

"Deliverable"

means an item or feature in the supply of the Goods 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;

"Delivery"

means, in respect of Goods, the time at which the Goods have been delivered 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 "Deliver" and "Delivered" shall be construed accordingly;

"Disclosing Party"

has the meaning given to it in Clause 23.4.1 (Confidentiality);

"Dispute"

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 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;

"Dispute Notice"

a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

"Dispute Resolution Procedure"

means the dispute resolution procedure set out in Clause (Dispute Resolution Procedure);

"Documentation"

means all such documentation as:

- a) is required to be supplied by the Supplier to the Customer under this Call Off Contract;
- 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 Goods;
- c) is required by the Supplier in order to provide the Goods; and/or
- d) has been or shall be generated for the purpose of providing the Goods;

"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 2012/1988) made under section 132A of the Social Security Administration Act 1992;

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

means the Goods are no longer being manufactured and there is insufficient stock of such Goods available in the supply chain to meet the full Customer requirement and/or Order.

means a failure rate equal to or above 300% the mean time to failure under Goods testing by the manufacturer;

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;

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;

means the sum of £ 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;

means the Cabinet Office Efficiency and Reform Group;

means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Customer's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):

- a) be able to perform all such functions in any number of currencies and/or in Euros; during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies

"Customer Software"

with this Call Off Contract:
means software which is owned by or licensed to the Customer other than software licensed to the Customer under this Call Off Contract and which is or will be used by the Supplier for the purposes of providing the Goods;

"Customer Premises"

means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-contractors for provision of the Goods (or any of them);

"Customer Property"

means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with this Call Off Contract;

"Customer's Confidential Information"

means:

- 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);
- 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
- c) information derived from any of the above;

"Damaged"

means Goods which contain a Defect;

"Data Controller"

shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;

"Data Processor"

shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;

"Data Protection Legislation" or "DPA"

means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

"Data Subject"

shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;

"Data Subject Access Request"

means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;

"Dead on Arrival/Installation" or

means once removed from its packaging at a customer's premises, the delivered device fails to work in accordance with the manufacturer's

"DOA" or "DOI"

"Deductions"

specification;
all Delay Payments or any other deduction which the Customer is paid or is payable under this Call Off Contract;

"Default"

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) after the words, act, omission, negligence or statement of the Supplier, or its Sub-Contractors or any Supplier Personnel however 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;

"Defect"

means any of the following:

- a) any error, damage or defect in the manufacturing or delivery of a Deliverable; or
- b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or
- c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under the Call Off Contract; or
- d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under the Call Off Contract;

"Delay"

means:

- a) a delay in the Achievement of a Milestone by its Milestone Date; or
- b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;

"Delay Payments"

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;

and, in relation to the euro and the national currency of the relevant party(s) of the UK, dual denominations;

- b) recognise, accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
 - c) incorporate protocols for dealing with rounding and currency conversion;
 - d) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant party(s) of the UK and/or the euro; and
 - e) permit the input of data in euro and display an outcome in euro where such data, supporting the Customer's normal business practices, operates in euro and/or the national currency of the relevant party(s) of the UK;
- means the timetable set out in paragraph 2.8 of Annex 3 to the Call Off Terms (Dispute Resolution Procedure);
- means the Freedom of Information Act 2000 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;
- means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:

- 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 the Call Off Contract;
 - b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
 - c) acts of the Crown, local government or Regulatory Bodies;
 - d) fire, flood or any disaster; and
 - e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
- i) any industrial dispute relating to the

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Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and

- 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
- iii) any failure of delay caused by a lack of funds.

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;

"Force Majeure Notice"

"Framework Agreement"

"Framework Commencement Date"

"Framework Period"

"Framework Price(s)"

"Framework Schedule"

"Fraud"

"Further Competition Procedure"

"General Anti-Abuse Rule"

"General Change in Law"

"Good Industry Practice"

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;

means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence

and freight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

"Goods"

means the goods to be provided by the Supplier to the Customer as specified in the Order Form or, where this is used, Annex 1 of Call Off Schedule 2 (Goods);

"Government"

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;

"GS1"

means the GS1 system of standards, the design and implementation of global standards and solutions to improve the efficiency and visibility of supply and demand chains globally and across sectors. Further information available at: <http://www.gs1.org/barcodes>;

"Halifax Abuse Principle"

means the principle explained in the CJEU Case C-255/02 Halifax and others;

"HMRC"

means Her Majesty's Revenue and Customs;

"Holding Company"

shall have the meaning given to it in section 1159 of the Companies Act 2006;

"ICT Policy"

means the Customer's ICT policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier before the Call Off Commencement Date), as updated from time to time in accordance with the Variation Procedure;

"Impact Assessment"

shall have the meaning given to it in Clause 16.1.3;

