12.5.4 and any resulting resulting Variation that may be required in connection with a Work Around Solution shall be dealt with in accordance with Clause 24.1 (Variation).
- 12.5.5 In order to claim the rights and reliefs in Clause 12.5, the Supplier shall provide the Customer with details of the Customer Cause within 10 Working Days of the date when the Supplier became aware or ought reasonably to have become aware of the occurrence of the Customer 's default
- 12.5.6 Any disputes about or arising out of whether a Customer Cause applies to the Supplier's failure to supply the Bulk Fuel Products in accordance with this Call Off Contract (including in accordance with the Service Levels) shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the dispute both Parties shall continue to resolve the causes of, and mitigate the effects of such failure.

### **13. STANDARDS AND QUALITY**

- 13.1 The Supplier shall at all times during the Call Off Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.
- 13.2 Throughout the Call Off Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Customer, of the Products and/or Services. The adoption of any such new or emergent standard, or changes to existing Standards (including any specified in the Call Off Order Form), shall be agreed in accordance with the Variation Procedure.
- 13.3 Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Customer's receipt of the Products and/or Services is explained to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 13.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Call Off Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard or Standards shall require Approval (and the written consent of the Customer where the relevant Standard or Standards is/are included in Framework Schedule 2 (Products and/or Services and Key Performance Indicators) and shall be implemented within an agreed timescale.
- 13.5 Where a standard, policy or document is referred to by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall agree the impact of such change.

### **14. TESTING**

- 14.1 This Clause 14 shall apply if so specified by the Customer in the Call Off Order Form.
- 14.2 The Parties shall comply with any provisions set out in Call Off Schedule 5 (Testing).

### **15. SERVICE LEVELS AND SERVICE CREDITS**

- 15.1 This Clause 15 shall apply where the Customer has specified Service Levels and Service Credits in the Call Off Order Form. Where the Customer has specified Service Levels but not Service Credits, only sub-clauses 15.2, 15.3 and 15.7 shall apply.
- 15.2 When this Clause 15.2 applies, the Parties shall also comply with the provisions of Part A (Service Levels and Service Credits) of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).
- 15.3 The Supplier shall at all times during the Call Off Contract Period provide the Products and/or Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
- 15.4 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to the rights set out in Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.
- 15.5 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 15.6 A Service Credit shall be the Customer's exclusive financial remedy for a Service Level Failure except where:
- 15.6.1 the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;
- 15.6.2 the Service Level Failure:
- (a) exceeds the relevant Service Level Threshold;
  - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and
  - (c) results in:
    - (i) the corruption or loss of any Customer Data (in which case the remedies under Clause 37.2.8 (Protection of Customer Data) shall also be available); and/or
    - (ii) the Customer being required to make a compensation payment to one or more third parties; and/or
- 15.6.3 the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 44 (Customer Termination Rights) except Clause 44.8 (Termination Without Cause).
- 15.7 Not more than once in each Call Off Contract Year, the Customer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Level Performance Criteria and the Supplier shall not be entitled to object to, or increase the Call Off Contract Charges as a result of such changes, provided that:
- 15.7.1 the total number of Service Level Performance Criteria for which the weighting is to be changed does not exceed the number set out, for the purposes of this clause, in the Call Off Order Form;
- 15.7.2 the principal purpose of the change is to reflect changes in the Customer's business requirements and/or priorities or to reflect changing industry standards; and
- 15.7.3 there is no change to the Service Credit Cap.

## **16. CRITICAL SERVICE LEVEL FAILURE**

- 16.1 This Clause 16 shall apply if the Customer has specified both Service Credits and Critical Service Level Failure in the Call Off Order Form.
- 16.2 On the occurrence of a Critical Service Level Failure:
  - 16.2.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
  - 16.2.2 the Customer shall (subject to the Service Credit Cap set out in Clause 39.2.1(a) (Financial Limits)) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Call Off Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),  
  
provided that the operation of this Clause 16.2 shall be without prejudice to the right of the Customer to terminate this Call Off Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.
- 16.3 The Supplier:
  - 16.3.1 agrees that the application of Clause 16.2 is commercially justifiable where a Critical Service Level Failure occurs; and
  - 16.3.2 acknowledges that it has taken legal advice on the application of Clause 16.2 and has had the opportunity to price for that risk when calculating the Call Off Contract Charges.

## **17. BUSINESS CONTINUITY AND DISASTER RECOVERY**

- 17.1 This Clause 17 shall apply if the Customer has so specified in the Call Off Order Form.
- 17.2 The Parties shall comply with the provisions of Call Off Schedule 8 (Business Continuity and Disaster Recovery).

## **18. DISRUPTION**

- 18.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call Off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 18.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.
- 18.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Products and/or Services in accordance with its obligations under this Call Off Contract.
- 18.4 If the Supplier's proposals referred to in Clause 18.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.
- 18.5 If the Supplier is temporarily unable to fulfil the requirements of this Call Off Contract owing to disruption of normal business solely due to a Customer Cause, then subject to Clause 19 (Supplier Notification of Customer Cause), an appropriate allowance by way of an extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **19. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE**

- 19.1 Without prejudice to any other obligations of the Supplier in this Call Off Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 45.1.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall:
- 19.1.1 notify the Customer as soon as reasonably practicable ((and in any event within two (2) Working Days of the Supplier becoming aware)) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:
- (a) the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Call Off Contract; and
  - (b) any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
  - (c) use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

## **20. CONTINUOUS IMPROVEMENT**

- 20.1 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Products and/or Services in accordance with this Clause 20 with a view to reducing the Customer's costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Products and/or Services and their supply to the Customer. As part of this obligation the Supplier shall identify and report to the Customer once every twelve (12) months:
- 20.1.1 the emergence of new and evolving relevant technologies which could improve the Sites and/or the provision of the Products and/or Services, and those technological advances potentially available to the Supplier and the Customer which the Parties may wish to adopt;
- 20.1.2 new or potential improvements to the provision of the Products and/or Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support Products and/or Services in relation to the Products and/or Services;
- 20.1.3 changes in business processes and ways of working that would enable the Products and/or Services to be provided at lower costs and/or at greater benefits to the Customer; and/or
- 20.1.4 changes to the Sites business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Products and/or Services.
- 20.2 The Supplier shall ensure that the information that it provides to the Customer shall be sufficient for the Customer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Customer requests.
- 20.3 If the Customer wishes to incorporate any improvement identified by the Supplier, the Customer shall request a Variation in accordance with the Variation Procedure and the Supplier shall implement such Variation at no additional cost to the Customer.

## **D. CALL OFF CONTRACT GOVERNANCE**

## **21. PERFORMANCE MONITORING**

- 21.1 The Supplier shall comply with the monitoring requirements set out in Part B (Performance Monitoring) of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).

## **22. REPRESENTATIVES**

- 22.1 Each Party shall have a representative for the duration of this Call Off Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Call Off Contract.
- 22.2 The initial Supplier Representative shall be the person named as such in the Call Off Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 29 (Supplier Personnel).
- 22.3 If the initial Customer Representative is not specified in the Call Off Order Form, the Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Call Off Commencement Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.

## **23. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

- 23.1 The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Products and/or Services provided under it, any Sub-Contracts and the amounts paid by the Customer.
- 23.2 The Supplier shall:
- 23.2.1 keep the records and accounts referred to in Clause 23.1 in accordance with Good Industry Practice and Law; and
  - 23.2.2 afford any Auditor access to the records and accounts referred to in Clause 23.1 at the Supplier's Premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 23.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call Off Contract including in order to:
    - (a) verify the accuracy of the Call Off Contract Charges and any other amounts payable by the Customer under this Call Off Contract (and proposed or actual variations to them in accordance with this Call Off Contract);
    - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Products and/or Services;
    - (c) verify the Open Book Data;
    - (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
    - (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;

- (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Framework Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to perform the Products and/or Services;
- (g) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Call Off Contract;
- (i) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;
- (j) enable the National Audit Office to carry out an 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;
- (k) review any Performance Monitoring Reports provided under Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Products and/or Services and to verify that these reflect the Supplier's own internal reports and records;
- (l) verify the accuracy and completeness of any information delivered or required by this Call Off Contract;
- (m) review the Supplier's quality management systems (including any quality manuals and procedures);
- (n) review the Supplier's compliance with the Standards;
- (o) inspect the Customer Assets, including the Customer's IPRs, Equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date; and/or
- (p) review the integrity, confidentiality and security of the Customer Data.

23.3 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Products and/or Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.

23.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:

23.4.1 all reasonable information requested by the Customer within the scope of the audit;

23.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Products and/or Services; and

23.4.3 access to the Supplier Personnel.

- 23.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 23, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

## 24. CHANGE

### 24.1 Variation Procedure

- 24.1.1 Subject to the provisions of this Clause 24 and Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 24.1.2 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 24.1.3 Where the Customer has so specified on receipt of a Variation Form from the Supplier, the Supplier shall carry out an impact assessment of the Variation on the Products and/or Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:
- (a) details of the impact of the proposed Variation on the Products and/or Services and the Supplier's ability to meet its other obligations under this Call Off Contract;
  - (b) details of the cost of implementing the proposed Variation;
  - (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Call Off Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
  - (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
  - (e) such other information as the Customer may reasonably request in (or in response to) the Variation request.
- 24.1.4 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.
- 24.1.5 Subject to 24.1.4, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Products and/or Services and the proposed Variation.
- 24.1.6 In the event that:
- (a) the Supplier is unable to agree to or provide the Variation; and/or
  - (b) the Parties are unable to agree a change to the Call Off Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof,
- the Customer may:

- (i) agree to continue to perform its obligations under this Call Off Contract without the Variation; or
- (ii) terminate this Call Off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the provision of the Products and/or Services in accordance with this Call Off Contract or where the Supplier can show evidence of substantial work being carried out to provide the Products and/or Services under this Call Off Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

24.1.7 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Call Off Contract.

## 24.2 **Legislative Change**

24.2.1 The Supplier shall neither be relieved of its obligations under this Call Off Contract nor be entitled to an increase in the Call Off Contract Charges as the result of a:

- (a) General Change in Law;
- (b) Specific Change in Law where the effect of that Specific Change in Law on the Products and/or Services is reasonably foreseeable at the Call Off Commencement Date.

24.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 24.2.1(b)), the Supplier shall:

- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
  - (i) whether any Variation is required to the provision of the Products and/or Services, the Call Off Contract Charges or this Call Off Contract; and
  - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
- (b) provide to the Customer with evidence:
  - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
  - (ii) as to how the Specific Change in Law has affected the cost of providing the Products and/or Services; and
  - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 20 (Continuous Improvement), has been taken into account in amending the Call Off Contract Charges.

24.2.3 Any change in the Call Off Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 24.2.1(b)) shall be implemented in accordance with the Variation Procedure.



## **E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**

### **25. CALL OFF CONTRACT CHARGES AND PAYMENT**

#### **25.1 Call Off Contract Charges**

- 25.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Products and/or Services, the Customer shall pay the undisputed Call Off Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).
- 25.1.2 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 14 (Testing), 23 (Records, Audit Access and Open Book Data), 37.4 (Transparency and Freedom of Information) and 37.5 (Protection of Personal Data).
- 25.1.3 If the Customer fails to pay any undisputed Call Off Contract Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 25.1.4 If at any time during this Call Off Contract Period the Supplier reduces its Framework Prices for any Products and/or Services which are provided under the Framework Agreement (whether or not such Products and/or Services are offered in a catalogue, if any, which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Call Off Contract Charges for such Products and/or Services under this Call Off Contract by the same amount.
- 25.1.5 If the Customer has requested price hedging in the Order Form pursuant to paragraph 4.4 of the specification in Framework Schedule 2 (Products and/or Services and Key Performance Indicators), the Supplier shall provide a price hedging option. This is in terms of physically fixing the Call Off Contract Charges for the future delivery of the Products but not paying the Call Off Contract Charges until the Products have been Delivered. The Customer may instruct a third party to carry out the price hedging arrangement with the Supplier and, if it does, the Supplier agrees to co-operate with such third party. The refined terms of the price hedging arrangement and any consequential amendments or refinements to this Call Off Contract shall apply as stipulated by the Customer in a Further Competition Procedure.

#### **25.2 PAYMENT**

- 25.2.1 The customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted in accordance with the provisions of this Call Off Contract.
- 25.2.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Customer may specify) for liquid fuel contains the following minimum information:
  - (a) description of the Products and/or Services supplied. The Products should be described using the generic descriptions as used by the Platts prices;

- (b) quantity of Products and/or Services supplied;
- (c) Commodity Price;
- (d) Duty;
- (e) Supplier Margin;
- (f) discounts applied Charge
- (g) Delivery Date
- (h) Delivery Location

and is accompanied by all other documentation reasonably required by the customer to substantiate the invoice including but not limited to delivery notes and other forms of evidence of delivery.

- 25.2.3 The Supplier shall ensure that all invoices submitted to the Customer for the Products and/or Services are inclusive of any Management Charge applicable to the invoiced Products and/or Services.
- 25.2.4 In the event that the Customer queries the invoice, the Supplier must undertake to resolve the issue within 3 Working Days of being notified of the issue. If a Customer query cannot be resolved within this timescale, the Customer and the Authority must be notified immediately together with the Supplier's suggested timescale for resolution.
- 25.2.5 Where the Supplier enters into a Sub-Contract it shall comply with Clause 50.2.
- 25.2.6 The Supplier shall add VAT to the Call Off Contract Charges at the prevailing rate as applicable.
- 25.2.7 The Supplier shall fully 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 (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT and/or excise duty relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 25 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.
- 25.2.8 Without prejudice to Clause 44.2 (Termination on Material Default), the Supplier shall not suspend the supply of the Products and/or Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part) unless the Customer fails to pay all sums properly due within sixty (60) days of receipt of a valid invoice.
- 25.2.9 The Supplier shall accept the Government Procurement Card as a means of payment for the Products and/or 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.

### 25.3 **Recovery of Sums Due**

- 25.3.1 Wherever under this Call Off Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Call Off Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under this Call Off Contract or under any other Call Off Agreement or other agreement between the Supplier and the Customer.
- 25.3.2 An overpayment by either Party, whether of the Call Off Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 25.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 25.3.4 All payments due shall be made within the time period set out in Clause 24.2.1, unless otherwise specified in this Call Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

#### **25.4 Euro**

- 25.4.1 Any requirement of Law to account for the Products and or Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 25.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 25.7.1 by the Supplier.

#### **25.5 VAT**

- 25.5.1 The Call Off Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a Valid Invoice.
- 25.5.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) 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 Contract. Any amounts due under Clause 25.5 (VAT) shall be paid in cleared funds 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.

#### **25.6 Retention and Set Off**

- 25.6.1 The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Call Off Contract or under any other agreement between the Supplier and the Customer.
- 25.6.2 If the Customer wishes to exercise its right pursuant to Clause 25.6.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Call Off Contract Charges.
- 25.6.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount,

abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

## **25.7 Foreign Currency**

- 25.7.1 Any requirement of Law to account for the Products and/or Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 25.7.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 25.7.1 by the Supplier.

## **25.8 Income Tax and National Insurance Contributions**

- 25.8.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call Off Contract, the Supplier shall:
  - (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
  - (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Products and/or Services by the Supplier or any Supplier Personnel.
- 25.8.2 In the event that any one of the Supplier Personnel is a Worker as defined in Call Off Schedule 1 (Definitions) who receives consideration relating to the Products and/or Services, then, in addition to its obligations under Clause 25.8.1, the Supplier shall ensure that its contract with the Worker contains the following requirements:
  - (a) that the Customer may, at any time during the Call Off Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 25.8.1, or why those requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided;
  - (b) that the Worker's contract may be terminated at the Customer's request if:
    - (i) the Worker fails to provide the information requested by the Customer within the time specified by the Customer under Clause 23.5.2(a); and/or
    - (ii) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with Clause 25.8.1 or confirms that the Worker is not complying with those requirements; and

- (c) that the Customer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

## **26. PROMOTING TAX COMPLIANCE**

- 26.1 This Clause 26 shall apply if the Call Off Contract Charges payable under this Call Off Contract exceed or are likely to exceed five (5) million pounds during the Call Off Contract Period.
- 26.2 If, at any point during the Call Off Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
  - 26.2.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
  - 26.2.2 promptly provide to the Customer:
    - (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.
- 26.3 In the event that the Supplier fails to comply with this Clause 26 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable, then the Customer reserves the right to terminate this Call Off Contract for material Default.

## **27. BENCHMARKING**

- 27.1 Notwithstanding the Supplier's obligations under Clause 20 (Continuous Improvement), the Customer shall be entitled to regularly benchmark the Call Off Contract Charges and level of performance by the Supplier of the supply of the Products and/or Services, against other suppliers providing Products and/or Services substantially the same as the Products and/or Services during the Call Off Contract Period.
- 27.2 The Customer, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 27.1 above.
- 27.3 The Customer shall be entitled to disclose the results of any benchmarking of the Call Off Contract Charges and provision of the Products and/or Services to the Authority and any Contracting Authority (subject to the Contracting Authority entering into reasonable confidentiality undertakings).
- 27.4 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking and such information requirements shall be at the discretion of the Customer.
- 27.5 Where, as a consequence of any benchmarking carried out by the Customer, the Customer decides improvements to the Products and/or Services should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Customer.
- 27.6 The benefit of any work carried out by the Supplier at any time during the Call Off Contract Period to update, improve or provide the Products and/or Services, facilitate their delivery to any other Contracting Authority and/or any alterations or variations to the Charges or the provision of the Products and/or Services, which are identified in the Continuous Improvement Plan produced by the Supplier and/or as a consequence of any benchmarking

carried out by the Authority pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking), shall be implemented by the Supplier in accordance with the Variation Procedure and at no additional cost to the Customer.

## **F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS**

### **28. KEY PERSONNEL**

- 28.1 This Clause 28 shall apply where the Customer has specified Key Personnel in the Call Off Order Form.
- 28.2 The Call Off Order Form lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Call Off Commencement Date.
- 28.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Call Off Contract Period.
- 28.4 The Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 28.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Call Off Schedule 9 (Exit Management)) unless:
  - 28.5.1 requested to do so by the Customer;
  - 28.5.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - 28.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
  - 28.5.4 the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 28.6 The Supplier shall:
  - 28.6.1 notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 28.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 28.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;
  - 28.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Products and/or Services; and
  - 28.6.5 ensure that any replacement for a Key Role:
    - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
    - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

- 28.6.6 shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.
- 28.7 The Customer may require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

## **29. SUPPLIER PERSONNEL**

### **29.1 Supplier Personnel**

#### **29.1.1 The Supplier shall:**

- (a) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- (b) ensure that all Supplier Personnel:
  - (i) are appropriately qualified, trained and experienced to provide the Products and/or Services with all reasonable skill, care and diligence;
  - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards;
  - (iii) obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Products and/or Services to the reasonable satisfaction of the Customer; and
  - (iv) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call Off Schedule 7 (Security);
- (c) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Call Off Contract shall be a Default by the Supplier;
- (d) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (e) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (f) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (g) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.

#### **29.1.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Call Off Contract, it may:**

- (a) refuse admission to the relevant person(s) to the Customer Premises ; and/or
- (b) direct the Supplier to end the involvement in the provision of the Products and/or Services of the relevant person(s).

(c) At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission to the Premises in connection with this Call Off Contract, specifying the capacities in which they are concerned with this Call Off Contract and giving such other particulars as the Customer may reasonably request.

(d) If the Supplier fails to comply with Clause 29.1.2(c) within three (3) weeks of the date of the request or such other reasonable period which the Customer may specify, the Customer may terminate this Call Off Contract for Material Breach, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

29.1.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

## **29.2 Relevant Convictions**

29.2.1 This sub-clause 29.2 shall apply if the Customer has specified Relevant Convictions in the Call Off Order Form.

29.2.2 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Products and/or Services without Approval.

29.2.3 Notwithstanding Clause 29.2.2, for each member of Supplier Personnel who, in providing the Products and/or Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):

- (a) carry out a check with the records held by the Department for Education (DfE);
- (b) conduct thorough questioning regarding any Relevant Convictions; and
- (c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Products and/or Services any person who has a Relevant Conviction or an inappropriate record.

## **29.3 Additional Staffing Security**

29.3.1 This Clause 29.3 shall apply if the Customer has so stipulated in a Further Competition Procedure.

29.3.2 The Supplier shall comply with the Staff Vetting Procedures in respect of all or part of the Staff (as specified by the Customer) and/or any other relevant instruction, guidance or procedure issued by the Customer that will be used to specify the level of staffing security required and to vet the Staff (or part of the Staff).