"Implementation Plan"

means any implementation plan required by the Order Form, and to be set out in Part A of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities (and Key Personnel)) where this is used;

"Information"

has the meaning given under section 84 of the Freedom of Information Act 2000;

"Installation Works"

shall mean all works which the Supplier is to carry out at the beginning of the Call Off Contract Period to install the Goods in accordance with the Order Form

"Insolvency Event"

means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable):

- a) a proposal is made for a voluntary

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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

- 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

- 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

- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

- 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

- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

- 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

- 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

- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction.

means

"Intellectual Property Rights" or "IPR"

- 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;

- b) applications for registration, and the right to

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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 Goods or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer 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 1 (Goods and Key Performance Indicators);

"Key Personnel"

means the individuals (if any) identified as such in the Order Form or Part C of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities (and Key Personnel)) where this is used;

"Key Role(s)"

has the meaning given to it in Clause 50. (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 Goods; 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 Goods 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;

means all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Customer for the purposes of or pursuant to this Call Off Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;

"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;

"Malicious Software"

means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

"Mark-Up"

means the percentage uplift that will be applied to the Costs, excluding any other supply chain rebates and shipping/delivery;

"Man Day"

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"

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

"Material Default"

means:

- a) a Supplier's failure to comply with the Rectification Plan Process;
- b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) being materially untrue or misleading;
- c) not used;
- d) a breach by the Supplier referred to expressly by the term Material Default in this Call Off Contract including in any of the following Clauses: 6.2.3 (Implementation Plan), 7.5.2 (Undelivered Goods), 12.4 (Disruption), 16.5

(Records, Audit Access and Open Book Data), 24.4.9 (Confidentiality), 40.6.2 (Prevention of Fraud and Bribery) and, where used, 48.2 (Installation Works);

e) any material breach by the Supplier of this Call Off Contract under the Law including of the following Clauses and Call Off Schedules (where used): 19 (Promoting Tax Compliance), 24.6 (Freedom of Information), 24.7 (Protection of Personal Data), 38 (Compliance), Call Off Schedule 8 (Security Management);

f) a breach which prevents the Customer from discharging a statutory duty.

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

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

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;

"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 is found 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 the Disclosure of Tax Avoidance Scheme or any equivalent or similar regime in any jurisdiction; and/or

b) the Supplier's tax affairs give rise on or after 1 April 2013 to a conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a penalty

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"Open Book Data"

for civil fraud or evasion;

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

a) the Supplier's Costs broken down against each Good and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;

b) operating expenditure relating to the provision of the Goods including an analysis showing:

i) the unit costs and quantity of consumables and bought-in 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; and

iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin;

c) Overheads;

d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Goods;

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 Goods, including the amount of money attributed to each risk and/or contingency; and

computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;

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"Order"

means the order for the provision of the Goods 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 details of an Order, together with other information in relation to such Order, including without limitation the description of the Goods to be supplied;

"Other Supplier"

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 Goods"

has the meaning given to it in Clause 7.9;

"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 "Parties" shall mean both of them;

"Personal Data"

has the same meaning as set out in the Data Protection Act 1998;

"Processing"

has the meaning given to "processing" under the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" 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 the Customer and/or the Authority or other Contracting Body 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)
- ii) under legislation or common law concerning fraudulent acts; or
- iii) defrauding, attempting to defraud or conspiring to defraud the Customer; 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;

means:

"Project Specific IPR"

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 or the Specially Written Software;

has the meaning given to it in Clause 23.4.1 (Confidentiality);

means a plan to address the impact of, and prevent the recurrence of, a Default;

means the process set out in Clause 28.2 (Rectification Plan Process);

has the meaning given to in Call Off Schedule 11 (Exit Management);

means the Public Contracts Regulations 2006 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;

means any person who provides Goods to the Customer which are related to the Goods from time to time;

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;

means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return;

"Relief Notice"	has the meaning given to it in Clause 28.2.2 (Supplier Relief Due to Customer Cause);
"Replacement Goods"	means any goods which are substantially similar to any of the Goods and which the Customer receives in substitution for any of the Goods following the Call Off Expiry Date, whether those goods are provided by the Customer internally and/or by any third party;
"Replacement Supplier"	means any third party provider of Replacement Goods appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Goods for its own account, shall also include the Customer;
"Request for Information"	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Goods or an apparent request for such information under the FOIA or the EIRs;
"Restricted Countries"	has the meaning given to it in Clause 23.7.3 (Protection of Personal Data);
"Satisfaction Certificate"	means the certificate materially in the form of the document contained in Annex 1 to Call Off Schedule 5 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph 3 of Call Off Schedule 8 (Security Management), where this is used a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 3 of Call Off Schedule 8 (Security Management) and as updated from time to time;
"Security Policy"	the Customer's security policy 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;
"Sites"	means: a) any premises (including the Customer Premises, the Supplier's premises or third party premises); 1) from, to or at which: (1) the Goods are (or are to be) provided; or (2) the Supplier manages, organises or otherwise directs the provision of the Goods;
"Software"	means Specially Written Software, Supplier Software and Third Party Software;
"Software Supporting Materials"	has the meaning given to it in Clause 22.2.1b);