29.3.3 The Supplier confirms that, at the Call Off Commencement Date, that the Staff were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures and/or any



other relevant instruction, guidance or procedure as specified by the Customer.

- 29.3.4 The Supplier shall provide training on a continuing basis for all Staff in compliance with the Security Policy and Security Management Plan (if any).

**29.4 Training**

- 29.4.1 The Supplier shall provide training to the Customers personnel in respect of the use and maintenance of the Products and/or Services as the customer has specified in the Order Form

**30. NOT USED**

**31. SUPPLY CHAIN RIGHTS AND PROTECTION**

**31.1 Appointment of Sub-Contractors**

- 31.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:

- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Call Off Contract in the Delivery of the Products and/or Services; and
- (c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Call Off Contract.

- 31.1.2 Prior to sub-contacting any of its obligations under this Call Off Contract, the Supplier shall notify the Customer and provide the Customer with:

- (a) the proposed Sub-Contractor's name, registered office and company registration number;
- (b) the scope of any Products and/or Services to be provided by the proposed Sub-Contractor; and
- (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.

- 31.1.3 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 31.1.2, the Supplier shall also provide:

- (a) a copy of the proposed Sub-Contract; and
- (b) any further information reasonably requested by the Customer.

- 31.1.4 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 31.1.2 (or, if later, receipt of any further information requested pursuant to Clause 31.1.3), object to the appointment of the relevant Sub-Contractor if they consider that:

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Products and/or Services or may be contrary to the interests respectively of the Customer under this Call Off Contract;

- (b) the proposed Sub-Contractor is unreliable and/or has not provided reliable Products and or reasonable services to its other customers; and/or
  - (c) the proposed Sub-Contractor employs unfit persons,
- in which case, the Supplier shall not proceed with the proposed appointment.

31.1.5 If:

- (a) the Customer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
  - (i) the Supplier's notice issued pursuant to Clause 31.1.2; and
  - (ii) any further information requested by the Customer pursuant to Clause 31.1.3; and
- (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority and the Customer in accordance with Clause 31.2 (Appointment of Key Sub-Contractors).

the Supplier may proceed with the proposed appointment.

**31.2 Appointment of Key Sub-Contractors**

31.2.1 The Authority and the Customer have consented to the engagement of the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors).

31.2.2 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Customer (the decision to consent or otherwise not to be unreasonably withheld or delayed). The Authority and/or the Customer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:

- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Products and/or Services or may be contrary to its interests;
- (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reliable Products and/or reasonable services to its other customers; and/or
- (c) the proposed Key Sub-Contractor employs unfit persons.

31.2.3 Except where the Authority and the Customer have given their prior written consent under Clause 31.2.1, the Supplier shall ensure that each Key Sub-Contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Call Off Contract;
- (b) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
- (c) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;

- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Call Off Contract in respect of:
  - (i) data protection requirements set out in Clauses 37.1 (Security Requirements), 37.2 (Protection of Customer Data) and 37.5 (Protection of Personal Data);
  - (ii) FOIA requirements set out in Clause 37.4 (Transparency and Freedom of Information);
  - (iii) the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in Clause 7.1.4(I) (Provision of Products and/or Services);
  - (iv) the keeping of records in respect of the Products and/or Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data;
  - (v) the conduct of audits set out in Clause 23 (Records, Audit Access & Open Book Data);
- (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 44 (Customer Termination Rights), 46 (Termination by Either Party) and 48 (Consequences of Expiry or Termination) of this Call Off Contract;
- (g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Products and/or Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;

### 31.3 **Supply Chain Protection**

31.3.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
- (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- (c) conferring a right to the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
- (d) giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
- (e) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 31.3.1.

31.3.2 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
- (b) include within the Performance Monitoring Reports required under Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) a summary of its compliance with this Clause 31.3.2 (a), such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.

31.3.3 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

31.3.4 Notwithstanding any provision of Clauses 37.3 (Confidentiality) and 38 (Publicity and Branding) if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

#### 31.4 **Termination of Sub-Contracts**

31.4.1 The Customer may require the Supplier to terminate:

- (a) a Sub-Contract where:
  - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant to any of the termination events in Clause 44 (Customer Termination Rights) except Clause 44.8 (Termination Without Cause); and/or
  - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Products and/or Services or otherwise; and/or
- (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
  - (i) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - (ii) the Customer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

#### 31.5 **Competitive Terms**

31.5.1 If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, Products or services used by the Supplier or the Supplier Personnel in the supply of the Products and/or Services, then the Customer may:

- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial

terms obtained by the Customer in respect of the relevant item; or

- (b) subject to Clause 31.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

31.5.2 If the Customer exercises the option pursuant to Clause 31.5.1, then the Call Off Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.

31.5.3 The Customer's right to enter into a direct agreement for the supply of the relevant items is subject to:

- (a) the Customer making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Products and/or Services; and
- (b) any reduction in the Call Off Contract Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

#### **31.6 Retention of Legal Obligations**

31.6.1 Notwithstanding the Supplier's right to Sub-Contract pursuant to Clause 31 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

### **G. PROPERTY MATTERS**

#### **32. CUSTOMER PREMISES**

##### **32.1 Licence to occupy Customer Premises**

32.1.1 Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Call Off Contract. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Call Off Contract and in accordance with Call Off Schedule 9 (Exit Management).

32.1.2 The Supplier shall limit access to the Customer Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Call Off Contract and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Customer Premises as the Customer may reasonably request.

32.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2 (Due Diligence) and set out in the Call Off Order Form (or elsewhere in this Call Off Contract), should the Supplier require modifications to the Customer Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this Clause 32.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.

32.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such

Customer Premises and conduct of personnel at the Customer Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed Equipment or fittings therein.

32.1.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Call Off Contract, the Customer retains the right at any time to use any Customer Premises in any manner it sees fit.

## 32.2 Security of Customer Premises

32.2.1 The Customer shall be responsible for maintaining the security of the Customer Premises in accordance with the Security Policy. The Supplier shall comply with the Security Policy and any other reasonable security requirements of the Customer while on the Customer Premises.

32.2.2 The Customer shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

## 33. CUSTOMER PROPERTY

33.1 Where the Customer issues Customer Property free of charge to the Supplier such Customer Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any Premises of the Supplier during normal business hours on reasonable notice to recover any such Customer Property.

33.2 The Supplier shall not in any circumstances have a lien or any other interest on the Customer Property and at all times the Supplier shall possess the Customer Property as fiduciary agent and bailee of the Customer.

33.3 The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Customer Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Customer Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.

33.4 The Customer Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.

33.5 The Supplier shall maintain the Customer Property in good order and condition (excluding fair wear and tear) and shall use the Customer Property solely in connection with this Call Off Contract and for no other purpose without Approval.

33.6 The Supplier shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Products and/or Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.

33.7 The Supplier shall be liable for all loss of, or damage to the Customer Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Customer Cause. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Customer Property.

### **34. SUPPLIER EQUIPMENT**

- 34.1 Unless otherwise stated in the Call Off Order Form (or elsewhere in this Call Off Contract), the Supplier shall provide all the Supplier Equipment necessary for the provision of the Products and/or Services.
- 34.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.
- 34.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Call Off Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.
- 34.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Supplier's property located on Customer Premises which is due to the negligent act or omission of the Customer.
- 34.5 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Products and/or Services in accordance with this Call Off Contract, including the Service Level Performance Measures.
- 34.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.
- 34.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
  - 34.7.1 remove from the Customer Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Call Off Contract; and
  - 34.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.
- 34.8 For the purposes of this Clause 34.8, 'X' shall be the number of Service Failures, and 'Y' shall be the period in months, as respectively specified for 'X' and 'Y' in the Call Off Order Form. If this Clause 34.8 has been specified to apply in the Call Off Order Form, and there are no values specified for 'X' and/or 'Y', in default, 'X' shall be two (2) and 'Y' shall be twelve (12). Where a failure of Supplier Equipment or any component part of Supplier Equipment causes X or more Service Failures in any Y Month period, the Supplier shall notify the Customer in writing and shall, at the Customer's request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced).

### **35. LPG INSTALLATIONS – POINT AT WHICH THE SITE RESUMES RESPONSIBILITY**

- 35.1 The tank Owner is responsible for examination and maintenance of the storage tank, pipework, control devices and associated protection and safety Equipment up to the outlet from the 1st stage regulator. (The first stage regulator reduces the gas pressure prior to leaving the tank compound). The Owner is usually the LPG Supplier.

- 35.2 The Customer is responsible for examination and maintenance of the installation of the outlet from the 1st stage regulator onwards and is also responsible for the upkeep of the LPG compound area. The examination and maintenance work is usually carried out by the Customer.
- 35.3 Supplier and Customer responsibilities for Equipment provided for use on Fire Training Rig installations are as follows:
- (a) Liquid off-take - the Supplier is responsible for the provision, examination and maintenance of a vessel with a liquid outlet valve, short length of pipe, pneumatic actuated valve, pipe work orientation to suit the site and a regulator if required.
  - (b) Vapour Off-take – the Supplier responsibilities terminate at outlet of first stage regulator in the normal way, but the supplier will fit and maintain an actuated valve on the vapour supply if required.
- 35.4 Responsibility for the examination and maintenance of all pipe work downstream of the outlet from the 1st stage regulator remains with the the Customer.
- 35.5 Footnote: The supplier is not responsible for the provision of the Air supply.

## **H. INTELLECTUAL PROPERTY AND INFORMATION**

### **36. INTELLECTUAL PROPERTY RIGHTS**

#### **36.1 Allocation of title to IPR**

- 36.1.1 Save as expressly granted elsewhere under this Call Off Contract:
- (a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
    - (i) the Supplier Background IPR; and
    - (ii) the Third Party IPR.
  - (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the:
    - (i) Customer Background IPR;
    - (ii) Customer Data; and
    - (iii) Project Specific IPRs.
- 36.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 36.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 36.1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 36.1.4 Unless the Customer otherwise agrees in advance in writing (and subject to Clause 36.10.3):
- (a) Project Specific IPR Items shall be created in a format, or able to be converted into a format, which is:
    - (i) suitable for publication by the Customer as Open Source; and



- (ii) based on Open Standards (where applicable);
- (b) where the Project Specific IPR Items are written in a format that requires conversion before publication as Open Source or before complying with Open Standards, the Supplier shall also provide the converted format to the Customer.

**36.2 Assignments granted by the Supplier: Project Specific IPR**

- 36.2.1 The Supplier hereby assigns to the Customer with full guarantee (or shall procure from the first owner the assignment to the Customer), title to and all rights and interest in the Project Specific IPRs. The assignment under this Clause 36.2.1 shall take effect as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs.
- 36.2.2 The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Project Specific IPRs are properly transferred to the Customer.
- 36.2.3 To the extent that it is necessary to enable the Customer to obtain the full benefits of ownership of the Project Specific IPRs, the Supplier hereby grants to the Customer and shall procure that any relevant third party licensor shall grant to the Customer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR Items.

**36.3 Licences granted by the Supplier: Supplier Background IPR**

- 36.3.1 The Supplier hereby grants to the Customer a perpetual, royalty-free and non-exclusive licence to use the Supplier Background IPR for any purpose relating to the Products and/or Services (or substantially equivalent Products and/or services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function.
- 36.3.2 At any time during the Call Off Contract Period or following the Call Off Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Background IPR under Clause 36.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Customer Cause which constitutes a material breach of the terms of 36.3.1 which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.
- 36.3.3 In the event the licence of the Supplier Background IPR is terminated pursuant to Clause 36.3.2, the Customer shall:
  - (a) immediately cease all use of the Supplier Background IPR;
  - (b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Background IPR, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Customer may destroy the documents and other tangible materials that contain any of the Supplier Background IPR; and
  - (c) ensure, so far as reasonably practicable, that any Supplier Background IPR that is held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the

Customer) from any computer, word processor, voicemail system or any other device containing such Supplier Background IPR.

#### 36.4 **Customer's right to sub-license**

36.4.1 The Customer may sub-license:

- (a) the rights granted under Clause 36.3.1 (Licence granted by the Supplier: Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
  - (i) the sub-license is on terms no broader than those granted to the Customer; and
  - (ii) the sub-license only authorises the third party to use the rights licensed in Clause 36.3.1 (Licence granted by the Supplier: Supplier Background IPR) for purposes relating to the Products and/or Services (or substantially equivalent Products and/or services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and
- (b) the rights granted under Clause 36.3.1 (Licence granted by the Supplier: Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR provided that the sub-license is on terms no broader than those granted to the Customer.

#### 36.5 **Customer's right to assign/novate licences**

36.5.1 The Customer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 36.3 (Licence granted by the Supplier: Supplier Background IPR) to:

- (a) a Central Government Body; or
- (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.

36.5.2 Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 36.3 (Licences granted by the Supplier: Supplier Background IPR). If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 36.3 (Licence granted by the Supplier: Supplier Background IPR).

36.5.3 If a licence granted in Clause 36.3 (Licence granted by the Supplier: Supplier Background IPR) is novated under Clauses 36.5.1 or there is a change of the Customer's status pursuant to Clause 36.5.2 (both such bodies being referred to as the "**Transferee**"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

#### 36.6 **Third Party IPR**

36.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 36.3 (Licence granted by the Supplier: Supplier Background IPR)

and Clause 36.5.1 (Customer's right to assign/novate licences). If the Supplier cannot obtain for the Customer a licence in accordance with the licence terms set out in Clause 36.3 (Licences granted by the Supplier: Supplier Background IPR) and Clause 36.5.1 (Customer's right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:

- (a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
- (b) only use such Third Party IPR if the Customer Approves the terms of the licence from the relevant third party.

36.6.2 Should the Supplier become aware at any time, including after termination, that the Project Specific IPRs contain any Intellectual Property Rights for which the Customer does not have a licence, then the Supplier must notify the Customer within 10 days of what those rights are and which parts of the Project Specific IPRs they are found in.

36.6.3 Without prejudice to any other right or remedy of the Customer, if the Supplier becomes aware at any time, including after termination, that any Intellectual Property Rights for which the Customer does not have a licence in accordance with Clause 36.2.3 subsist in the Project Specific IPR Items, then the Supplier must notify the Customer within 10 days of what those rights are and which parts of the Project Specific IPR Items they are found in.

#### **36.7 Licence granted by the Customer**

36.7.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call Off Contract Period to use the Customer Background IPR, the Project Specific IPRs and the Customer Data solely to the extent necessary for providing the Products and/or Services in accordance with this Call Off Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 37.3 (Confidentiality); and
- (b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

#### **36.8 Termination of licenses**

36.8.1 Subject to Clause 36.3 (Licence granted by the Supplier: Supplier Background IPR), all licences granted pursuant to Clause 36 (Intellectual Property Rights) (other than those granted pursuant to Clause 36.6 (Third Party IPR) and 36.7 (Licence granted by the Customer)) shall survive the Call Off Expiry Date.

36.8.2 The Supplier shall, if requested by the Customer in accordance with Call Off Schedule 9 (Exit Management), grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 36.3 (Licence granted by the Supplier: Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

36.8.3 The licence granted pursuant to Clause 36.7 (Licence granted by the Customer ) and any sub-licence granted by the Supplier in accordance with Clause 36.7.1 (Licence granted by the Customer) shall terminate automatically on the Call Off Expiry Date and the Supplier shall:

- (a) immediately cease all use of the Customer Background IPR and the Customer Data (as the case may be);
- (b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Background IPR and the Customer Data, provided that if the Customer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Background IPR and the Customer Data (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Customer Background IPR and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Customer Background IPR and/or Customer Data.

## 36.9 IPR Indemnity

36.9.1 The Supplier shall, during and after the Call Off Contract Period, on written demand, indemnify the Customer against all Losses incurred by, awarded against, or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

36.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

- (a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
  - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
  - (ii) the replaced or modified item does not have an adverse effect on any other Products and/or Services;
  - (iii) there is no additional cost to the Customer; and
  - (iv) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Products and/or Services.

36.9.3 If the Supplier elects to procure a licence in accordance with Clause 36.9.2(a) or to modify or replace an item pursuant to Clause 36.9.2(b), but this has not avoided or resolved the IPR Claim, then:

- (a) the Customer may terminate this Call Off Contract by written notice with immediate effect; and
- (b) without prejudice to the indemnity set out in Clause 33.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute Products and/or Services

including the additional costs of procuring, implementing and maintaining the substitute items.

**36.10 Open Source Publication**

36.10.1 Subject to Clause 36.10.3, the Supplier agrees that the Customer may at its sole discretion publish as Open Source all or part of the Project Specific IPR Items after the Operational Services Commencement Date (such date to be notified by the Customer to the Supplier).

36.10.2 Subject to Clause 36.10.3, the Supplier hereby warrants that the Project Specific IPR Items:

- (a) are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Customer will not enable a third party to use the published Project Specific IPRs or Project Specific IPR Items in any way, which could reasonably be foreseen to compromise the operation, running or security of the Project Specific IPRs or the Customer System;
- (b) have been developed by the Supplier using reasonable endeavours to ensure that publication by the Customer of the same shall not cause any harm or damage to any party using the published Project Specific IPRs;
- (c) do not contain any material which would bring the Customer into disrepute upon publication as Open Source;
- (d) do not contain any IPRs which have not been licensed to the Customer under licence terms which permit the publication of the Project Specific IPR Items as Open Source by the Customer;
- (e) will be supplied in a format suitable for publication as Open Source ("the Open Source Publication Material") no later than the date notified to the Supplier under Clause 36.10.1; and
- (f) do not contain any Malicious Software.

36.10.3 The Supplier hereby acknowledges and agrees that any Supplier Background IPRs which it includes in the Open Source Publication Material supplied to the Customer pursuant to Clause 36.10.2(e) and which have not been Approved for exclusion under Clause 36.10.4 will become Open Source and will hereby be licensed to the Customer under the Open Source licence terms adopted by the Customer and treated as such following publication by the Customer.

36.10.4 Where the Customer has Approved a request by the Supplier under Clause 36.1.4, for any part of the Project Specific IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Background IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:

- (a) as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and
- (b) include in the written details provided under Clause 36.10.4
  - (a) information about the impact that inclusion of such IPRs

and items or Deliverables based on such IPRs will have on any other Project Specific IPRs Items and the Customer's ability to publish such other items or Deliverables as Open Source.

## **37. SECURITY AND PROTECTION OF INFORMATION**

### **37.1 Security Requirements**

- 37.1.1 The Supplier shall comply with the Security Policy and the requirements of Call Off Schedule 7 (Security) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 37.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 37.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Products and/or Services it may propose a Variation to the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call Off Contract Charges shall then be subject to the Variation Procedure.
- 37.1.4 Until and/or unless a change to the Call Off Contract Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Products and/or Services in accordance with its existing obligations.

### **37.2 Protection of Customer Data**

- 37.2.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 37.2.2 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 Contract or as otherwise Approved by the Customer.
- 37.2.3 To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified by the Customer in the Call Off Order Form and, in any event, as specified by the Customer from time to time in writing.
- 37.2.4 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 37.2.5 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with any BCDR Plan or otherwise. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 37.2.6 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 Security Policy and the Security Management Plan (if any).

- 37.2.7 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 37.2.8 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Supplier may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Call Off Schedule 8 (Business Continuity and Disaster Recovery) or as otherwise required by the Customer, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
  - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Call Off Schedule 8 (Business Continuity and Disaster Recovery) or as otherwise required by the Customer.

### 37.3 **Confidentiality**

- 37.3.1 For the purposes of Clause 37.3, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 37.3.2 Except to the extent set out in Clause 37.3 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
  - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call Off Contract or without obtaining the owner's prior written consent;
  - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and
  - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 37.3.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 37.4 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;

- (b) the need for such disclosure arises out of or in connection with:
  - (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;
  - (ii) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Products and/or Services provided under this Call Off Contract; or
  - (iii) the conduct of a Central Government Body review in respect of this Call Off Contract; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
- (d) such information was in the possession of the Disclosing Party without obligation of confidentiality prior to its disclosure by the information owner;
- (e) such information was obtained from a third party without obligation of confidentiality;
- (f) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; and
- (g) the information is independently developed without access to the Disclosing Party's Confidential Information.

37.3.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

37.3.5 Subject to Clause 37.3.2, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:

- (a) Supplier Personnel who are directly involved in the provision of the Products and/or Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Call Off Contract; and
- (b) its professional advisers for the purposes of obtaining advice in relation to this Call Off Contract.