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"Source Code"	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Call Off Contract;
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
"Standards"	has the meaning of: a) any 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; b) any standards detailed in the specification in Framework Schedule 1 (Goods and Key Performance Indicators); c) any standards detailed by the Customer in Call Off Schedule 7 (Standards) following a Further Competition Procedure or agreed between the Parties from time to time; d) any relevant Government codes of practice and guidance applicable from time to time.
"Sub-Contract"	means any contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods or any part thereof or facilities, services necessary for the provision of the Goods or any part thereof or necessary for the management, direction or control of the provision of the Goods or any part thereof;
"Sub-Contractor"	means the third party from the list of key-subcontractors listed in Framework Schedule 2 (Key Sub-Contractors) or any third party engaged by the

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Supplier from time to time under a Sub-Contract permitted pursuant to the Framework Agreement and this Call Off Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;

"Supplier"

means the person, firm or company with whom the Customer enters into the Call Off Contract as identified in the Order Form;

"Supplier Assets"

means all assets and rights used by the Supplier to provide the Goods in accordance with this Call Off Contract but excluding the Customer Assets;

"Supplier Background IPR"

means

- 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
- b) Intellectual Property Rights created by the Supplier independently of this Call Off Contract;

for which the Customer requires a licence to realise the benefit of the Goods provided hereunder, but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

"Supplier Personnel"

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;

"Supplier Equipment"

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 the Call Off Contract] – Not Applicable

"Supplier Non-Performance"

has the meaning given to it in Clause 28.1 (Supplier Relief Due to Customer Cause);

"Supplier Representative"

means the representative appointed by the Supplier named in the Order Form;

"Supplier Software"

means any software which is proprietary to the Supplier (or an Affiliate of the Supplier) and identified as such in the Order Form together with all other such software which is not identified in the Order Form but which is or will be used by the Supplier or any Sub-Contractor for the purposes of

providing the Goods or is embedded in and in respect of such other software as required to be licensed in order for the Customer to receive the benefit of and/or make use of the Goods;

"Supplier's Confidential Information"

means

- 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;
- 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;
- c) information derived from any of the above.

"Tender"

means the tender submitted by the Supplier to the Authority on 17/02/2015 and annexed to Framework Schedule 17;

"Test Device"

means a device provided by the Supplier to the Customer for the purposes of testing compatibility of the Goods with the Customer's IT Infrastructure. The Test Device shall be an exact sample of the Goods specified in the Order Form;

"Test Issue"

means any variance or non-conformity of the Goods or Deliverables from their requirements as set out in the Call Off Contract;

"Test Plan"

means the plan for the Testing of Deliverables and other agreed criteria related to the achievement of Milestones identified in any Implementation Plan;

"Tests" and "Testing"

means any tests required to be carried out pursuant to this Call Off Contract as set out in the Test Plan or elsewhere in the Call Off Contract;

"Termination Notice"

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;

"Third Party IPR"

means Intellectual Property Rights owned by a third party and subsisting in Goods to be supplied hereunder but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;

"Third Party Software"

means any software identified as such in the Order Form together with all other software which is not listed in the Order Form which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which is or will be used by the Supplier for the purposes of providing the Goods).

CALL OFF SCHEDULE 2: GOODS

1. INTRODUCTION

1.1 This Call Off Schedule specifies the :

1.1.1 Goods to be provided under the Call off Contract, in Annex 1;

"Undelivered Goods"

shall have the meaning given in Clause 7.5

"Undisputed Sum's Time Period"

has the meaning given in Clause 32.1.1 (Termination of Customer Cause for Failure to Pay);

"Valid Invoice"

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);

"Variation"

has the meaning given in Clause 16.1 (Variation Procedure);

"Variation Form"

means the form set out in Annex 2 to the Call Off Terms

"Variation Procedure"

means the procedure set out in Clause 16.1 (Variation Procedure);

"VAT"

means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

"Warranty Period"

means, in relation to any Goods, the warranty period specified in the Order Form;

"Working Day"

means any Day other than a Saturday or Sunday or public holiday in England and Wales.

ANNEX 1: THE GOODS

1. THE CUSTOMER'S SPECIFICATION OF REQUIREMENT

2. INTRODUCTION

2.1. The Equality and Human Rights Commission (EHRC) is a statutory body established under the Equality Act 2006, which look over the responsibilities of the Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission in October 2007. The EHRC is a Non-Departmental Public Body and the principal regulator and independent advocate for equality and human rights in Britain.