37.3.6 Where the Supplier discloses Confidential Information of the Customer pursuant to Clause 37.3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.

37.3.7 The Customer may disclose the Confidential Information of the Supplier:



- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 37.3.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Call Off Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under Clause 37.3.

37.3.8 Nothing in Clause 37.3 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

37.3.9 In the event that the Supplier fails to comply with Clauses 37.3.2 to 37.3.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

#### 37.4 **Transparency and Freedom of Information**

37.4.1 The Parties acknowledge that

- (a) the Transparency Reports; and
- (b) the content of this Call Off Contract, including any changes to this Call Off Contract agreed from time to time, except for –
  - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Customer; and
  - (ii) Commercially Sensitive Information;

(together the "Transparency Information") are not Confidential Information.

37.4.2 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

- 37.4.3 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Call Off Schedule 13 (Transparency Reports).
- 37.4.4 If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 37.4.5 The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Call Off Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 37.4.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 37.3.7(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Customer within 5 working days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.
- 37.4.7 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;
  - (b) transfer to the Customer all Requests for Information relating to this Call Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - (c) provide the Customer with a copy of all Information held on behalf of the Customer requested in the Request for Information which is 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 reasonably specify) of the Customer's request for such Information; and
  - (d) not respond directly to a Request for Information addressed to the Customer unless authorised in writing to do so by the Customer.
- 37.4.8 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable

steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Call Off Contract) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

### **37.5 Protection of Personal Data**

37.5.1 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Call Off Contract, the Parties acknowledge that the Customer is the Data Controller and that the Supplier is the Data Processor.

37.5.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call Off Contract;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in Clauses 37.1 (Security Requirements) and 37.2 (Protection of Customer Data);
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Products and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call Off Contract)
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
  - (i) are aware of and comply with the Supplier's duties under Clause 37.5.2 and Clauses 37.1 (Security Requirements), 37.2 (Protection of Customer Data) and 37.3 (Confidentiality);
  - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Customer within five (5) Working Days if it receives:
  - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or

- communication relating to the Customer's obligations under the DPA;
- (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
- (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint, communication or request made (as referred to at Clause 37.5.2(e)), including by promptly providing:
  - (i) the Customer with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
  - (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 37.5.2 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

37.5.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Call Off Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a Variation to the Customer which, if it is agreed by the Customer, shall be dealt with in accordance with the Variation Procedure and Clauses 37.5.3(b) to 37.5.3(c);
- (b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
  - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
  - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;

- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
  - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and
  - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - (A) a direct data processing agreement with the Customer on such terms as may be required by the Customer; or
    - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-Contractor relating to the relevant Personal Data transfer, and
  - (iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

37.5.4 The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the DPA and shall not perform its obligations under this Call Off Contract in such a way as to cause the Customer to breach any of the Customer's obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

## **38. PUBLICITY AND BRANDING**

- 38.1 The Supplier shall not:
  - 38.1.1 make any press announcements or publicise this Call Off Contract in any way; or
  - 38.1.2 use the Customer's name or brand in any promotion or marketing or announcement of orders,
  - 38.1.3 without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed).
- 38.2 Each Party acknowledges to the other that nothing in this Call Off Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Products and/or Services and

Supplier Equipment) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## **I. LIABILITY AND INSURANCE**

### **39. LIABILITY**

#### **39.1 Unlimited Liability**

##### **39.1.1 Neither Party excludes or limits its liability for:**

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (b) bribery or Fraud by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Products and Services Act 1982; or
- (d) any liability to the extent it cannot be excluded or limited by Law.

39.1.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clauses 36.9 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

#### **39.2 Financial Limits**

##### **39.2.1 Subject to Clause 39.1 (Unlimited Liability), the Supplier's total aggregate liability:**

- (a) in respect of all:
  - (i) Service Credits; and
  - (ii) Compensation for Critical Service Level Failure;incurred in any rolling period of 12 Months shall be subject in aggregate to the Service Credit Cap;
- (b) in respect of all other Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:
  - (i) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, the higher of ten million pounds (£10,000,000) or a sum equal to one hundred and fifty per cent (150%) of the Estimated Year 1 Call Off Contract Charges;
  - (ii) in relation to any Defaults occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, the higher of ten million pounds (£10,000,000) in each such Call Off Contract Year or a sum equal to one hundred and fifty per cent (150%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
  - (iii) in relation to any Defaults occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, the higher of ten million pounds (£10,000,000) in each such Call Off Contract Year or a sum equal to one hundred and fifty per cent (150%) of the Call Off Contract Charges payable to the Supplier under this

Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period;

unless the Customer has specified different financial limits in the Call Off Order Form.

39.2.2 Subject to Clauses 39.1 (Unlimited Liability) and 39.2 (Financial Limits) and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:

- (a) in relation to any Customer Causes occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, a sum equal to the Estimated Year 1 Call Off Contract Charges;
- (b) in relation to any Customer Causes occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
- (c) in relation to any Customer Causes occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.

### 39.3 Non-recoverable Losses

39.3.1 Subject to Clause 39.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:

- (a) indirect, special or consequential Loss;
- (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

### 39.4 Recoverable Losses

39.4.1 Subject to Clause 39.2 (Financial Limits), and notwithstanding Clause 39.3 (Non-recoverable Losses), the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Products and/or Services for the remainder of the Call Off Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Products and/or Services and/or replacement Deliverables above those which would have been payable under this Call Off Contract;
- (d) any compensation or interest paid to a third party by the Customer; and

- (e) any fine, penalty or costs incurred by the Customer pursuant to Law.

#### 39.5 Miscellaneous

- 39.5.1 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call Off Contract.
- 39.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 39.2 (Financial Limits).
- 39.5.3 Subject to any rights of the Customer under this Call Off Contract (including in respect of an IPR Claim), any claims by a third party where an indemnity is sought by that third party from a Party to this Call Off Contract shall be dealt with in accordance with the provisions of Framework Schedule 20 (Conduct of Claims).

### 40. INSURANCE

- 40.1 This Clause 40 will only apply where specified in the Call Off Order Form or elsewhere in this Call Off Contract.
- 40.2 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 31 (Insurance) of the Framework Agreement, the Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Framework Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract.
- 40.3 Without limitation to the generality of Clause 40.2 the Supplier shall ensure that it maintains the policy or policies of insurance as stipulated in the Call Off Order Form.
- 40.4 The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause 40 for six (6) years after the Call Off Expiry Date.
- 40.5 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause 40 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 40.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause 40 the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 40.7 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 40.8 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.



## **J. REMEDIES AND RELIEF**

### **41. CUSTOMER REMEDIES FOR DEFAULT**

#### **41.1 Remedies**

41.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising (including under Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 15.6 (Service Levels and Service Credits) and 6.4.1(b) (Delay Payments), if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Products and/or Services have been Delivered) do any of the following:

- (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Products and/or Services and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Customer's instructions;
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Products and/or Services comply with this Call Off Contract;
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
  - (i) instruct the Supplier to comply with the Rectification Plan Process;
  - (ii) suspend this Call Off Contract (whereupon the relevant provisions of Clause 47 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Products and/or Services;
  - (iii) without terminating or suspending the whole of this Call Off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Products and/or Services only (whereupon the relevant provisions of Clause 47 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Good and/or Services;

41.1.2 Where the Customer exercises any of its step-in rights under Clauses 41.1.1(c)(ii) or 41.1.1(c)(iii), the Customer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Products and/or Services by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Products and/or Replacement Products and/or Services.

#### **41.2 Rectification Plan Process**

- 41.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 41.1.1(c)(i):
- (a) the Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within 10 (ten) Working Days (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.
  - (b) the draft Rectification Plan shall set out:
    - (i) full details of the Default that has occurred, including a cause analysis;
    - (ii) the actual or anticipated effect of the Default; and
    - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- 41.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of this Call Off Schedule 11 (Dispute Resolution Procedure).
- 41.2.3 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
  - (b) will take too long to complete;
  - (c) will not prevent reoccurrence of the Default; and/or
  - (d) will rectify the Default but in a manner which is unacceptable to the Customer.
- 41.2.4 The Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.
- 41.2.5 If the Customer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

## **42. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE**

- 42.1 If the Supplier has failed to:
- 42.1.1 Achieve a Milestone by its Milestone Date;

42.1.2 provide the Products and/or Services in accordance with the Service Levels;

42.1.3 comply with its obligations under this Call Off Contract,  
(each a "Supplier Non-Performance"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 19 (Supplier Notification of Customer Cause)):

- (a) the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (b) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 44 (Customer Termination Rights) except Clause 44.7 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
  - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
  - (ii) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;
  - (iii) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and/or
- (d) where the Supplier Non-Performance constitutes a Service Level Failure:
  - (i) the Supplier shall not be liable to accrue Service Credits;
  - (ii) the Customer shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 16 (Critical Service Level Failure); and
  - (iii) the Supplier shall be entitled to invoice for the Call Off Contract Charges for the provision of the relevant Products and/or Services affected by the Customer Cause,

in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Customer Cause.

42.2 In order to claim any of the rights and/or relief referred to in Clause 42.1, the Supplier shall:

42.2.1 comply with its obligations under Clause 19 (Notification of Customer Cause); and

42.2.2 within ten (10) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer notice (a "**Relief Notice**") setting out details of:

- (a) the Supplier Non-Performance;

- (b) the Customer Cause and its effect on the Supplier's ability to meet its obligations under this Call Off Contract; and
  - (c) the relief claimed by the Supplier.
- 42.3 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief, consulting with the Supplier where necessary.
- 42.4 Without prejudice to Clauses 9.6 (Continuing obligation to provide the Services) and 10.13 (Continuing obligation to provide the Products), if a Dispute arises as to:
  - 42.4.1 whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or
  - 42.4.2 the nature and/or extent of the relief claimed by the Supplier,  
either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 42.5 Any Variation that is required to the Implementation Plan or to the Call Off Contract Charges pursuant to Clause 42 shall be implemented in accordance with the Variation Procedure.

#### **43. FORCE MAJEURE**

- 43.1 Subject to the remainder of Clause 43 (and, in relation to the Supplier, subject to its compliance with any obligations in Clause 17 (Business Continuity and Disaster Recovery)), a Party may claim relief under Clause 43 from liability for failure to meet its obligations under this Call Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 43.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 43.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under Clause 43 to the extent that consequences of the relevant Force Majeure Event:
  - 43.3.1 are capable of being mitigated by any of the provision of any Products and/or Services, including any BCDR Products and/or Services, but the Supplier has failed to do so; and/or
  - 43.3.2 should have been foreseen and prevented or avoided by a prudent provider of Products and/or Services similar to the Products and/or Services, operating to the standards required by this Call Off Contract.
- 43.4 Subject to Clause 43.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken,

to enable continued provision of the Products and/or Services affected by the Force Majeure Event.

- 43.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 43.6 Where, as a result of a Force Majeure Event:
- 43.6.1 an Affected Party fails to perform its obligations in accordance with this Call Off Contract, then during the continuance of the Force Majeure Event:
- (a) the other Party shall not be entitled to exercise any rights to terminate this Call Off Contract in whole or in part as a result of such failure unless the provision of the Products and/or Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
  - (b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Cause arising as a result of such failure;
- 43.6.2 the Supplier fails to perform its obligations in accordance with this Call Off Contract:
- (a) the Customer shall not be entitled:
    - (i) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 41.1.1(b) and 41.1.1(c) (Customer Remedies for Default) as a result of such failure;
    - (ii) to receive Delay Payments pursuant to Clause 6.4 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
    - (iii) to receive Service Credits or withhold and retain any of the Call Off Contract Charges as Compensation for Critical Service Level Failure pursuant to Clause 16 (Critical Service Level Failure) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; and
  - (b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Products and/or Services (or part of the Products and/or Services) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.
- 43.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract.
- 43.8 Relief from liability for the Affected Party under Clause 43 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract and shall not be dependent on the serving of notice under Clause 43.7.

## **K. TERMINATION AND EXIT MANAGEMENT**

## 44. CUSTOMER TERMINATION RIGHTS

### 44.1 Termination in Relation to Call Off Guarantee

44.1.1 Where this Call Off Contract is conditional upon the Supplier procuring a Call Off Guarantee pursuant to Clause 4 (Call Off Guarantee), the Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where:

- (a) the Call Off Guarantor withdraws the Call Off Guarantee for any reason whatsoever;
- (b) the Call Off Guarantor is in breach or anticipatory breach of the Call Off Guarantee;
- (c) an Insolvency Event occurs in respect of the Call Off Guarantor; or
- (d) the Call Off Guarantee becomes invalid or unenforceable for any reason whatsoever,

and in each case the Call Off Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Customer; or

- (e) the Supplier fails to provide the documentation required by Clause 4.1 by the date so specified by the Customer.

### 44.2 Termination on Material Default

44.2.1 The Customer may terminate this Call Off Contract for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier commits a Critical Service Level Failure;
- (b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable;
- (c) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed 80% (unless stated differently in the Call Off Order Form) of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clauses 39.2.1(a) and 39.2.1(b) (Liability);

44.3 the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: 6.2.3 (Implementation Plan), 9.4.2 (Services), 10.4.2 and 10.8.1 (Products) Delivery of the Products by Instalments

- (a) , 11.3 (Installation Works), 16.1 (Critical Service Level Failure), 18.4 (Disruption), 23.5 (Records, Audit Access and Open Book Data), 26 (Promoting Tax Compliance), 37.3.9 (Confidentiality), 53.6.2 (Prevention of Fraud and Bribery);
- (b) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Customer, capable of remedy; and/or
- (c) the Supplier commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer in accordance with the Rectification Plan Process.

44.3.2 For the purpose of Clause 44.2.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults

(whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

44.4 Termination in Relation to Financial Standing

44.4.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Customer there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- (a) adversely impacts on the Supplier's ability to supply the Products and/or Services under this Call Off Contract; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Products and/or Services under this Call Off Contract.

44.5 Termination on Insolvency

44.5.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

44.6 Termination on Change of Control

44.6.1 The Supplier shall notify the Customer immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.

44.6.2 The Supplier shall ensure that any notification made pursuant to Clause 44.6.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

44.6.3 The Customer may terminate this Call Off Contract by issuing a Termination Notice under Clause 44.6 to the Supplier within six (6) Months of:

- (a) being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
- (b) where no notification has been made, the date that the Customer becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

44.7 Termination for breach of Regulations

44.7.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

44.8 Termination Without Cause

44.8.1 The Customer shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving at least thirty (30) Working Days written notice (unless stated differently in the Call Off Order Form).

44.9 Termination in Relation to Framework Agreement

44.9.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier if the Framework Agreement is terminated for any reason whatsoever.

#### 44.10 Termination In Relation to Benchmarking

44.10.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in paragraphs 1 and 2 of Framework Schedule 12 (Continuous Improvement and Benchmarking).

#### 44.11 Termination in Relation to Variationi

44.11.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier for failure of the Parties to agree or the Supplier to implement a Variation in accordance with the Variation Procedure.

### 45. SUPPLIER TERMINATION RIGHTS

#### 45.1 Termination on Customer Cause for Failure to Pay

45.1.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call Off Contract if the Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract which in aggregate exceeds an amount equal to one month's average Call Off Contract Charges (unless a different amount has been specified in the Call Off Order Form), for the purposes of this Clause 45.1.1 (the "**Undisputed Sums Limit**"), and the said undisputed sum due remains outstanding for sixty (60) Working Days (the "**Undisputed Sums Time Period**") after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

- (a) the Customer's failure to pay; and
- (b) the correct overdue and undisputed sum; and
- (c) the reasons why the undisputed sum is due; and
- (d) the requirement on the Customer to remedy the failure to pay; and

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 25.6 (Retention and Set off).

45.1.2 The Supplier shall not suspend the supply of the Products and/or Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part) unless the Customer fails to pay all sums properly due within sixty (60) days of receipt of a valid invoice.

### 46. TERMINATION BY EITHER PARTY

#### 46.1 Termination for continuing Force Majeure Event

46.1.1 Either Party may, by issuing a Termination Notice to the other Party, terminate this Call Off Contract in accordance with Clause 43.6.1(a) (Force Majeure).

### 47. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

47.1 Where the Customer has the right to terminate this Call Off Contract, the Customer shall be entitled to terminate or suspend all or part of this Call Off



Contract provided always that, if the Customer elects to terminate or suspend this Call Off Contract in part, the parts of this Call Off Contract not terminated or suspended can, in the Customer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Call Off Contract.

47.2 Any suspension of this Call Off Contract under Clause 47.1 shall be for such period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

47.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Products and/or Services and the Call Off Contract Charges, provided that the Supplier shall not be entitled to:

47.3.1 an increase in the Call Off Contract Charges in respect of the provision of the Products and/or Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 44 (Customer Termination Rights) except Clause 44.8 (Termination Without Cause); and

47.3.2 reject the Variation.

#### **48. CONSEQUENCES OF EXPIRY OR TERMINATION**

48.1 Consequences of termination under Clauses 44.1 (Termination in Relation to Guarantee), 44.2 (Termination on Material Default), 44.4 (Termination in Relation to Financial Standing), 44.9 (Termination in Relation to Framework Agreement), 44.10 (Termination in Relation to Benchmarking) and 44.11 (Termination in Relation to Variation)

48.1.1 Where the Customer:

- (a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 48.1; and
- (b) then makes other arrangements for the supply of the Products and/or Services,

the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period provided that Customer shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

48.2 Consequences of termination under Clauses 44.8 (Termination without Cause) and 45.1 (Termination on Customer Cause for Failure to Pay)

48.2.1 Where:

- (a) the Customer terminates (in whole or in part) this Call Off Contract under Clause 44.8 (Termination without Cause); or
- (b) the Supplier terminates this Call Off Contract pursuant to Clause 45.1 (Termination on Customer Cause for Failure to Pay),

the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such

Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 44.8 (Termination without Cause).

48.2.2 The Customer shall not be liable under Clause 48.2.1 to pay any sum which:

- (a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Supplier under this Call Off Contract, exceeds the total sum that would have been payable to the Supplier if this Call Off Contract had not been terminated.

48.3 Consequences of termination under Clause 46.1 (Termination for Continuing Force Majeure Event)

48.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Call Off Contract for a continuing Force Majeure Event pursuant to Clause 46.1 (Termination for Continuing Force Majeure Event).

48.4 Consequences of Termination for Any Reason

48.4.1 Save as otherwise expressly provided in this Call Off Contract:

- (a) termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 23 (Records, Audit Access & Open Book Data), 36 (Intellectual Property Rights), 37.3 (Confidentiality), 37.4 (Transparency and Freedom of Information) 37.5 (Protection of Personal Data), 39 (Liability), 48 (Consequences of Expiry or Termination), 54 (Severance), 57 (Entire Agreement), 58 (Third Party Rights) 61 (Dispute Resolution) and 62 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), Call Off Schedule 9 (Exit Management), Call Off Schedule 11 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

48.5 Exit management

48.5.1 The Parties shall comply with the exit management provisions set out in Call Off Schedule 9 (Exit Management).

## **L. MISCELLANEOUS AND GOVERNING LAW**

## **49. COMPLIANCE**

#### 49.1 Health and Safety

49.1.1 The Supplier shall perform its obligations under this Call Off Contract (including those in relation to the Products and/or Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Customer's health and safety policy (as provided to the Supplier from time to time) whilst at the Customer Premises.

49.1.2 Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Call Off Contract

49.1.3 While on the Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Personnel and other persons working there and any instructions from the Customer on any necessary associated safety measures.

#### 49.2 Equality and Diversity

49.2.1 The Supplier shall:

- (a) perform its obligations under this Call Off Contract (including those in relation to provision of the Products and/or Services) in accordance with:
  - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
  - (ii) any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

#### 49.3 Official Secrets Act and Finance Act

49.3.1 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

#### 49.4 Environmental Requirements

49.4.1 The Supplier shall, when working on the Sites, perform its obligations under this Call Off Contract in accordance with the Environmental Policy of the Customer.

49.4.2 The Customer shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

### 50. ASSIGNMENT AND NOVATION

50.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Call Off Contract or any part of it without Approval.

- 50.2 The Customer may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Call Off Contract or any part thereof to:
- 50.2.1 any other Contracting Authority; or
  - 50.2.2 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
  - 50.2.3 any private sector body which substantially performs the functions of the Customer,  
and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 50.2.
- 50.3 A change in the legal status of the Customer shall not, subject to Clause 50.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.
- 50.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a private sector body in accordance with Clause 50.2.3 (the "**Transferee**" in the rest of this Clause 50.4) the right of termination of the Customer in Clause 44.5 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in Clause 44.5 (Termination on Insolvency) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee).

## **51. WAIVER AND CUMULATIVE REMEDIES**

- 51.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 59 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Call Off Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.
- 51.2 Unless otherwise provided in this Call Off Contract, rights and remedies under this Call Off Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

## **52. RELATIONSHIP OF THE PARTIES**

- 52.1 Except as expressly provided otherwise in this Call Off Contract, nothing in this Call Off Contract, nor any actions taken by the Parties pursuant to this Call Off Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

## **53. PREVENTION OF FRAUD AND BRIBERY**

- 53.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Call Off Commencement Date:
- 53.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

- 53.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 53.2 The Supplier shall not during the Call Off Contract Period:
  - 53.2.1 commit a Prohibited Act; and/or
  - 53.2.2 do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 53.3 The Supplier shall during the Call Off Contract Period:
  - 53.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 53.3.2 keep appropriate records of its compliance with its obligations under Clause 53.3.1 and make such records available to the Customer on request;
  - 53.3.3 if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Products and/or Services in connection with this Call Off Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
  - 53.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 53.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 53.1, or has reason to believe that it has or any of the Supplier Personnel have:
  - 53.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 53.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 53.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call Off Contract or otherwise suspects that any person or Party directly or indirectly connected with this Call Off Contract has committed or attempted to commit a Prohibited Act.
- 53.5 If the Supplier makes a notification to the Customer pursuant to Clause 53.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with Clause 23 (Records, Audit Access and Open Book Data).
- 53.6 If the Supplier breaches Clause 53.3, the Customer may by notice:

- 53.6.1 require the Supplier to remove from performance of this Call Off Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
- 53.6.2 immediately terminate this Call Off Contract for material Default.
- 53.7 Any notice served by the Customer under Clause 53.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).

#### **54. SEVERANCE**

- 54.1 If any provision of this Call Off Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Call Off Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call Off Contract shall not be affected.
- 54.2 In the event that any deemed deletion under Clause 54.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract or materially alters the balance of risks and rewards in this Call Off Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.
- 54.3 If the Parties are unable to resolve the Dispute arising under Clause 54 within twenty (20) Working Days of the date of the notice given pursuant to Clause 54.2, this Call Off Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Contract is terminated pursuant to Clause 54.

#### **55. MISTAKES IN INFORMATION**

- 55.1 The supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Products and/or Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

#### **56. FURTHER ASSURANCES**

- 56.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Call Off Contract.

#### **57. ENTIRE AGREEMENT**

- 57.1 This Call Off Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersede and extinguish all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 57.2 Neither Party has been given, nor entered into this Call Off Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call Off Contract.
- 57.3 Nothing in Clause 57 shall exclude any liability in respect of misrepresentations made fraudulently.

## 58. THIRD PARTY RIGHTS

- 58.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and the provisions of paragraph **Error! Reference source not found.** of Call Off Schedule 9 (Exit Management) (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 58.2 Subject to Clause 58.1, a person who is not a Party to this Call Off Contract has no right under the CTRPA to enforce any term of this Call Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 58.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.
- 58.4 Any amendments or modifications to this Call Off Contract may be made, and any rights created under Clause 58.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

## 59. NOTICES

- 59.1 Except as otherwise expressly provided within this Call Off Contract, any notices sent under this Call Off Contract must be in writing. For the purpose of Clause 59, an e-mail is accepted as being "in writing".
- 59.2 Subject to Clause 59.3, the following table sets out the method by which notices may be served under this Call Off Contract and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 59.3 and 59.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 <sup>st</sup> Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 59.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1<sup>st</sup> Class or other prepaid in the manner set out in the table in Clause 59.2:
- 59.3.1 any Termination Notice (Clause 44 (Customer Termination Rights)),
- 59.3.2 any notice in respect of:
- (a) partial termination, suspension or partial suspension (Clause 47 (Partial Termination, Suspension and Partial Suspension)),
  - (b) waiver (Clause 51 (Waiver and Cumulative Remedies))
  - (c) Default or Customer Cause; and
- 59.3.3 any Dispute Notice.
- 59.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 59.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1<sup>st</sup> Class delivery (as set out in the table in Clause 59.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 59.5 Clause 59 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).
- 59.6 For the purposes of Clause 59, the address and email address of each Party shall be as specified in the Call Off Order Form.

## **60. LEGISLATIVE CHANGE**

- 60.1 The Supplier shall neither be relieved of its obligations under this Call Off Contract nor be entitled to an increase in the Call Off Contract Charges as the result of:
- 60.1.1 General Change in law;
- 60.1.2 Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Effective Date.
- 60.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than those referred to in Clause 60.1.2), the Supplier shall notify the Customer of the likely effects of that change.
- 60.3 As soon as as practicable after any notification in accordance with Clause 60.2 the parties shall discuss and agree the matters referred to in that clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:
- 60.3.1 Providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
- 60.3.2 Demonstrating that a foreseeable Specific Change in Law had been taken into account by the Supplier before it occurred;
- 60.3.3 Giving evidence as to how the Specific Change in Law has affected the cost of supplying the Products and/or Services; and
- 60.3.4 Demonstrating that any expenditure that has been avoided, has been taken into account in amending the Call Off Contract Charges.



- 60.4 Any increase in the Call Off Contract Charges or relief from any of the Supplier's obligations under this Call Off Contract agreed by the Parties pursuant to Clauses 60.2 and 60.3 above shall be implemented in accordance with Clause 24.1 (Variation).

## **61. DISPUTE RESOLUTION**

- 61.1 The Parties shall resolve Disputes arising out of or in connection with this Call Off Contract in accordance with the Dispute Resolution Procedure.
- 61.2 The Supplier shall continue to provide the Products and/or Services in accordance with the terms of this Call Off Contract until a Dispute has been resolved.

## **62. GOVERNING LAW AND JURISDICTION**

- 62.1 This Call Off Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 62.2 Subject to Clause 61 (Dispute Resolution) and Call Off Schedule 11 (Dispute Resolution Procedure) (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales (unless stated differently in the Call Off Order Form) shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.

## CALL OFF SCHEDULE 1: DEFINITIONS

1. In accordance with Clause 1 (Definitions and Interpretation) of this Call Off Contract including its recitals the following expressions shall have the following meanings:

<b>"Achieve"</b>	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Strategy Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and <b>"Achieved"</b> , <b>"Achieving"</b> and <b>"Achievement"</b> shall be construed accordingly;
<b>"Acquired Rights Directive"</b>	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
<b>"Additional Clauses"</b>	means the additional Clauses in Call Off Schedule 14 (Alternative and/or Additional Clauses) and any other additional Clauses set out in the Call Off Order Form or elsewhere in this Call Off Contract;
<b>"Affected Party"</b>	means the party seeking to claim relief in respect of a Force Majeure;
<b>"Affiliates"</b>	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Alternative Clauses"</b>	means the alternative Clauses in Call Off Schedule 14 (Alternative and/or Additional Clauses) and any other alternative Clauses set out in the Call Off Order Form or elsewhere in this Call Off Contract;
<b>"Approval"</b>	means the prior written consent of the Customer and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Approved Sub-Licensee"</b>	means any of the following: <ul style="list-style-type: none"><li>a) a Central Government Body;</li><li>b) any third party providing Products and/or Services to a Central Government Body; and/or</li><li>c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;</li></ul>
<b>"Auditor"</b>	means: <ul style="list-style-type: none"><li>a) the Customer's internal and external auditors;</li><li>b) the Customer's statutory or regulatory auditors;</li><li>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li><li>d) HM Treasury or the Cabinet Office;</li><li>e) any party formally appointed by the Customer to carry out audit or similar review functions; and</li></ul>

	f) successors or assigns of any of the above;
<b>"Authority"</b>	means <b>THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office")</b> as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
<b>"BACS"</b>	means the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
<b>"BCDR Products and/or Services"</b>	means the Business Continuity Products and/or Services and Disaster Recovery Products and/or Services;
<b>"BCDR Plan"</b>	means the plan prepared pursuant to paragraph 2 of Call Off Schedule 8 (Business Continuity and Disaster Recovery), as may be amended from time to time;
<b>"Business Continuity Products and/or Services"</b>	has the meaning given to it in paragraph 4.2.2 of Call Off Schedule 8 (Business Continuity and Disaster Recovery);
<b>"Call Off Commencement Date"</b>	means the date of commencement of this Call Off Contract set out in the Call Off Order Form;
<b>"Call Off Contract"</b>	means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement), which consists of the terms set out in the Call Off Order Form and the Call Off Terms;
<b>"Call Off Contract Charges"</b>	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract, as set out in Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Call Off Contract less any Deductions;
<b>"Call Off Contract Period"</b>	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date;
<b>"Call Off Contract Year"</b>	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;
<b>"Call Off Expiry Date"</b>	means: <ul style="list-style-type: none"> <li>(a) the end date of the Call Off Initial Period or any Call Off Extension Period; or</li> <li>(b) if this Call Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call Off Contract;</li> </ul>
<b>"Call Off Extension Period"</b>	means such period or periods up to a maximum of the number of years in total as may be specified by the Customer, pursuant to Clause 5.2 and in the Call Off Order Form;
<b>"Call Off Guarantee"</b>	means a deed of guarantee that may be required under this Call Off Contract in favour of the Customer in the form

	set out in Framework Schedule 13 (Guarantee) granted pursuant to Clause 7 (Call Off Guarantee);
<b>"Call Off Guarantor"</b>	means the person acceptable to the Customer to give a Call Off Guarantee;
<b>"Call Off Initial Period"</b>	means the initial term of this Call Off Contract from the Call Off Commencement Date to the end date of the initial term stated in the Call Off Order Form;
<b>"Call Off Order Form"</b>	means the Order Form applicable to and set out in Part 1 of this Call Off Contract;
<b>"Call Off Procedure"</b>	means the process for awarding a call off contract pursuant to Clause 5 (Call Off Procedure) of the Framework Agreement and Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Schedule"</b>	means a schedule to this Call Off Contract;
<b>"Call Off Tender"</b>	means the tender submitted by the Supplier in response to the Customer's Statement of Requirements following a Further Competition Procedure and set out at Call Off Schedule 15 (Call Off Tender);
<b>"Call Off Terms"</b>	means the terms applicable to and set out in Part 2 of this Call Off Contract;
<b>"Central Government Body"</b>	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul>
<b>"Change of Control"</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	means the charges raised under or in connection with this Call Off Contract from time to time, which shall be calculated in a manner that is consistent with the Charging Structure;
<b>"Charging Structure"</b>	means the structure to be used in the establishment of the charging model which is applicable to the Call Off Contract, which is set out in Framework Schedule 3 (Framework Prices and Charging Structure);
<b>"Commercially Sensitive Information"</b>	<p>means the Confidential Information listed in the Call Off Order Form (if any) comprising of commercially sensitive information relating to: -</p> <ul style="list-style-type: none"> <li>(a) the pricing of the Services;</li> <li>(b) details of the Supplier's IPR;</li> <li>(c) the Supplier's business and investment plans; and/or</li> <li>(d) the Supplier's trade secrets;</li> </ul> <p>which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier</p>

	significant commercial disadvantage or material financial loss;
<b>“Commodity Price”</b>	Shall have the meaning given to it in Schedule 3 of the Framework Agreement
<b>"Comparable Supply"</b>	means the supply of Products and/or Services to another customer of the Supplier that are the same or similar to the Products and/or Services;
<b>“Compensation for Critical Service Level Failure”</b>	has the meaning given to it in Clause 16.2.2 (Critical Service Level Failure);
<b>"Confidential Information"</b>	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
<b>"Continuous Improvement Plan"</b>	means a plan for improving the provision of the Products and/or Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);
<b>"Contracting Authority"</b>	means the Authority, the Customer and any other bodies listed in the OJEU Notice;
<b>"Control"</b>	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
<b>"Conviction"</b>	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;
<b>"Costs"</b>	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Products and/or Services:</p> <ul style="list-style-type: none"> <li>a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including: <ul style="list-style-type: none"> <li>i) base salary paid to the Supplier Personnel;</li> <li>ii) employer's national insurance contributions;</li> <li>iii) pension contributions;</li> <li>iv) car allowances;</li> <li>v) any other contractual employment benefits;</li> <li>vi) staff training;</li> <li>vii) work place accommodation;</li> <li>viii) work place IT Equipment and tools reasonably necessary to provide the Products and/or</li> </ul> </li> </ul>

Services (but not including items included within limb (b) below); and

ix) reasonable recruitment costs, as agreed with the Customer;

- b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Customer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
- c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Products and/or Services;
- d) Reimbursable Expenses to the extent these have been specified as allowable in the Call Off Order Form and are incurred in delivering any Products and/or Services where the Call Off Contract Charges for those Products and/or Services are to be calculated on a Fixed Price or Firm Price pricing mechanism (as set out in Framework Schedule 3 (Framework Prices and Charging Structure));

but excluding:

- a) Overhead;
- b) financing or similar costs;
- c) maintenance and support costs to the extent that these relate to maintenance and/or support Products and/or Services provided beyond the Call Off Contract Period whether in relation to Supplier Assets or otherwise;
- d) taxation;
- e) fines and penalties;
- f) amounts payable under Clause 27 (Benchmarking); and
- g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

**"Critical Service Level Failure"**

means any instance of critical service level failure specified in the Call Off Order Form;

**"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;

**"Crown Body"**

means any department, office or executive agency of the Crown;

<b>"CRTPA"</b>	means the Contracts (Rights of Third Parties) Act 1999;
<b>"Customer"</b>	means the customer(s) identified in the Call Off Order Form;
<b>"Customer Assets"</b>	means the Customer's infrastructure, data, software, materials, assets, Equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Products and/or Services;
<b>"Customer Background IPR"</b>	means: <ul style="list-style-type: none"> <li>a) IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, software, processes and procedures;</li> <li>b) IPRs created by the Customer independently of this Call Off Contract; and/or</li> <li>c) Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract;</li> </ul>
<b>"Customer Cause"</b>	means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Customer is liable to the Supplier;
<b>"Customer Data"</b>	means: <ul style="list-style-type: none"> <li>a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which: <ul style="list-style-type: none"> <li>i) are supplied to the Supplier by or on behalf of the Customer; or</li> <li>ii) the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or</li> </ul> </li> <li>b) any Personal Data for which the Customer is the Data Controller;</li> </ul>
<b>"Customer Premises"</b>	means Premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for the provision of the Products and/or Services (or any of them);
<b>"Customer Property"</b>	means the property, other than real property and IPR, including any Equipment issued or made available to the Supplier by the Customer in connection with this Call Off Contract;
<b>"Customer Representative"</b>	means the representative appointed by the Customer from time to time in relation to this Call Off Contract;
<b>"Customer Responsibilities"</b>	means the responsibilities of the Customer set out in Call Off Schedule 4 (Implementation Plan) and any other responsibilities of the Customer in the Call Off Order Form or agreed in writing between the Parties from time to time in connection with this Call Off Contract;

<b>"Customer's Confidential Information"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Customer (including all Customer Background IPR and Project Specific IPR);</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Customer's attention or into the Customer's possession in connection with this Call Off Contract; and</li> <li>c) information derived from any of the above;</li> </ul>
<b>"Data Controller"</b>	takes the meaning given in the Data Protection Legislation
<b>"Data Processor"</b>	takes the meaning given in the Data Protection Legislation
<b>"Data Protection Legislation"</b>	all applicable Law about the processing of personal data and privacy;
<b>"Data Subject"</b>	takes the meaning given in the Data Protection Legislation
<b>"Data Subject Access Request"</b>	means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>"Deductions"</b>	means all Service Credits, Delay Payments or any other deduction which the Customer is paid or is payable under this Call Off Contract;
<b>"Default"</b>	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;
<b>"Delay"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) a delay in the Achievement of a Milestone by its Milestone Date; or</li> <li>b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</li> </ul>
<b>"Delay Payments"</b>	means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
<b>"Delay Period Limit"</b>	shall be the number of days specified in Call Off Schedule 4 (Implementation Plan) for the purposes of Clause 6.4.1(b)(ii);
<b>"Deliverable"</b>	means an item or feature in the supply of the Products and/or Services delivered or to be delivered by the



	Supplier at or before a Milestone Date listed in the Implementation Plan (if any) or at any other stage during the performance of this Call Off Contract;
<b>"Delivery"</b>	means delivery in accordance with the terms of this Call Off Contract as confirmed by the issue by the Customer of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Call Off Contract and accepted by the Customer and <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;
<b>"Disaster"</b>	means the occurrence of one or more events which, either separately or cumulatively, mean that the Products and/or Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Call Off Order Form (for the purposes of this definition the <b>"Disaster Period"</b> );
<b>"Disaster Recovery Products and/or Services"</b>	means the Products and/or Services embodied in the processes and procedures for restoring the provision of Products and/or Services following the occurrence of a Disaster, as detailed further in Call Off Schedule 8 (Business Continuity and Disaster Recovery);
<b>"Disclosing Party"</b>	means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient;
<b>"Dispute"</b>	means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Products and/or Services, failure to agree in accordance with the Variation Procedure or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>"Dispute Notice"</b>	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
<b>"Dispute Resolution Procedure"</b>	means the dispute resolution procedure set out in Call Off Schedule 11 (Dispute Resolution Procedure);
<b>"Documentation"</b>	means descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) as: <ul style="list-style-type: none"> <li>a) is required to be supplied by the Supplier to the Customer under this Call Off Contract;</li> <li>b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Products and/or Services;</li> <li>c) is required by the Supplier in order to provide the Products and/or Services; and/or</li> </ul>

- d) has been or shall be generated for the purpose of providing the Products and/or Services;

**"DOTAS"**

means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

**"Due Diligence Information"**

means any information supplied to the Supplier by or on behalf of the Customer prior to the Call Off Commencement Date;

**"Employee Liabilities"**

means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- f) claims whether in tort, contract or statute or otherwise;
- g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**"Employment Regulations"**

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as

	amended or replaced or any other Regulations implementing the Acquired Rights Directive;
<b>"Environmental Policy"</b>	means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Customer;
<b>"Environmental Information Regulations or EIRs"</b>	means 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;
<b>"Equipment"</b>	means the Suppliers' hardware, computer and telecoms devices, equipment, plant, gauges, metering equipment, materials and such other items supplied and used by the Supplier (but not hires or leased or loaned from the Customers) in the performance of its obligations under the Call Off Contract
<b>"Estimated Year 1 Call Off Contract Charges"</b>	means the sum in pounds estimated by the Customer to be payable by it to the Supplier as the total aggregate Call Off Contract Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year stipulated in the Call Off Order Form;
<b>"Exit Plan"</b>	means the exit plan described in paragraph 5 of Call Off Schedule 9 (Exit Management);
<b>"Expedited Dispute Timetable"</b>	means the timetable set out in paragraph 5 of Call Off Schedule 11 (Dispute Resolution Procedure);
<b>Environmental Information Regulations</b>	means the Environmental Information (Scotland) Regulations 2004 (and any subordinate regulations made under them from time to time or any superseding or amending regulations) together with any guidance and/or codes or practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such regulations.
<b>"FOIA"</b>	means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that 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;
<b>FOISA</b>	means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes of practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such legislation.

<b>"Force Majeure"</b>	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> <li>a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Call Off Contract;</li> <li>b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>c) acts of the Crown, local government or Regulatory Bodies;</li> <li>d) fire, flood or any disaster; and</li> <li>e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> <li>i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and</li> <li>ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</li> <li>iii) any failure of delay caused by a lack of funds;</li> </ul> </li> </ul>
<b>"Force Majeure Notice"</b>	<p>means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;</p>
<b>"Former Supplier"</b>	<p>means a supplier supplying the Products and/or Services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Products and/or Services (or any part of the Products and/or Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);</p>
<b>"Framework Agreement"</b>	<p>means the framework agreement between the Authority and the Supplier referred to in the Call Off Order Form;</p>
<b>"Framework Commencement Date"</b>	<p>means 01 October 2020</p>
<b>"Framework Period"</b>	<p>means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;</p>
<b>"Framework Price(s)"</b>	<p>means the price(s) applicable to the provision of the Products and/or Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);</p>
<b>"Framework Schedule"</b>	<p>means a schedule to the Framework Agreement;</p>
<b>"Fraud"</b>	<p>means any offence under any Laws creating offences in respect of fraudulent acts (including the</p>

	Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
<b>"Further Competition Procedure"</b>	means the further competition procedure described in paragraph 3 of Framework Schedule 5 (Call Off Procedure);
<b>"General Anti-Abuse Rule"</b>	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>"General Change in Law"</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Products "</b>	means the Products to be provided by the Supplier to the Customer as specified in Annex 2 of Call Off Schedule 2 (Products and and/or Services);
<b>"GDPR"</b>	the General Data Protection Regulation (Regulation (EU) 2016/679)
<b>"Government"</b>	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 government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Government Procurement Card"</b>	means the Government's preferred method of purchasing and payment for low value Products or services <a href="https://www.gov.uk/government/publications/government-procurement-card--2">https://www.gov.uk/government/publications/government-procurement-card--2</a> ;
<b>"Halifax Abuse Principle"</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	means Her Majesty's Revenue and Customs;
<b>"Holding Company"</b>	has the meaning given to it in section 1159 of the Companies Act 2006;
<b>"ICT Policy"</b>	means the Customer's policy in respect of information and communications technology, referred to in the Call Off Order Form, which is in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
<b>"Impact Assessment"</b>	has the meaning given to it in Clause 24.1.3 (Variation Procedure);
<b>"Implementation Plan"</b>	means the plan set out in the Call Off Schedule 4 (Implementation Plan);

<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
<b>"Installation Works"</b>	means all works which the Supplier is to carry out at the beginning of the Call Off Contract Period to install the Products in accordance with the Call Off Order Form;
<b>"Insolvency Event"</b>	<p>means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable):</p> <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</li> <li>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</li> <li>h) where the Supplier or Framework Guarantor or Call Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</li> <li>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</li> </ul>
<b>"Intellectual Property Rights" or "IPR"</b>	<p>means</p> <ul style="list-style-type: none"> <li>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 or business names, designs, Know-How, trade secrets and other rights in Confidential Information;</li> </ul>

- 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
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

**"IPR Claim"**

means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Products and/or Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer (including any claims arising from the publication of the Project Specific IPRs as Open Source) in the fulfilment of its obligations under this Call Off Contract;

**"Key Performance Indicators" or "KPIs"**

means the performance measurements and targets in respect of the Supplier's performance of the Framework Agreement set out in Part B of Framework Schedule 2 (Products and/or Services and Key Performance Indicators);

**"Key Personnel"**

means the individuals (if any) identified as such in the Call Off Order Form;

**"Key Role(s) "**

has the meaning given to it in Clause 28.1 (Key Personnel);

**"Key Sub-Contract"**

means each Sub-Contract with a Key Sub-Contractor;

**"Key Sub-Contractor"**

means any Sub-Contractor:

- a) listed in Framework Schedule 7 (Key Sub-Contractors);
- b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Products and/or Services; and/or
- c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;

**"Know-How"**

means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Products and/or Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;

**"Law"**

means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

**"Losses"**

means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of

investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **"Loss"** shall be interpreted accordingly;

**"Management Information"**

or MI means the Management Information specified in Framework Schedule 9 (Management Information)

**"Man Day"**

means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;

**"Man Hours"**

means the hours spent by the Supplier Personnel properly working on the provision of the Products and/or Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;

**"Milestone"**

means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;

**"Milestone Date"**

means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;

**"Milestone Payment"**

means a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;

**"MOD Additional Clause"**

means any of the Additional Clauses set out in Call Off Schedule 14 (MOD Additional Clauses) which have been inserted in the Call Off Contract by the Ministry of Defence;

**"Month"**

means a calendar month and **"Monthly"** shall be interpreted accordingly;

**"Occasion of Tax Non-Compliance"**

means:

- a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
  - i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a



criminal conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a civil penalty for fraud or evasion;

**"Open Book Data "**

means complete and accurate financial and non-financial information which is sufficient to enable the Customer to verify the Call Off Contract Charges already paid or payable and Call Off Contract Charges forecast to be paid during the remainder of this Call Off Contract, including details and all assumptions relating to:

- a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Products and/or services;
- b) operating expenditure relating to the provision of the Products and/or Services including an analysis showing:
  - i) the unit costs and quantity of Products and any other consumables and bought-in Products and/or services;
  - ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
  - iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and
  - iv) Reimbursable Expenses, if allowed under the Call Off Order Form;
- c) Overheads;
- d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Products and/or Services;
- e) the Supplier Profit achieved over the Call Off Contract Period and on an annual basis;
- f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- g) an explanation of the type and value of risk and contingencies associated with the provision of the Products and/or Services, including the amount of money attributed to each risk and/or contingency; and
- h) the actual Costs profile for each Service Period.

**"Open Source"**

means computer software, computer program, and any other material that is published for use, with rights to access and modify, by any person for free, under a generally recognised open source licence;

**"Open Standards"**

means the open standards principles as described by Government and further detailed at

<https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles> (as may be updated from time to time);

"Order"	means the order for the provision of the Products and/or Services placed by the Customer with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;
"Order Form"	means the form, as completed and forming part of this Call Off Contract, which contains, including without limitation the description of the Products and Services to be supplied
"Other Supplier"	means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Over-Delivered Products"	has the meaning given to it in Clause 10.5.1 (Over-Delivered Products);
"Overhead"	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Customer or the Supplier and " <b>Parties</b> " shall mean both of them;
"Performance Monitoring System"	has the meaning given to it in paragraph <b>Error! Reference source not found.</b> in Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Performance Monitoring Reports"	has the meaning given to it in paragraph <b>Error! Reference source not found.</b> of Part B of Schedule 6 (Service Level, Service Credit and Performance Monitoring);
"Personal Data"	takes the meaning given in the Data Protection Legislation;
"Premises"	means any of the locations and/or Premises where the Products and/or Services are to be supplied as set out in the Order Form and by the Customer from time to time;
"Processing"	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and " <b>Process</b> " and " <b>Processed</b> " shall be interpreted accordingly;

**"Prohibited Act"**

means any of the following:

- a) to directly or indirectly offer, promise or give any person working for or engaged by a Contracting Authority or any other public body a financial or other advantage to:
  - i) induce that person to perform improperly a relevant function or activity; or
  - ii) reward that person for improper performance of a relevant function or activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- c) committing any offence:
  - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
  - ii) under legislation or common law concerning fraudulent acts; or
  - iii) defrauding, attempting to defraud or conspiring to defraud a Contracting Authority or other public body; or
  - iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

**"Project Specific IPR"**

means:

- a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- b) IPR in or arising as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same;

but shall not include the Supplier Background IPR;

**"Project Specific IPR Items"**

means the items in which the Project Specific IPRs subsist;

**"Purchase Order"**

means an Order under this Call off Contract made in accordance with the purchasing procedure.

**"Purchasing Procedure"**

Means the procedure for repeat purchasing of Products and/or Services under this Call Off Contract specified by the Customer

<b>"Recipient"</b>	mean the Party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party;);
<b>"Rectification Plan"</b>	means the rectification plan pursuant to the Rectification Plan Process;
<b>"Rectification Plan Process"</b>	means the process set out in Clause 41.2 (Rectification Plan Process);
<b>"Registers"</b>	has the meaning given to in Call Off Schedule 9 (Exit Management);
<b>"Regulations"</b>	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
<b>"Reimbursable Expenses"</b>	has the meaning given to it in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
<b>"Related Supplier"</b>	means any person who provides Products and/or Services to the Customer which are related to the Products and/or Services from time to time;
<b>"Relevant Conviction"</b>	means a Conviction that is relevant to the nature of the Products and/or Services to be provided or as specified in the Call Off Order Form;
<b>"Relevant Requirements"</b>	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Relevant Transfer"</b>	means a transfer of employment to which the Employment Regulations applies;
<b>"Relevant Transfer Date"</b>	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>"Relief Notice"</b>	has the meaning given to it in Clause 42.2.2 (Supplier Relief Due to Customer Cause);
<b>"Replacement Products"</b>	means any Products which are substantially similar to any of the Products and which the Customer receives in substitution for any of the Products following the Call Off Expiry Date, whether those Products are provided by the Customer internally and/or by any third party;
<b>"Replacement Services"</b>	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the Call Off Expiry Date, whether those services are provided by the Customer internally and/or by any third party;
<b>"Replacement Sub-Contractor"</b>	means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>"Replacement Supplier"</b>	means any third party provider of Replacement Products and/or Services appointed by or at the direction of the Customer from time to time or where the Customer is

	providing Replacement Products and/or Services for its own account, shall also include the Customer;
<b>"Request for Information"</b>	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Products and/or Services or an apparent request for such information under the FOIA or the EIRs;
<b>"Restricted Countries"</b>	means a country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;
<b>"Satisfaction Certificate"</b>	means the certificate materially in the form of the document contained in Call Off Schedule 5 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;
<b>"Security Management Plan"</b>	means the Supplier's security management plan prepared pursuant to paragraph <b>Error! Reference source not found.</b> of Call Off Schedule 7 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph <b>Error! Reference source not found.</b> of Call Off Schedule 7 (Security) and as updated from time to time;
<b>"Security Policy"</b>	means the Customer's security policy, referred to in the Call Off Order Form, in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>"Security Policy Framework"</b>	the current HMG Security Policy Framework that can be found at <a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a> ;
<b>"Service Credit Cap"</b>	has the meaning given to it in the Call Off Order Form;
<b>"Service Credits"</b>	means any service credits specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service Failure"</b>	means an unplanned failure and interruption to the provision of the Products and/or Services, reduction in the quality of the provision of the Products and/or Services or event which could affect the provision of the Products and/or Services in the future;
<b>"Service Level Failure"</b>	means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
<b>"Service Level Performance Criteria"</b>	has the meaning given to it in paragraph <b>Error! Reference source not found.</b> of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Level Performance Measure"</b>	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);

<b>"Service Level Threshold"</b>	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Levels"</b>	means any service levels applicable to the provision of the Products and/or Services under this Call Off Contract specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Period"</b>	has the meaning given to in paragraph <b>Error! Reference source not found.</b> of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Transfer"</b>	means any transfer of the Products and/or Services (or any part of the Products and/or Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
<b>"Service Transfer Date"</b>	means the date of a Service Transfer;
<b>"Services"</b>	means the services to be provided by the Supplier to the Customer as referred to in Annex 1 of Call Off Schedule 2 (Products and Services);
<b>"SI Litres"</b>	means litres measured in accordance with the International System of Units or "SI"
<b>"Sites"</b>	means any Premises (including the Customer Premises , the Supplier's Premises or third party Premises ) from, to or at which: <ul style="list-style-type: none"> <li>a) the Products and/or Services are (or are to be) provided; or</li> <li>b) the Supplier manages, organises or otherwise directs the provision or the use of the Products and/or Services.</li> </ul>
<b>"Specific Change in Law"</b>	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
<b>"Staff Vetting Procedure"</b>	means any Customer's procedures and departmental policies for the vetting of personnel as set out by the Customer in the Order Form or elsewhere in the Call Off Contract
<b>"Standards"</b>	means any: <ul style="list-style-type: none"> <li>a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>b) standards detailed in the specification in Framework Schedule 2 (Products and/or Services and Key Performance Indicators);</li> </ul>

	<ul style="list-style-type: none"> <li>c) standards detailed by the Customer in the Call Off Order Form or agreed between the Parties from time to time;</li> <li>d) relevant Government codes of practice and guidance applicable from time to time.</li> </ul>
<b>“Statement of Requirements”</b>	means a statement issued by the Customer detailing its requirements in respect of Products and/or Services issued in accordance with the Call Off Procedure;
<b>"Sub-Contract"</b>	<p>means any contract or agreement (or proposed contract or agreement) pursuant to which a third party:</p> <ul style="list-style-type: none"> <li>a) provides the Products and/or Services(or any part of them);</li> <li>b) provides facilities or services necessary for the provision of the Products and/or Services(or any part of them); and/or</li> <li>c) is responsible for the management, direction or control of the provision of the Products and/or Services(or any part of them);</li> </ul>
<b>"Sub-Contractor"</b>	means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>"Supplier"</b>	means the person, firm or company with whom the Customer enters into this Call Off Contract as identified in the Call Off Order Form;
<b>"Supplier Assets"</b>	means all assets and rights used by the Supplier to provide the Products and/or Servicesin accordance with this Call Off Contract but excluding the Customer Assets;
<b>"Supplier Background IPR"</b>	<p>means</p> <ul style="list-style-type: none"> <li>a) Intellectual Property Rights owned by the Supplier before the Call Off Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</li> <li>b) Intellectual Property Rights created by the Supplier independently of this Call Off Contract,</li> </ul>
<b>"Supplier Equipment"</b>	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Call Off Contract;
<b>“Supplier Margin”</b>	means those values and rates per litre of Products supplied as submitted by the Supplier during the Further Competition Procedure and as set out in Call Off Schedule 2 (Site Addition Template)

<b>"Supplier Maximum Margin"</b>	means those values maximum values and rates per litre of Products supplied as submitted by the Supplier in the Tender
<b>"Supplier Non-Performance"</b>	has the meaning given to it in Clause 42.1 (Supplier Relief Due to Customer Cause);
<b>"Supplier Personnel"</b>	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Call Off Contract;
<b>"Supplier Profit"</b>	means, in relation to a period or a Milestone (as the context requires), the difference between the total Call Off Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
<b>"Supplier Profit Margin"</b>	means, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Call Off Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
<b>"Supplier Representative"</b>	means the representative appointed by the Supplier named in the Call Off Order Form;
<b>"Supplier's Confidential Information"</b>	means <ul style="list-style-type: none"> <li>a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier;</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Call Off Contract;</li> <li>c) information derived from any of the above.</li> </ul>
<b>"Template Call Off Order Form"</b>	means the template Call Off Order Form in Annex 1 of Framework Schedule 4 (Template Call Off Order Form and Template Call Off Terms);
<b>"Template Call Off Terms"</b>	means the template terms and conditions in Annex 2 of Framework Schedule 4 (Template Call Off Order Form and Template Call Off Terms);
<b>"Tender"</b>	means the tender submitted by the Supplier to the Authority, a copy of which is annexed or referred to in Framework Schedule 21;
<b>"Termination Notice"</b>	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Call Off Contract on a specified date and setting out the grounds for termination;



<b>"Test Issue"</b>	means any variance or non-conformity of the Products and/or Services or Deliverables from their requirements as set out in the Call Off Contract;
<b>"Test Plan"</b>	means a plan: <ul style="list-style-type: none"> <li>a) for the Testing of the Deliverables; and</li> <li>b) setting out other agreed criteria related to the achievement of Milestones,</li> </ul> as described further in paragraph 4 of Call of Schedule 5 (Testing);
<b>"Test Strategy"</b>	means a strategy for the conduct of Testing as described further in paragraph 3 of Call Off Schedule 5 (Testing);
<b>"Tests and Testing"</b>	means any tests required to be carried out pursuant to this Call Off Contract as set out in the Test Plan or elsewhere in this Call Off Contract and "Tested" shall be construed accordingly;
<b>"Third Party IPR"</b>	means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Products and/or Services;
<b>"Transferring Customer Employees"</b>	those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>"Transferring Former Supplier Employees"</b>	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>"Transferring Supplier Employees"</b>	means those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.
<b>"Transparency Reports"</b>	means the information relating to the Services and performance of this Call Off Contract which the Supplier is required to provide to the Customer in accordance with the reporting requirements in Schedule 13;
<b>"Undelivered Products "</b>	has the meaning given to it in Clause 10.4.1 (Products );
<b>"Undelivered Products and/or Services"</b>	has the meaning given to it in Clause 9.4.1 (Products and/or Services);
<b>"Undisputed Sums Time Period"</b>	has the meaning given to it Clause 45.1.1 (Termination of Customer Cause for Failure to Pay);
<b>"Valid Invoice"</b>	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph 7 (Invoicing Procedure) of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
<b>"Variation"</b>	has the meaning given to it in Clause 24.1 (Variation Procedure);
<b>"Variation Form"</b>	means the form set out in Call Off Schedule 12 (Variation Form);
<b>"Variation Procedure"</b>	means the procedure set out in Clause 24.1 (Variation Procedure);
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

<b>"Warranty Period"</b>	means, in relation to any Products, the warranty period specified in the Call Off Order Form;
<b>"Worker"</b>	means any one of the Supplier Personnel which the Customer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> applies in respect of the Products and/or Services.
<b>"Working Day"</b>	means any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by Parties in this Call Off Contract.

## **CALL OFF SCHEDULE 2: PRODUCTS AND/OR SERVICES**

### **1. INTRODUCTION**

- 1.1 This Call Off Schedule 2 specifies the:
  - 1.1.1 Services to be provided under this Call Off Contract, in Annex 1; and
  - 1.1.2 Products to be provided under this Call Off Contract, in Annex 2.
  - 1.1.3 For Lot Group 1 Liquid Fuels consisting of 14 regional Lots 101 to 114 inclusive and Lot 2, insert site addition template with Supplier Margins inserted

## **ANNEX 1: THE SERVICES – NOT USED**

## **ANNEX 2: THE PRODUCTS**

The supplier shall deliver the following product:

Shell Aeroshell 2XN Oil Additive. (MIL-6529C Type 1(US), NATO Code C-608).

## CALL OFF SCHEDULE 3: CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING

### 1. DEFINITIONS

1.1 The following terms used in this Call Off Schedule 3 shall have the following meaning:

<b>"Indexation"</b>	means the adjustment of an amount or sum in accordance with paragraph 11 of this Call Off Schedule 3;
<b>"Indexation Adjustment Date"</b>	has the meaning given to it in paragraph 11.1.1(a) of this Call Off Schedule 3;
<b>"Reimbursable Expenses"</b>	<p>means the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Customer's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"><li>a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the Premises at which the Services are principally to be performed, unless the Customer otherwise agrees in advance in writing; and</li><li>b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the Premises at which the Services are principally to be performed;</li></ul>
<b>"Review Adjustment Date"</b>	has the meaning given to it in paragraph 10.1.2 of this Call Off Schedule 3;
<b>"CPI"</b>	means the <b>Consumer Prices Index</b> as published by the Office of National Statistics ( <a href="http://www.statistics.gov.uk/instantfigures.asp">http://www.statistics.gov.uk/instantfigures.asp</a> ); and
<b>"Supporting Documentation"</b>	means sufficient information in writing to enable the Customer to reasonably to assess whether the Call Off Contract Charges, Reimbursable Expenses and other sums due from the Customer under this Call Off Contract detailed in the information are properly payable.

### 2. GENERAL PROVISIONS

2.1 This Call Off Schedule 3 details:

- 2.1.1 the Call Off Contract Charges for the Products and/or the Services under this Call Off Contract; and
- 2.1.2 the payment terms/profile for the Call Off Contract Charges;
- 2.1.3 the invoicing procedure; and
- 2.1.4 the procedure applicable to any adjustments of the Call Off Contract Charges.

### **3. CALL OFF CONTRACT CHARGES**

- 3.1 The Call Off Contract Charges which are applicable to this Call Off Contract are set out in Annex 1 of this Call Off Schedule 3.
- 3.2 The Supplier acknowledges and agrees that:
  - 3.2.1 in accordance with paragraph 2 (General Provisions) of Framework Schedule 3 (Framework Prices and Charging Structure), the Call Off Contract Charges can in no event exceed the Framework Prices set out in Annex 3 to Framework Schedule 3 (Framework Prices and Charging Structure); and
  - 3.2.2 subject to paragraph 8 of this Call Off Schedule 3 (Adjustment of Call Off Contract Charges), the Call Off Contract Charges cannot be increased during the Call Off Contract Period, this is only applicable for Lot 3, 4 and 5.

### **4. COSTS AND EXPENSES**

- 4.1 Except as expressly set out in paragraph 5 of this Call Off Schedule 3(Reimbursable Expenses),] the Call Off Contract Charges include all costs and expenses relating to the Products and/or Servicesand/or the Supplier's performance of its obligations under this Call Off Contract and no further amounts shall be payable by the Customer to the Supplier in respect of such performance, including in respect of matters such as:
  - 4.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office Equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
  - 4.1.2 any amount for any services provided or costs incurred by the Supplier prior to the Call Off Commencement Date.

### **5. REIMBURSEABLE EXPENSES**

- 5.1 If the Customer has so specified in the Call Off Order Form, the Supplier shall be entitled to be reimbursed by the Customer for Reimbursable Expenses (in addition to being paid the relevant Call Off Contract Charges under this Call Off Contract), provided that such Reimbursable Expenses are supported by Supporting Documentation. The Customer shall provide a copy of their current expenses policy to the Supplier upon request.

### **6. PAYMENT TERMS/PAYMENT PROFILE**

- 6.1 The payment terms/profile which are applicable to this Call Off Contract are set out in Annex 2 of this Call Off Schedule 3.

### **7. INVOICING PROCEDURE**

- 7.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Customer in paragraph 7.6 of this Call Off Schedule 3 and in accordance with the provisions of this Call Off Contract.
- 7.2 The Supplier shall ensure that each invoice (whether submitted electronically through a purchase-to-pay (P2P) automated system (or similar) or in a paper form, as the Customer may specify (but, in respect of paper form, subject to paragraph 7.3 below)):
  - 7.2.1 contains:

- (a) all appropriate references, including the unique order reference number set out in the Call Off Order Form; and
  - (b) a detailed breakdown of the Delivered Products and/or Services, including the Milestone(s) (if any) and Deliverable(s) within this Call Off Contract to which the Delivered Products and/or Services relate, against the applicable due and payable Call Off Contract Charges; and
- 7.2.2 shows separately:
  - (a) any Service Credits due to the Customer; and
  - (b) the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 25.5.1 of this Call Off Contract (VAT) and the tax point date relating to the rate of VAT shown; and
- 7.2.3 is exclusive of any Management Charge (except for in the case of Liquid Fuel and LPG both of which include the Management Charge) (and the Supplier shall not attempt to increase the Call Off Contract Charges or otherwise recover from the Customer as a surcharge the Management Charge levied on it by the Authority); and
- 7.2.4 it is supported by any other documentation reasonably required by the Customer to substantiate that the invoice is a Valid Invoice.
- 7.3 If the Customer is a Central Government Body, the Customer's right to request paper form invoicing shall be subject to procurement policy note 11/15 (available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/437471/PPN\\_e-invoicing.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437471/PPN_e-invoicing.pdf)), which sets out the policy in respect of unstructured electronic invoices submitted by the Supplier to the Customer (as may be amended from time to time).
- 7.4 The Supplier shall accept the Government Procurement Card as a means of payment for the Products and/or 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.
- 7.5 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Call Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- 7.6 The Supplier shall submit invoices directly to the Customer's billing address set out in the Call Off Order Form.

## **8. ADJUSTMENT OF CALL OFF CONTRACT CHARGES**

- 8.1 The Call Off Contract Charges shall only be varied:
  - 8.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Call Off Contract Charges in accordance with Clause 24.2 of this Call Off Contract (Legislative Change);
  - 8.1.2 in accordance with Clause 25.1.4 of this Call Off Contract (Call Off Contract Charges and Payment) where all or part of the Call Off Contract Charges are reduced as a result of a reduction in the Framework Prices;



- 8.1.3 where all or part of the Call Off Contract Charges are reduced as a result of a review of the Call Off Contract Charges in accordance with Clause 20 of this Call Off Contract (Continuous Improvement);
  - 8.1.4 where all or part of the Call Off Contract Charges are reduced as a result of a review of Call Off Contract Charges in accordance with Clause 27 of this Call Off Contract (Benchmarking);
  - 8.1.5 where all or part of the Call Off Contract Charges are reviewed and reduced in accordance with paragraph 9 of this Call Off Schedule 3;
  - 8.1.6 where a review and increase of Call Off Contract Charges is requested by the Supplier and Approved, in accordance with the provisions of paragraph 10 of this Call Off Schedule 3; or
  - 8.1.7 where Call Off Contract Charges or any component amounts or sums thereof are expressed in this Call Off Schedule 3 as "subject to increase by way of Indexation", in accordance with the provisions in paragraph 11 of this Call Off Schedule 3.
- 8.2 Subject to paragraphs 8.1.1 to 8.1.5 of this Call Off Schedule 3, the Call Off Contract Charges will remain fixed for the number of Contract Years specified in the Call Off Order Form.

## **9. SUPPLIER PERIODIC ASSESSMENT OF CALL OFF CONTRACT CHARGES**

- 9.1 Every six (6) Months during the Call Off Contract Period, the Supplier shall assess the level of the Call Off Contract Charges to consider whether it is able to reduce them, this is applicable only to Lots 3, 4 and 5.
- 9.2 Such assessments by the Supplier under paragraph 9 of this Call Off Schedule 3 shall be carried out on the dates specified in the Call Off Order Form in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Call Off Contract Charges it shall promptly notify the Customer in writing and such reduction shall be implemented in accordance with paragraph 12.1.5 of this Call Off Schedule 3 below.

## **10. SUPPLIER REQUEST FOR INCREASE OF THE CALL OFF CONTRACT CHARGES**

- 10.1 If the Customer has so specified in the Call Off Order Form, the Supplier may request an increase in all or part of the Call Off Contract Charges in accordance with the remaining provisions of this paragraph 10 subject always to:
  - 10.1.1 paragraph 3.2 of this Call Off Schedule 3;
  - 10.1.2 the Supplier's request being submitted in writing at least three (3) Months before the effective date for the proposed increase in the relevant Call Off Contract Charges ("**Review Adjustment Date**") which shall be subject to paragraph 10.2 of this Call Off Schedule 3; and
  - 10.1.3 the Approval of the Customer which shall be granted in the Customer's sole discretion.
- 10.2 The earliest Review Adjustment Date will be the first (1st) Working Day following the anniversary of the Call Off Commencement Date after the expiry of the period specified in paragraph 8.2 of this Schedule 3 during which the Contract Charges shall remain fixed (and no review under this paragraph 10 is permitted). Thereafter any subsequent increase to any of the Call Off Contract Charges in accordance with this paragraph 10 of this Call Off Schedule 3 shall not occur before the anniversary of the previous Review Adjustment Date during the Call Off Contract Period.

- 10.3 To make a request for an increase of some or all of the Call Off Contract Charges in accordance with this paragraph 10, the Supplier shall provide the Customer with:
- 10.3.1 a list of the Call Off Contract Charges it wishes to review;
- 10.3.2 for each of the Call Off Contract Charges under review, written evidence of the justification for the requested increase including:
- (a) a breakdown of the profit and cost components that comprise the relevant Call Off Contract Charge;
  - (b) details of the movement in the different identified cost components of the relevant Call Off Contract Charge;
  - (c) reasons for the movement in the different identified cost components of the relevant Call Off Contract Charge;
  - (d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and
  - (e) evidence that the Supplier's profit component of the relevant Call Off Contract Charge is no greater than that applying to Call Off Contract Charges using the same pricing mechanism as at the Call Off Commencement Date.

## 11. INDEXATION

- 11.1 Where the Call Off Contract Charges or any component amounts or sums thereof are expressed in this Call Off Schedule 3 as "subject to increase by way of Indexation" the following provisions shall apply:
- 11.1.1 the relevant adjustment shall:
- (a) be applied on the effective date of the increase in the relevant Call Off Contract Charges by way of Indexation ("**Indexation Adjustment Date**") which shall be subject to paragraph 11.1.2 of this Call Off Schedule 3;
  - (b) be determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the twelve (12) Months ended on the 31<sup>st</sup> of January immediately preceding the relevant Indexation Adjustment Date;
  - (c) where the published CPI figure at the relevant Indexation Adjustment Date is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the Customer and the Supplier shall agree otherwise;
  - (d) if the CPI is no longer published, the Customer and the Supplier shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified in this Call Off Schedule 3.
- 11.1.2 The earliest Indexation Adjustment Date will be the (1st) Working Day following the expiry of the period specified in paragraph 8.2 of this Call Off Schedule 3 during which the Contract Charges shall remain fixed (and no review under this paragraph 11 is permitted). Thereafter any subsequent increase by way of Indexation shall not occur before the anniversary of the previous Indexation Adjustment Date during the Call Off Contract Period;
- 11.1.3 Except as set out in this paragraph 11 of this Call Off Schedule 3, neither the Call Off Contract Charges nor any other costs,

expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-Contractors of the performance of their obligations under this Call Off Contract.

## **12. IMPLEMENTATION OF ADJUSTED CALL OFF CONTRACT CHARGES**

- 12.1 Variations in accordance with the provisions of this Call Off Schedule 3 to all or part the Call Off Contract Charges (as the case may be) shall be made by the Customer to take effect:
- 12.1.1 in accordance with Clause 24.2 of this Call Off Contract (Legislative Change) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.1 of this Call Off Schedule 3;
  - 12.1.2 in accordance with Clause 25.1.4 of this Call Off Contract (Call Off Contract Charges and Payment) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.2 of this Call Off Schedule 3;
  - 12.1.3 in accordance with Clause 20 of this Call Off Contract (Continuous Improvement) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.3 of this Call Off Schedule 3;
  - 12.1.4 in accordance with Clause 27 of this Call Off Contract (Benchmarking) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.4 of this Call Off Schedule 3;
  - 12.1.5 on the dates specified in the Call Off Order Form where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.5 of this Call Off Schedule 3;
  - 12.1.6 on the Review Adjustment Date where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.6 of this Call Off Schedule 3;
  - 12.1.7 on the Indexation Adjustment Date where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.7 of this Call Off Schedule 3;
- and the Parties shall amend the Call Off Contract Charges shown in Annex 1 to this Call Off Schedule 3 to reflect such variations.

## **ANNEX 1: CALL OFF CONTRACT CHARGES**

The Customer will not be liable for any costs incurred by the Supplier in meeting the requirements of DEFCON 522.

## **ANNEX 2: PAYMENT TERMS/PROFILE**

In accordance with DEFCON 522 (Schedule 16).

**CALL OFF SCHEDULE 4: IMPLEMENTATION PLAN – NOT USED**

**CALL OFF SCHEDULE 5: TESTING – NOT USED**

**CALL OFF SCHEDULE 6: NOT USED**



## CALL OFF SCHEDULE 7: SECURITY

### 1. DEFINITIONS

1.1 In this Call Off Schedule 7, the following definitions shall apply:

**"Breach of Security"**

means the occurrence of:

- a) any unauthorised access to or use of the Products and/or Services, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Call Off Contract; and/or
- b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Call Off Contract,

in either case as more particularly set out in the Security Policy;

### 2. INTRODUCTION

2.1 The purpose of this Call Off Schedule 7 is to ensure a good organisational approach to security under which the specific requirements of this Call Off Contract will be met;

2.2 This Call Off Schedule 7 covers:

- 2.2.1 principles of protective security to be applied in delivering the Products and/or Services;
- 2.2.2 the creation and maintenance of the Security Management Plan; and
- 2.2.3 obligations in the event of actual or attempted Breaches of Security.

### 3. PRINCIPLES OF SECURITY

3.1 The Supplier acknowledges that the Customer places great emphasis on the reliability of the performance of the Products and/or Services, confidentiality, integrity and availability of information and consequently on security.

3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:

- 3.2.1 is in accordance with the Law and this Call Off Contract;
- 3.2.2 as a minimum demonstrates Good Industry Practice;
- 3.2.3 complies with the Security Policy;
- 3.2.4 meets any specific security threats of immediate relevance to the Products and/or Services and/or the Customer Data; and
- 3.2.5 complies with the Customer's ICT Policy.

3.3 Subject to Clause 37 of this Call Off Contract (Security and Protection of Information) the references to standards, guidance and policies contained or set out in paragraph 3.2 of this Call Off Schedule 7 shall be deemed to be

references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Customer's Representative of such inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

#### **4. SECURITY MANAGEMENT PLAN**

##### **4.1 Introduction**

- 4.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Call Off Schedule 7. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

##### **4.2 Content of the Security Management Plan**

###### **4.2.1 The Security Management Plan shall:**

- (a) comply with the principles of security set out in paragraph 3 of this Call Off Schedule 7 and any other provisions of this Call Off Contract relevant to security;
- (b) identify the necessary delegated organisational roles defined for those responsible for ensuring it is complied with by the Supplier;
- (c) detail the process for managing any security risks from Sub-Contractors and third parties authorised by the Customer with access to the Products and/or Services, processes associated with the provision of the Products and/or Services, the Customer Premises, the Sites and any ICT, Information and data (including the Customer's Confidential Information and the Customer Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Products and/or Services;
- (d) unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Products and/or Services and all processes associated with the provision of the Products and/or Services, including the Customer Premises, the Sites, and any ICT, Information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Products and/or Services;
- (e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Products and/or Services and all processes associated with the provision of the Products and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Products and/or Services comply with the provisions of this Call Off Contract;
- (f) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full

obligations of the security requirements set out in this Call Off Contract and the Security Policy; and

- (g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the provision of the Products and/or Services and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Call Off Schedule 7.

#### 4.3 Development of the Security Management Plan

- 4.3.1 Within twenty (20) Working Days after the Call Off Commencement Date (or such other period agreed by the Parties in writing) and in accordance with paragraph 4.4 (Amendment and Revision of the Security Management Plan), the Supplier shall prepare and deliver to the Customer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 4.3.2 If the Security Management Plan submitted to the Customer in accordance with paragraph 4.3.1, or any subsequent revision to it in accordance with paragraph 4.4 (Amendment and Revision of the Security Management Plan), is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Call Off Schedule 7. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for Approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
- 4.3.3 The Customer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to paragraph 4.3.2. However a refusal by the Customer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 shall be deemed to be reasonable.
- 4.3.4 Approval by the Customer of the Security Management Plan pursuant to paragraph 4.3.2 of this Call Off Schedule 7 or of any change to the Security Management Plan in accordance with paragraph 4.4 shall not relieve the Supplier of its obligations under this Call Off Schedule 7.

#### 4.4 Amendment and Revision of the Security Management Plan

- 4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
  - (a) emerging changes in Good Industry Practice;
  - (b) any change or proposed change to the Products and/or Services and/or associated processes;
  - (c) any change to the Security Policy;
  - (d) any new perceived or changed security threats; and

- (e) any reasonable change in requirements requested by the Customer.
- 4.4.2 The Supplier shall provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Customer. The results of the review shall include, without limitation:
  - (a) suggested improvements to the effectiveness of the Security Management Plan;
  - (b) updates to the risk assessments; and
  - (c) suggested improvements in measuring the effectiveness of controls.
- 4.4.3 Subject to paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with paragraph 4.4.1, a request by the Customer or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved by the Customer.
- 4.4.4 The Customer may, where it is reasonable to do so, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Call Off Contract.

## **5. BREACH OF SECURITY**

- 5.1 Either party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan if one exists) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 5.1, the Supplier shall:
  - 5.2.1 immediately take all reasonable steps(which shall include any action or changes reasonably required by the Customer) necessary to:
    - (a) minimise the extent of actual or potential harm caused by any Breach of Security;
    - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Customer and the provision of the Products and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
    - (c) prevent an equivalent breach in the future exploiting the same root cause failure; and
    - (d) as soon as reasonably practicable provide to the Customer, where the Customer so requests, full details (using the reporting mechanism defined by the Security Management Plan if one exists) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Customer.

- 5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security policy or the requirements of this Call Off Schedule 7, then any required change to the Security Management Plan shall be at no cost to the Customer.

## **ANNEX 1: SECURITY POLICY – NOT USED**

## **ANNEX 2: SECURITY MANAGEMENT PLAN – NOT REQUIRED**

## CALL OFF SCHEDULE 8: BUSINESS CONTINUITY AND DISASTER RECOVERY

### 1. DEFINITIONS

1.1 In this Call Off Schedule 8, the following definitions shall apply:

<b>"Business Continuity Plan"</b>	has the meaning given to it in paragraph 2.2.1(b) of this Call Off Schedule 8;
<b>"Disaster Recovery Plan"</b>	has the meaning given to it in 2.2.1(c) of this Call Off Schedule 8;
<b>"Disaster Recovery System"</b>	means the system embodied in the processes and procedures for restoring the provision of Products and/or Services following the occurrence of a disaster;
<b>"Review Report"</b>	has the meaning given to it in paragraph 6.2 of this Call Off Schedule 8;
<b>"Supplier's Proposals"</b>	has the meaning given to it in paragraph 6.2.3 of this Call Off Schedule 8;

### 2. BCDR PLAN

- 2.1 Within thirty 30 Working Days from the Call Off Commencement Date the Supplier shall prepare and deliver to the Customer for the Customer's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:
- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Products and/or Services; and
  - 2.1.2 the recovery of the Products and/or Services in the event of a Disaster.
- 2.2 The BCDR Plan shall:
- 2.2.1 be divided into three parts:
    - (a) Part A which shall set out general principles applicable to the BCDR Plan;
    - (b) Part B which shall relate to business continuity (the **"Business Continuity Plan"**); and
    - (c) Part C which shall relate to disaster recovery (the **"Disaster Recovery Plan"**); and
  - 2.2.2 unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Customer shall:
- 2.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and
  - 2.3.2 notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Customer.
- 2.4 If the Customer rejects the draft BCDR Plan:
- 2.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and



- 2.4.2 the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Customer's comments) and shall re-submit a revised draft BCDR Plan to the Customer for the Customer's approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraphs 2.3 and 2.4 of this Call Off Schedule 8 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

### **3. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS**

3.1 Part A of the BCDR Plan shall:

- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Products and/or Services and any Products and/or Services provided to the Customer by a Related Supplier;
- 3.1.3 contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;
- 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Customer and any of its other Related Supplier in each case as notified to the Supplier by the Customer from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Customer;
- 3.1.6 contain a risk analysis, including:
  - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
  - (b) identification of any single points of failure within the provision of Products and/or Services and processes for managing the risks arising therefrom;
  - (c) identification of risks arising from the interaction of the provision of Products and/or Services and with the Products and/or Services provided by a Related Supplier; and
  - (d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Customer;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure

- that there is no more than the accepted amount of data loss and to preserve data integrity;
- 3.1.11 identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
  - 3.2.1 the Products and/or Services are provided in accordance with this Call Off Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
  - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
  - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Products and/or Services or to the business processes facilitated by and the business operations supported by the provision of Products and/or Services.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Call Off Contract.

#### 4. BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Products and/or Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Customer expressly states otherwise in writing:
  - 4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Products and/or Services; and
  - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Products and/or Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
  - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Products and/or Services;
  - 4.2.2 set out the Products and/or Services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Products and/or Services (such Products and/or Services and steps, the "**Business Continuity Products and/or Services**");
  - 4.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other

Products and/or Services during any period of invocation of the Business Continuity Plan; and

- 4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

## **5. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS**

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Customer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
- 5.3.1 the technical design and build specification of the Disaster Recovery System;
  - 5.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
    - (a) [data centre and disaster recovery site audits;
    - (b) backup methodology and details of the Supplier's approach to data back-up and data verification;
    - (c) identification of all potential disaster scenarios;
    - (d) risk analysis;
    - (e) documentation of processes and procedures;
    - (f) hardware configuration details;
    - (g) network planning including details of all relevant data networks and communication links;
    - (h) invocation rules;
    - (i) Service recovery procedures; and
    - (j) steps to be taken upon resumption of the provision of Products and/or Services to address any prevailing effect of the failure or disruption of the provision of Products and/or Services;
  - 5.3.3 any applicable Service Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Products and/or Services during any period of invocation of the Disaster Recovery Plan;
  - 5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
  - 5.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule 8; and
  - 5.3.6 testing and management arrangements.

## **6. REVIEW AND AMENDMENT OF THE BCDR PLAN**

- 6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
- 6.1.1 on a regular basis and as a minimum once every six (6) months;
  - 6.1.2 within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
  - 6.1.3 where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Call Off Schedule 8) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Customer for the Customer's approval. The costs of both Parties of any such additional reviews shall be met by the Customer except that the Supplier shall not be entitled to charge the Customer for any costs that it may incur above any estimate without the Customer's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 of this Call off Schedule 8 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Products and/or Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Customer shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report (a "**Review Report**") setting out:
- 6.2.1 the findings of the review;
  - 6.2.2 any changes in the risk profile associated with the provision of Products and/or Services; and
  - 6.2.3 the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any Products, services or systems provided by a third party.
- 6.3 Following receipt of the Review Report and the Supplier's Proposals, the Customer shall:
- 6.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
  - 6.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Customer.
- 6.4 If the Customer rejects the Review Report and/or the Supplier's Proposals:
- 6.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and

- 6.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Customer's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Customer for the Customer's approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraphs 6.3 and 6.4 of this Call Off Schedule 8 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the Customer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Products and/or Services.

## **7. TESTING OF THE BCDR PLAN**

- 7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 7.2 of this Call Off Schedule 8, the Customer may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers it necessary, including where there has been any change to the Products and/or Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Customer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.
- 7.4 The Supplier shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
- 7.5.1 the outcome of the test;
  - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Customer, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.

- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Call Off Contract.
- 7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Products and/or Services or as otherwise reasonably requested by the Customer.

## **8. INVOCATION OF THE BCDR PLAN**

- 8.1 In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Customer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Customer.

**CALL OFF SCHEDULE 9: EXIT MANAGEMENT – NOT USED**

**CALL OFF SCHEDULE 10: STAFF TRANSFER – NOT USED**



## CALL OFF SCHEDULE 11: DISPUTE RESOLUTION PROCEDURE

### 1. DEFINITIONS

1.1 In this Call Off Schedule 11, the following definitions shall apply:

<b>"CEDR"</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>"Counter Notice"</b>	has the meaning given to it in paragraph 6.2 of this Call Off Schedule 11;
<b>"Exception"</b>	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Products and/or Services;
<b>"Expert"</b>	the person appointed by the Parties in accordance with paragraph 5.2 of this Call Off Schedule 11;
<b>"Extraordinary Meeting"</b>	a meeting, attended in person or over a conference call, held by the Parties in an attempt to resolve the Dispute in good faith in accordance with paragraphs 2.5 and 2.6 of this Call Off Schedule 11;
<b>"Mediator"</b>	the independent third party appointed in accordance with paragraph 4.2 of this Call Off Schedule 11; and
<b>"Senior Officers"</b>	are senior officials of the Customer and Supplier that have been instructed by the Customer Representative and Supplier Representative respectively to resolve the Dispute by commercial negotiation.

### 2. INTRODUCTION

- 2.1 The Parties shall seek to resolve a Dispute:
- 2.1.1 first in good faith (as prescribed in paragraphs 2.4 to 2.8 of this Call Off Schedule 11);
  - 2.1.2 where the Dispute has not been resolved by good faith, the Parties shall attempt to resolve the Dispute by commercial negotiation (as prescribed in paragraph 3 of this Call Off Schedule 11);
  - 2.1.3 where the Dispute has not been resolved in good faith and commercial negotiation has been unsuccessful in resolving the Dispute, then either Party may serve a Dispute Notice and shall attempt to resolve the Dispute through mediation (as prescribed in paragraph 4 of this Call Off Schedule 11); and
  - 2.1.4 if mediation is not agreed by the Parties, the Parties may proceed to arbitration (as prescribed in paragraph 6 of this Call Off Schedule 11) or litigation (in accordance with Clause 62 of this Call Off Contract (Governing Law and Jurisdiction)).
- 2.2 Specific issues may be referred to Expert Determination (as prescribed in paragraph 5 of this Call Off Schedule 11) where specified under the provisions of this Call Off Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Call Off Schedule 11.

- 2.3 Save in relation to paragraph 4.5, the Parties shall bear their own legal costs in resolving Disputes under this Call Off Schedule 11.

Good faith discussions

- 2.4 Pursuant to paragraph 2.1.1 of this Call Off Schedule 11, if any Dispute arises the Customer Representative and the Supplier Representative shall attempt first to resolve the Dispute in good faith, which may include (without limitation) either Party holding an Extraordinary Meeting.
- 2.5 Either Party may hold an Extraordinary Meeting by serving written notice. The written notice must give the receiving party at least five (5) Working Days notice of when the Extraordinary Meeting is to take place.
- 2.6 The Customer Representative and Supplier Representative shall attend the Extraordinary Meeting. The key personnel of the Parties may also attend the Extraordinary Meeting.
- 2.7 The representatives of the Parties attending the Extraordinary Meeting shall use their best endeavours to resolve the Dispute.
- 2.8 If the Dispute is not resolved at the Extraordinary Meeting then the Parties may attempt to hold additional Extraordinary Meetings in an attempt to resolve the Dispute. If the Extraordinary Meetings are unsuccessful in resolving the Dispute or the Dispute has not been resolved through good faith discussions thirty (30) Working Days from when they first started, the Parties shall attempt to resolve the Dispute by commercial negotiation.

**3. COMMERCIAL NEGOTIATIONS**

- 3.1 Where the Parties have been unable to resolve the Dispute in good faith under paragraphs 2.4 to 2.8 of this Call Off Schedule 11, pursuant to paragraph 2.1.2 the Customer and the Supplier shall use reasonable endeavours to resolve the Dispute by discussion between Senior Officers.
- 3.2 Senior Officers shall resolve the Dispute as soon as possible and in any event thirty (30) Working Days from the date Parties agree good faith discussions were deemed unsuccessful.
- 3.3 If Senior Officers:
- 3.3.1 are of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or
  - 3.3.2 fail to resolve the Dispute in the timelines under paragraph 3.2 of this Call Off Schedule 11,

commercial negotiations shall be deemed unsuccessful and either Party may serve a Dispute Notice in accordance with paragraphs 3.4 and 3.5 of this Call Off Schedule 11.

Dispute Notice

- 3.4 The Dispute Notice shall set out:
- 3.4.1 the material particulars of the Dispute;
  - 3.4.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
  - 3.4.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 7 of this Call Off Schedule 11, the reason why.
- 3.5 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Call Off Contract regardless of the

nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

#### **4. MEDIATION**

- 4.1 Pursuant to paragraph 2.1.3 of this Call Off Schedule 11, if a Dispute Notice is served, the Parties shall attempt to resolve the Dispute by way of mediation. The Parties may follow the CEDR's Model Mediation Procedure which is current at the time the Dispute Notice is served (or such other version as the Parties may agree) or a mediation procedure that is agreed between the Parties.
- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Dispute Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If neither Party applies to CEDR to nominate the Mediator or an application to CEDR is unsuccessful under paragraph 4.2 of this Call Off Schedule 11, either Party may proceed to:
  - 4.3.1 hold further discussions between Senior Officers; or
  - 4.3.2 an Expert determination, as prescribed in paragraph 5 of this Call Off Schedule 11; or
  - 4.3.3 arbitration, as prescribed in paragraph 6 of this Call Off Schedule 11; or
  - 4.3.4 litigation in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction).
- 4.4 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.5 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.
- 4.6 The costs of any mediation procedure used to resolve the Dispute under this paragraph 4 of this Call Off Schedule 11 shall be shared equally between the Parties.

#### **5. EXPERT DETERMINATION**

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Products and/or Services or otherwise relates to a technical matter of an accounting or financing nature (as the Parties may agree), either Party may request (such request shall not be unreasonably withheld or delayed by the Parties) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body.
- 5.3 The Expert shall act on the following basis:
  - 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

- 5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
- 5.3.5 the process shall be conducted in private and shall be confidential; and
- 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## 6. ARBITRATION

- 6.1 Either of the Parties may, at any time before court proceedings are commenced and after the Parties have attempted to resolve the Dispute in good faith, by commercial negotiation , mediation and Expert determination (if applicable), refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Call Off Schedule 11.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Call Off Schedule 11 or be subject to the jurisdiction of the courts in accordance with Clause 62 of this Call Off Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
  - 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Call Off Schedule 11 shall apply;
  - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 61 of this Call Off Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
  - 6.3.3 the Customer does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Call Off Schedule 11, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Call Off Schedule 11 or commence court proceedings in the courts in accordance with Clause 62 of this Call Off Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Call Off Schedule 11, the Parties hereby confirm that:

- 6.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to paragraphs and 6.4.6 of this Call Off Schedule 11);
- 6.4.2 the arbitration shall be administered by the LCIA;
- 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 6.4.5 the arbitration proceedings shall take place in London and in the English language; and
- 6.4.6 the seat of the arbitration shall be London.

## **7. EXPEDITED DISPUTE TIMETABLE**

- 7.1 In exceptional circumstances where the use of the times in this Call Off Schedule 11 would be considered unreasonable by the Parties, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 7.2 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 7.1 of this Call Off Schedule 11 or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this Call Off Schedule 11:
  - 7.2.1 in paragraph 2.8, fourteen (14) Working Days;
  - 7.2.2 in paragraph 3.2, ten (10) Working Days;
  - 7.2.3 in paragraph 4.2, ten (10) Working Days;
  - 7.2.4 in paragraph 5.2, five (5) Working Days; and
  - 7.2.5 in paragraph 6.2, ten (10) Working Days.
- 7.3 If at any point it becomes clear that an applicable deadline under paragraph 7.2 of this Call Off Schedule 11 cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the relevant deadline.
- 7.4 If, pursuant to paragraph 7.2 of this Call Off Schedule 11, the Parties fail to agree within two (2) Working Days after the relevant deadline has passed, the Customer may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs under paragraph 7.2 (or no less than two (2) Working Days in the case of Paragraph 5.2 of this Call Off Schedule 11).

- 7.5 Any agreed extension under paragraph 7.2 of this Call Off Schedule 11 shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Customer fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

## **8. URGENT RELIEF**

- 8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
- 8.1.1 for interim or interlocutory remedies in relation to this Call Off Contract or infringement by the other Party of that Party's Intellectual Property Rights; or
  - 8.1.2 where compliance with paragraph 2.1 of this Call Off Schedule 11 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period; or
  - 8.1.3 if the Parties fail to resolve the Dispute following good faith discussions and commercial negotiations and mediation (where applicable) is unsuccessful within 60 working days or such period as may be agreed by the Parties then any Dispute between the Parties may be referred to the Courts.

## CALL OFF SCHEDULE 12: VARIATION FORM

No of Call Off Order Form being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Customer] ("**the Customer**")

and

[insert name of Supplier] ("**the Supplier**")

1. This Call Off Contract is varied as follows:

***[Refer to Clause 24.1 and insert details of the Variation]***

- 2.

3. Words and expressions in this Variation shall have the meanings given to them in this Call Off Contract.

4. This Call Off Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Customer

Signature

Date

Name (in  
Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in  
Capitals)

Address

**CALL OFF SCHEDULE 13: TRANSPARENCY REPORTS – NOT USED**



## **CALL OFF SCHEDULE 14: ALTERNATIVE AND/OR ADDITIONAL CLAUSES**

### **1. INTRODUCTION**

- 1.1 This Call Off Schedule 14 specifies the range of Alternative Clauses and Additional Clauses that may be requested in the Call Off Order Form and, if requested in the Call Off Order Form, shall apply to this Call Off Contract.

### **2. CLAUSES SELECTED**

- 2.1 The Customer may, in the Call Off Order Form, request the following Alternative Clauses:
  - 2.1.1 Scots Law (see paragraph 4.1 of this Call Off Schedule 14);
  - 2.1.2 Northern Ireland Law (see paragraph 4.3 of this Call Off Schedule 14);
  - 2.1.3 Non-Crown Bodies (see paragraph 4.4 of this Call Off Schedule 14);
  - 2.1.4 Non-FOIA Public Bodies (see paragraph 4.5 of this Call Off Schedule 14);
  - 2.1.5 Financial Limits (see paragraph 4.6 of this Call Off Schedule 14).
- 2.2 The Customer may, in the Call Off Order Form, request the following Additional Clauses should apply:
  - 2.2.1 Security Measures (see paragraph **Error! Reference source not found.** of this Call Off Schedule 14);
  - 2.2.2 NHS Additional Clauses (see paragraph **Error! Reference source not found.** of this Call Off Schedule 14)
  - 2.2.3 MOD ("Ministry of Defence") Additional or Alternative Clauses (see paragraph 8 of this Call Off Schedule 14)
  - 2.2.4 Obligations to Advertise Supply Chain Opportunities (see paragraph 8 of this Call Off Schedule 14)

### **3. IMPLEMENTATION**

- 3.1 The appropriate changes have been made in this Call Off Contract to implement the Alternative and/or Additional Clauses specified in paragraph 2.1 of this Call Off Schedule 14 and the Additional Clauses specified in paragraphs 2.2 and 2.2.1 of this Call Off Schedule 14 shall be deemed to be incorporated into this Call Off Contract.

### **4. ALTERNATIVE CLAUSES**

- 4.1 SCOTS LAW – NOT USED
- 4.2 FREEDOM OF INFORMATION – NOT USED
- 4.3 NORTHERN IRELAND LAW – NOT USED
- 4.4 NON-CROWN BODIES – NOT USED
- 4.5 NON-FOIA PUBLIC BODIES – NOT USED
- 4.6 FINANCIAL LIMITS – NOT USED

### **5. ADDITIONAL CLAUSES: GENERAL – NOT USED**

### **6. SECURITY MEASURES – NOT USED**

### **7. NHS ADDITIONAL CLAUSES – NOT USED**

## **8. MOD ADDITIONAL CLAUSES**

8.1 MOD additional clauses are set out in Schedule 16.

**CALL OFF SCHEDULE 15: CALL OFF TENDER – NOT USED**

## CALL OFF SCHEDULE 16: MOD ADDITIONAL CLAUSES

### 1. Introduction

- 1.1. This Call Off Schedule 16 specifies the range of Additional Clauses requested by the Ministry of Defence as Customer that shall apply to this Call Off Contract.

### 2. IMPLEMENTATION

- 2.1. The appropriate changes have been made in this Call Off Contract to implement the MoD Additional Clauses specified in paragraph 3 and shall be deemed to be incorporated into this Call Off Contract.

### 3. MOD ADDITIONAL CLAUSES

#### 3.1. Definitions

- 3.1.1. The following definitions shall be added to the Glossary to the Call Off Terms:

MoD Terms and Conditions	means the contractual terms and conditions listed in Call Off Schedule 16 which form part of the Call Off Terms
Quality Assurance Representative	means the person named in Box 7 of DEFFORM 111
Delivery Areas	means the specific area(s) set aside at the Customer's Premises for the delivery of such Products as detailed in the Order Form or a Purchase Order Form
Authorised Demanders	means any person nominated by the Customer to place an Order, including a Purchase Order, under this Call Off Contract
Unit Identification Number or "UIN"	means the unique number that enables identification of units, sub-units and organisations
Unique Customer Account Number	means the unique number that enables identification of units, sub-units and organisations and which is a further derivation of the UIN
Supplier's Delivery Representative	means the Supplier's delivery driver or co-driver who enters the Customer's Premises
Customer's Receiving Officer	means the Officer in Charge who is authorised to receive the Products delivered by the Supplier under this Call Off Contract
Purchase Order Form	means the Customer's form for placing a Purchase Order under the Purchasing Procedure
Delivery Receipt (DR)	means the document produced by the Supplier and signed by the Customer's Receiving Officer to confirm delivery of the Products as ordered on the Order Form or Purchase Order Form

Site Access POC	means a member of the Customer's Military Guard Service or other Authorising Officer at any Customer's establishment who grants to persons and vehicles access to the Customer's Premises
Bulk Fuel Carrying Vehicle or "BFCV"	means a vehicle specifically designed and manufactured to carry large amounts of liquid fuel in as reasonably safe manner as possible
Site Control Point/Guard Office	means the Customer's Guard Officer usually found at the entrance to the Customer's Premises who grants to persons and vehicles access to Customer's Premises
Contracting, Purchasing and Finance or "CP&F"	Means an electronic system used by the Customer to pay Suppliers undisputed Call Off Contract Charges
Special Handling Equipment	means any Equipment that is needed for the safe unloading and handling of the Products that is supplied by the Customer to Supplier under this Call Off Contract
Customer's Project Manager	Means the assigned Customer's project manager as detailed in Box 2 of DEFFORM 111
Reporting Date	Means the 7 <sup>th</sup> day of each Month or such other date as may be agreed between the Parties
Contractor	for the purpose of the MoD Additional Clauses shall mean the Supplier and these two terms may be used interchangeably

### 3.2. MoD DEFCONs, DEFFORMs and DEFSTANs

3.2.1. The Following Defence Conditions of Contract ("**DEFCONs**"), Defence Forms ("**DEFFORMs**") and Defence Standards ("**DEFSTANs**") shall form part of the MoD Terms and Conditions:

#### **DEFCONs**

DEFCON No	Version	Description
5J	18/11/16	Unique Identifiers
68	02/19	Supply of Data for Hazardous Articles, Materials and Substances
76	12/06	Contractor's Personnel At Government Establishments
113	02/17	Diversion Orders
129J	18/11/16	The Use of Electronic Business Delivery Form
513	11/16	Value Added Tax (VAT)
522	11/17	Payment and Recovery of Sums Due
524	02/20	Rejection
524A	02/20	Counterfeit Materiel
525	10/98	Acceptance
528	07/17	Import And Export Licences
532A	04/20	Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)
550	02/14	Child Labour and Employment Law
566	12/18	Change Of Control Of Contractor
609	08/18	Contractor's Records

624	11/13	Use OF Asbestos
627	12/10	Requirement for Certificate of Conformity
630	02/18	Framework Agreements
644	07/18	Marking Of Articles
658	10/17	Cyber - Further to DEFCON 658 the Cyber Risk Profile of the Contract is 'very low', as defined in Def Stan 05-138
684	01/04	Limitation upon Claims In Respect of Aviation Products

### **DEFFORMs**

DEFFORM No	Version	Description
68	02/19	Hazardous Articles, Materials or Substances Statement by the Contractor
129J	09/17	The Use of the Electronic Business Delivery Form
111	05/19	Annex – Addresses and other Information

### **DEFSTANs**

DEFSTAN No	Version	Description
01-005	Issue 19, 14 February 2020	Fuels, Lubricants and Associated Products
05-61 Part 1	Issue 6, Publication date March 2016	Quality Assurance Procedural Requirements
JSP317	Version 6.4 May 2020	Segregation, handling and quality assurance of petroleum fuels, lubricants and associated products
2130 (AQAP)	Edition 3	NATO Quality Assurance Requirements for Inspection and Test.

The above documents can be found at [www.aof.mod.uk](http://www.aof.mod.uk) and at [www.dstan.mod.uk](http://www.dstan.mod.uk)

### **3.3. Due Diligence**

- 3.3.1. The following sub-clauses are added to Clause 2 (Due Diligence):
- 3.3.2. The Supplier confirms that it has had the opportunity to review the MoD Additional Clauses and has raised all due diligence questions in relation to any related documents with the Customer prior to the Call Off Commencement Date.
- 3.3.3. Where required by the Customer, the Supplier shall take such actions as are necessary to ensure that the MoD Additional Clauses constitute legal, valid, binding *and enforceable obligations on the Supplier*.

### **3.4. Delivery and Provision of the Products**

- 3.4.1. The following additional requirements in relation to delivery and provision of the Products shall apply:

### **Supplier's Delivery Representative**

- 3.4.2. The Supplier shall submit a list of intended or potential Delivery Representatives with the following detail:
- Full names;
  - Any/All background security checks that have been undertaken on that person by the Supplier;
  - Record of training/competence in line with industry standards to complete the required deliveries and associated actions; and
  - Record of training/competence in line with industry standards to deal with associated emergencies that may occur.
- 3.4.3. If this information is not submitted as above or is deemed unsatisfactory by the Customer to ascertain with confidence that the intended Supplier's Delivery Representative is suitably qualified to undertake the role and actions requested, the Customer reserves the right for the Supplier to use such individuals to complete the obligations of the Supplier at the Customer's Premises .
- 3.4.4. The entry of any Supplier's Delivery Representative onto the Customer's Premises is at the sole discretion of the Customer. The Customer will not be responsible for any loss or inability to deliver the Products if the entry of the Supplier's Delivery Representative is refused; however, such Approval will not be unreasonably withheld.

### **Entry and Approval Procedure**

- 3.4.5. The Supplier is responsible for ensuring confirmation in writing of entry permissions from the Site's POC before any delivery times can be confirmed
- 3.4.6. The Customer reserves the right to refuse such requests for delivery time slots, but will not unreasonably withhold Approval and will endeavour to support the Supplier's requests where viably possible.
- 3.4.7. Clause 10.3 of the Call Off Terms shall not apply and the Customer will not be responsible for refusing a Supplier's Delivery Representative onto any Customer's Premises if the Supplier has not mutually agreed with the Site Access POC the delivery time no later than 24 hours in advance of any requested delivery of Products by the Customer. In these circumstances, the Customer will not be responsible for any costs incurred by the Supplier for re-delivery of the Products.
- 3.4.8. Subject to compliance with the prevailing site security conditions and confirmation of entry to any Customer's Premises , the Supplier shall have safe right of access to those parts of the Customer's Premises for the purpose of delivering the Products.
- 3.4.9. The Supplier shall not be afforded any right or opportunity to inspect any of the Customer's physical security arrangements

at any of the Customer's Premises. The Supplier will comply with the Customer's Security Policy and any other security procedure(s) as dictated by the Customer in relation but not limited to the Customer's Premises at all times.

### **On Site Procedures**

- 3.4.10. Unless otherwise agreed prior to delivery of the Products, a representative of the Customer, known as the 'Customer's Receiving Officer' shall attend all deliveries.
- 3.4.11. The Supplier will ensure that any Bulk Fuel Carrying Vehicle (BFCV) used to deliver the Products to the Customer's Premises is correctly and suitably marked for the product being carried in accordance with industry regulations and standards.
- 3.4.12. Immediately on entering the Customer's Premises, the Supplier's Delivery Representative is to report to the Site Control Point/Guard Office for the relevant instructions in:
- emergency procedures;
  - loading operations; and
  - traffic control systems.
- 3.4.13. It is the Supplier's Delivery Representative's responsibility to carry out the following actions:
- Ensure the BFCV is positioned so it is able to exit the installation without reversing or carrying out a complicated manoeuvre in the event of an emergency;
  - Ensure that the BFCV is task worthy with the correct Equipment to complete the delivery in a safe and suitable manner;
  - Earth and bond the BFCV to the installation;
  - Ensure that the BFCV master switch is off once the vehicle is parked in the relevant position (unless required to drive pump);
  - Ensure BFCV fire extinguishers are to be placed 5 m upwind and the relevant hazard warning signs are displayed upon the approach to the vehicle location; and
  - Act in a responsible and safe manner at all times and undertake due care and attention to the access to and use of the Customer's Property and Premises.

### **Delivery**

- 3.4.14. The Supplier shall be responsible for transporting the Products supplied under the Call Off Contract from the point of origin to the consignee. The Supplier shall also be responsible for all unloading of the Products upon arrival at the Premises including, where necessary, the provision of special handling equipment.
- 3.4.15. Before any delivery can commence the Supplier's Delivery Representative should confirm the quality, volume and grade of the Products being transferred into the Customer's tank is that

as specified in the Purchase Order Form as sent by the Authorised Demander.

- 3.4.16. Quantity of the Products shall be measured in litres by dipstick, loading bar or other approved measuring device and taken before and after delivery in the presence of the Customer's Receiving Officer who shall be at liberty to compare such readings.
- 3.4.17. Due to the danger of tank pressurising, blocked vents and a spill leakage into the soil, fuel deliveries to underground tanks where the hose is fixed to a fill pipe are prohibited. However deliveries to underground tanks are permissible if the fuel can be discharged by means of gravity.
- 3.4.18. Accidents to the Supplier's Delivery Representative which must be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Customer's Receiving Officer.
- 3.4.19. On completion of delivery, the Supplier's Delivery Representative must ensure that the Customer's Receiving Officer for the fuel has satisfactorily completed the Delivery Receipt (DR) appertaining to the delivery and received, thereby confirming the volume of the Products delivered.
- 3.4.20. No terms or conditions endorsed upon, delivered with or contained in the Supplier's Delivery Receipt or any other similar document shall form part of this Call Off Contract.

#### **Temperature and Volume**

- 3.4.21. The quantity of the Products to be paid for shall be the volume that the material would occupy at the temperature of 15 degrees Celsius.

#### **Spillages and Contamination**

- 3.4.22. Without prejudice to the Supplier's obligations under Clause 8.5 of the Call Off Terms, in the event of spillage and contamination the Supplier must:
- Adhere to any spillage emergency plan that a particular Customer's Premise(s) will have in place; and/or
  - contact the Site Access POC or the MOD Receiving Officer with immediate effect of any such event; and
  - Inform the Project Manager as specified in Box 2 of the Appendix to Contract, DEFFORM 111.

#### **Statement of Requirement**

- 3.4.23 See Annex 1 to Call Off Schedule 16.

### **3.5. Payment**

- 3.5.1. The following sub-clauses are added to Clause 24:



- 3.5.2. For the purposes of this Call Off Agreement, payment for work authorised and satisfactorily completed shall be made as follows:
- 3.5.3. From the commencement to the expiry of the Call Off Agreement payment shall be made via the Customer's Contracting, Purchasing and Finance (CP&F) system in accordance with DEFCON 522.
- 3.5.4. As requested by The Authority the Supplier shall submit invoices for the supply of fuel annotated "NOT FOR PAYMENT" to the Commercial Officer detailed at Box 1 of DEFFORM 111. The Authority will raise a Purchase Order on the CP&F system for the value of product supplied. The Supplier will then be required to submit an invoice via CP&F detailing the agreed value and volume for payment.
- 3.5.5. The invoice submitted to the designated point of contact, prior to input into the CP&F system must clearly specify:
- Contract Number
- Delivery date
- Delivery location
- Product
- Volume in (M<sup>3</sup>)
- Unit price
- Total price
- 3.5.7 All invoices must be accompanied by proof of delivery documentation to confirm volume invoiced.
- 3.5.6. The Customer shall pay only those duties, taxes and other similar charges that are non-refundable. Non-refundable duties and taxes and other similar charges are to be paid in the first instance by the Supplier but shall be charged to the account of the Customer or his representative to the extent that these are not already included in the Call Off Contract Charges. The Customer has the right to request further information on any Call Off Contract charges in order to satisfy itself that they are a legitimate charge to the account of the Customer.
- 3.5.7. The Customer shall assist the Supplier by completing any necessary documentation to enable recovery of refundable duties, taxes and other similar charges.
- 3.5.8. Valid Invoices shall clearly show the net price for the Products delivered and precise details of all duties, taxes and other similar charges.
- 3.5.9. The Supplier shall comply with DEFCON 522 for all payments to be made via the Contracting, Purchasing and Finance (CP&F) system.

### 3.6. Variation and Waiver

- 3.6.1. Only the Authority detailed in the DEFFORM 111, or his authorised representative, is authorised to agree to a Variation of the Call Off Contract in accordance with the Variation Procedure in Clause 48.
- 3.6.2. Any proposal from the Supplier requesting a Variation to the Call Off Contract is to be submitted in writing to the Customer for consideration, together with cost and time-scale implications. Any such Variation accepted by the Customer shall be notified to the Supplier by written amendment to the Call Off Contract, and shall not be effective until accepted in writing with original signature(s) by the Supplier.
- 3.6.3. Notwithstanding the variation procedure in this call off contract, nothing said, done or written by any person nor anything omitted to be said, done or written by any person including, but without limitation, any servant or agent of the Customer shall in any way affect the rights of the Customer to modify, affect, reduce or extinguish the obligations and liabilities of the Supplier under the Call Off Contract, or be deemed to be a waiver of rights of the Customer, unless stated in writing and signed by the Customer's Commercial Branch named in DEFFORM 111 to this Call Off Contract.

### 3.7. Service Levels and Key Performance Indicators

- 3.7.1. Annex A to this Call Off Schedule 16 sets out Service Levels, the performance of which shall be measured by the Parties in each given service period, which shall be a recurrent period of one Month during the Call Off Contract Period (the "**Service Period**").
- 3.7.2. The Supplier shall monitor its performance of the provision by it of the Products by reference to the relevant Performance Criteria for achieving the Service Levels shown at Annex A to this Call Off Schedule 16 and shall send the Customer a report detailing the level of service that was achieved in accordance with paragraph 3.8 of this Call Off Schedule 16.
- 3.7.3. The Supplier shall, at all times, provide the Products in such a manner that the Service Levels are achieved.
- 3.7.4. If the level of performance of the Supplier of any element of the provision by it of the Products during the Call Off Contract Period fails to achieve a Service Level, the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights under the Call Off Contract or in Law, may:
  - 3.7.4.1. require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a Service Failure from taking place or recurring; and
  - 3.7.4.2. if the action taken under paragraph 3.8.1 above has not already prevented or remedied the Service

Failure, provide the Customer with a correction plan (the “**Correction Plan**”) within five (5) Working Days (or such other period as the Parties agree in writing) from the day the Supplier notifies the Customer under paragraph 3.8 above. The Supplier will set out in the Correction Plan the action that it will take to prevent the Service Failure or rectify and prevent the Service Failure from recurring. The Supplier will obtain the Customer’s approval of such Correction Plan (such approval not to be unreasonably withheld or delayed) and carry out the approved Correction Plan in accordance with its terms;

3.7.4.3. if the Service Failure constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Call Off Contract pursuant to Clause 38.5.

3.7.5. Approval and implementation of any Correction Plan by the Customer shall not relieve the Supplier of any responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation.

3.8. **Provision of Management Information and Performance Monitoring**

3.8.1. The Supplier shall provide the Authority with management reports on a monthly basis via email to the Authority Contract. Management reports shall be supplied to the Customer within 5 calendar days of the end of each Service Period.

3.8.2. The Management Information provided shall contain, as a minimum, the following information in respect of the preceding Service Period:

3.8.2.1. a list of all invoices submitted for payment during the Service Period, including: date invoice presented, date invoice paid, customers’ Unit Identity Numbers (UINs), volume of product(s) delivered, unit price, total invoice value.

3.8.2.2. for each Service Level, the actual performance achieved during the relevant Service Period.

3.8.2.3. a summary of all failures to achieve Service Levels that occurred during that Service Period.

3.8.2.4. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence.

3.8.2.5. Report detailing the volumes ordered against volumes delivered for each order placed and reasons for variations.

3.8.2.6. such other details as the Customer may reasonably require from time to time.

3.9. **Performance Monitoring and Performance Review Meetings**

- 3.9.1. The Parties shall attend meetings to discuss Service Level reports ("**Performance Review Meetings**") normally on a quarterly basis. The Performance Review Meetings shall be the forum for the review by the Supplier and the Customer of the Management Reports. The performance Review Meetings shall (unless otherwise agreed):
  - 3.9.1.1. take place every three months at such location and time as agreed between the Customer and the Supplier;
  - 3.9.1.2. be attended by the Supplier's Representative and the Customer's Representative; and
  - 3.9.1.3. be fully minuted by the Supplier. The prepared minutes shall be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's Representative and any other recipients agreed at the meeting. The minutes of the preceding Performance Review Meeting shall be agreed and signed by the Supplier's Representative and the Customer's Representative at each meeting.
- 3.9.2. The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 3.9.3. The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of performance of the Supplier for any specified Service Period.
- 3.10. MOD ADDITIONAL CLAUSES
  - 3.10.1. The definition of Call Off Contract in Schedule 1 (Definitions) to the Call Off Terms shall be replaced with the following:
  - 3.10.2. "**Call Off Contract**" means this written agreement between the Customer and the Supplier consisting of the Call Off Order Form and the Call Off Terms and the MoD Terms and Conditions.
- 3.11. The following definitions shall be inserted into in Schedule 1 (Definitions) to the Call Off Terms:
- 3.12. "**MoD Terms and Conditions**" means the contractual terms and conditions listed in Schedule 16 which form part of the Call Off Terms:
  - 8.1.1 "**Site**" shall include any of Her Majesty's Ships or Vessels and Service Stations.
  - 8.1.2 "**Officer in charge**" shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.
- 3.13. The following clauses shall be inserted into Clause 2 of this Call Off Contract (Due Diligence):

3.14. The Supplier confirms that it has had the opportunity to review the MoD Terms and Conditions and has raised all due diligence questions in relation to those documents with the Customer prior to the Commencement Date.

3.14.1. Where required by the Customer, the Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Supplier.

4. The following new Clause 4 shall apply:

4.1. **OBLIGATION TO ADVERTISE SUPPLY CHAIN OPPORTUNITIES**

4.1.1. The following new Clause 4 shall apply:

4.1.1.1. **[Obligation to Advertise Supply Chain Opportunities]**

4.1.1.2. The Supplier shall ensure that all Sub-Contracts, which the Supplier intends to procure following date of this Call Off Contract, and which the Supplier has not, before the date of this Call Off Contract, already awarded to a particular Sub-Contractor, are:

4.1.1.3. advertised; and

4.1.1.4. awarded following a fair, transparent and competitive process proportionate to the nature and value of the Sub-Contract.

4.1.2. Any Sub-Contract awarded by the Supplier pursuant to Clause 61.1 must contain suitable provisions to impose, as between the parties of the Sub-Contract:

4.1.3. requirements to the same effect as those in Clause 61.1; and

a requirement for the Sub-Contractor to include in any Sub-Contract which it in turn awards, suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 61.2.

5. **ACCESS TO MOD SITES**

5.1. In this Clause 5:

5.1.1. The Customer shall issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Customer and shall be surrendered on demand or on completion of the supply of the Products and/or Services.

5.1.2. The Supplier's representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the

conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.

- 5.1.3. The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Customer wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Call Off Contract where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Customer and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Customer with other evidence relating to the costs of this Call Off Contract.
- 5.1.4. Where the Supplier's representatives are required by this Call Off Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Supplier shall make such arrangements through the Technical Branch named for this purpose in this Call Off Contract. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Customer shall reimburse the Supplier's reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Call Off Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.
- 5.1.5. Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.

- 5.1.6. Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 5.1.7. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 5.1.8. The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Customer shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Customer shall be recovered from the Supplier.

## ANNEX 1 TO SCHEDULE 16 – STATEMENT OF USER REQUIREMENT

1. **Title:** Procurement of 2XN Oil to Support BBMF Aircraft – Engine Inhibiting for Storage
2. **Customer Sponsor:** Mr S Rowland
3. **Users:** BBMF
4. **Required In-Service-Date (ISD) and Reason:** 20191031 – BBMF Aircraft are entering Winter Maintenance Period during which all engines will require to be Inhibited to prevent Environmental Damage (corrosion).
5. **Background:** This Oil was selected as an acceptable alternative to PX13 for Inhibiting Chipmunk and Dakota aircraft. The oil has been approved by RR (DAOS) for both Merlin and Griffon engines (Lancaster, Hurricane and Spitfire) as an inhibitor which can be added to the engine oil (OM 270) and to inhibit the engine, RR approval has been backed-up by 1710NAS who undertook an independent review.
6. **Existing item(s) to be replaced:** Chipmunk and Dakota – PX13, New application on Merlin and Griffon
7. **Disposal of existing items:** No PX13 Held - Obsolete. PX24 any stockholdings will be returned/disposed of through MOD Supply.
8. **Disadvantages of existing item(s):** PX13 N/A. PX24 does not provide the corrosion protection required to protect the engine and cannot be mixed with the existing engine oil (Merlin & Griffon).
9. **Requirement:** Procurement of 2XN to support the continued inhibiting of BBMF engines (installed on aircraft and spares held) out to OSD. Perceived maximum usage per FY would be approximately 116 gallons (Winter Maintenance), and approximately 70 gallons throughout the year for re-inhibiting etc., this would enable all engines fitted aircraft and those in stores to be inhibited/re-inhibited. This is based on all aircraft entering a Primary at the time of Winter Maintenance (Full Oil Change) and represents the worst case.

Breakdown of Oil Consumption based on a 3 to1 Mix in Oil System:

During Winter Maintenance:

Lancaster	- 15g per engine = 60 gallons for Winter Maint.
Spitfire	- 3g per engine = 24 gallons per Winter Maint.
Spare Engines	- 12 gallons.
Spraying of 2XN	- 20 gallons. (Griffon, Merlin

In-season Inhibiting<sup>1</sup>

On aircraft (x3 Fighter)	- 9 gallons.
Lancaster	- 40 gallons.
Spare Engines	- 12 gallons.
Spraying of 2XN	- 10 gallons.

Total – 190 gallons

I think that this figure provides a start point, the main point is that by the end of Sep each year there should be a total stockholding of 116 gallons, with a minimum

---

<sup>1</sup> This includes those aircraft on Depth Maintenance and is based on the aircraft inhibited during 2019 Display Season.



stockholding during the season of 70 gallons. The cost for the provision of this F&L should be based on these stockholdings. This is the first time that the PT will have used this F&L and therefore the consumption rate is at best a 'best engineering guess' and therefore subject to change. The quantity above should be reviewed over time once we have been using the 2XN oil for 3 – 5 years.

**10. Costs if known** (*A year on year breakdown of SOIP consumption costs and a line by line breakdown by item is required if costs are known*):

An initial order was placed via EPC to test the product (17 May 2019). The order was placed on Silmid Ltd at a cost of £323.80 per 5 US Gallon drum (18.92 litres). Based on this price the yearly cost would be £12,304 (x38 x5 gallon drums = 190 gallons).

Based on these figures the yearly costs out to OSD, 2035 would be 13 years x £12,304 = £159,952.

**11. Users:** BBMF – All engine types

**12. Use:** Engine Inhibiting, Storage and Environmental Damage (Corrosion) Protection.

**13. Risk assessments:** Not applicable, see Safety Data sheet.

**14. System Safety Case Considerations:** There are no known negative affects of utilising this Oil upon current Aircraft Hazards. There is however an increased risk of introducing corrosion to internal components by not using this oil which may lead to a failure of a component and subsequently an increased Rtl.

**15. Operational requirements:** N/A if this refers to 'Military Ops'.

**16. Fielding Plan:** An initial purchase of 116 gallons and then the restock to maintain the Display Season and Winter Maintenance figures, restocking as required to maintain the stock within its product life. 1 Sept would be the ideal restock point for winter maintenance with a 12-14 days lead time from the USA.

**17. Physical characteristics:** Please see the attached Technical Data Sheet.

**18. Legislation / Standards:** MIL-6529C Type 1(US), NATO Code C-608

**19. Life Expectancy of the Product:** Products received have a standard 3-year shelf life.

**20. Training:** N/A

**21. Care and use:** See attached Product Safety Data sheet, Item classed as Non-Hazardous.

**22. Compatibility:** Can be mixed with extant engine oils (OMD 370 and OM270) for inhibiting to provide corrosion protection. Usage approved by RR DAOS for Merlin and Griffon engines and underpinned by NAVY 1710 NAS Report in to finding a replacement for OX13.

**23. Climatic:** Use in the UK only-temperate conditions.

**24. Sizing:** 5 US Gallon containers.

**25. Storage Life:** 3 years, avoid extreme temperatures and direct sunlight.

## ANNEX 2 TO SCHEDULE 16 – DEFFORM 111

DEFFORM 111  
(Edn 05/19)

### Appendix - Addresses and Other Information

#### Commercial Officer

Name: Ms. Mandy Hobson  
Address: DE&S Typhoon Commercial, Bldg 160, RAF Coningsby, Lincoln, Lincolnshire, LN4 4SY

Email: [Amanda.Hobson343@mod.gov.uk](mailto:Amanda.Hobson343@mod.gov.uk)

☎ +44 300 1591410

#### Project Manager (from whom technical information is available)

Name: Mr. Paul Hamilton  
Address: DE&S BBMF Ops Mgr, TSC (Bldg 525), RAF Coningsby, Lincolnshire, LN4 4SY

Email: [Paul.Hamilton458@mod.gov.uk](mailto:Paul.Hamilton458@mod.gov.uk)

#### Packaging Design Authority

Organisation & point of contact:

(Where no address is shown please contact the Project Team in Box 2)

#### (a) Supply Branch or Order Manager:

Name: Mr. Sean Mayes  
Address: DE&S BBMF SIM, TSC (Bldg 525), RAF Coningsby, Lincolnshire, LN4 4SY  
☎ 44 (0) 1526 348007

#### (b) U.I.N. F5476F

#### Drawings/Specifications are available from

#### Intentionally Blank

#### Quality Assurance Representative:

DES Typhoon-PQAO2a– David Lange

**AQAPS** and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.dif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

#### 8. Public Accounting Authority

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
☎ 44 (0) 161 233 5394

#### 9. Consignment Instructions

The items are to be consigned as follows:

As directed by BBMF-PM at Box 2.

#### 10. Transport. The appropriate Ministry of Defence Transport Offices are:

**A. DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

##### Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

##### Surface Freight Centre

IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

##### B. JSCS

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

[www.freightcollection.com](http://www.freightcollection.com)

#### 5. The Invoice Paying Authority

Ministry of Defence ☎ 0151-242-2000 DBS

Finance

Walker House, Exchange Flags Fax: 0151-242-2809

Liverpool, L2 3YL **Website is:**

<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

#### 12. Forms and Documentation are available through \*:

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site, Lower Arcott

Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

**Applications via fax or email:**

[Leidos-FormsPublications@teamleidos.mod.uk](mailto:Leidos-FormsPublications@teamleidos.mod.uk)

#### \*NOTE

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:

<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.

**CALL OFF SCHEDULE 17: SMR AND SMI – NOT USED**