2.2. The EHRC aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. It enforces equality legislation on age, disability, gender, race, religion or belief, sexual orientation or transgender status, and encourages compliance with the Human Rights Act.

2.3. As an organisation, we currently operate from five primary locations across England, Scotland and Wales and we have four regional 'hubs'. We have approximately 220 staff.

2.4. More information on EHRC can be found at www.equalityhumanrights.com

3. PURPOSE

3.1. This opportunity is for the provision of Microsoft and VMware software licenses to be deployed within the EHRC's primary IT data centre and at the disaster recovery location.

3.2. The Microsoft licenses are to be provided under a new 3 year Enterprise Agreement; the VMware licenses are to be purchased up front with 3 years support and subscription.

3.3. The EHRC must receive entitlement to the VMware licenses before 31st March 2015 and this is predicated on an order being raised with the successful supplier by Friday 8th March 2015.

3.4. This opportunity is open to all suppliers under Lot 2 of the Crown Commercial Services RM1054 Framework.

4. Background to requirement/OVERVIEW of requirement

4.1. In 2007 the EHRC invested heavily in new Microsoft software, including Windows Server, Exchange, SQL, SharePoint and Office Suite. This investment was protected with Software Assurance (SA) for an initial three year term.

4.2. In 2010, and as a result of a general downsizing of the organisation, the EHRC elected to end the SA agreement. As such the EHRC is only entitled to products released by Microsoft up until around September 2010. Similarly we suspended software maintenance for VMware ESX server around the same time.

4.3. The EHRC is now in a position to invest in new IT technology and services designed to meet the organisational needs for the next 2-3 years.

5. Scope of requirement

5.1. Bidders are invited to tender for the software licenses detailed at Annex A and noting the following:

The Microsoft licenses must be provided under a new 3-year Enterprise Agreement (EA). Bidders must not quote for an Enterprise Subscription Agreement.

Any value added services included in the EA should be clearly stated, e.g. professional consultancy days, training days and technical support calls. A full transparent description of the offer will need to be provided.

This is for information purposes only and will not be evaluated.

For VMware we require entitlement to:

- 20x vServer Operations Management Enterprise Plus Suite per processor licenses.
- 2x vCentre Server Standard Edition per instance licenses.
- The above licenses will be installed at 2 site location as per the table detailed in Annex A.

Bidders are encouraged to quote on the basis of the VMware Acceleration Kit (which includes 6x vSOM Enterprise Plus and 1x vCentre) and EHRC's VPP discount registration number V79184048. See Annex A for full license requirements by location.

6. Service levels and performance

6.1. The Authority will measure the quality of the Supplier's delivery by: Entitlement to the VMware licenses on or before 31/03/2015.

7. Location

7.1. The Goods and Services are to be provided at:

EHRC's Manchester City Centre Office located at Amdale House, Amdale Centre, Manchester, M4 3AQ

and

IT Disaster Recovery site at Building 1, Kelburn Court, Delan Park, Birchwood, Warrington, WA3 6JA

8. Security requirements

8.1. Please refer to Annex 1 to Schedule 8 of the RM1054 Call Off Terms and Conditions.

9. Proposed payment schedule

9.1. The contract will be subject to the following proposed payment schedule.

Payment Trigger	Value
Microsoft Enterprise Agreement Year 1	100% payment of first year charge
Microsoft Enterprise Agreement Year 2	100% payment of second year charge
Microsoft Enterprise Agreement Year 3	100% payment of third year charge
VMware licenses, support and maintenance	100% payment of full 3 year charges upon activation of license entitlement

10. ANNEX A – Software license requirements

Product and Description	SKU / part number	Quantity
MICROSOFT SERVER LICENSES		
Windows Server 2012 Standard (WnSvStd ALNG LcsApk MVL 2Proc)	P73-05897	11
Windows Server 2012 Data Centre (WnSvDlcr ALNG LcsApk MVL 2Proc)	P71-07280	10
Exchange Server 2013 Enterprise (ExchgSvrm ALNG LcsApk MVL)	385-02412	4
Remote Desktop Services User CAL (WnRmDsktpsvcsCAL ALNG LcsApk MVL UsrCAL)	6VC-01252	230
SQL Server 2014 Enterprise Per Core (SQLSVENrCoe ALNG LcsApk MVL 2Lic CoreLic)	7JQ-00341	2
SharePoint Server 2013 (SharePntSvr ALNG LcsApk MVL)	H04-00232	1
MICROSOFT PLATFORM LICENSE		
Microsoft Office Professional Plus (OfficeProPlus ALNG LcsApk MVL Pltfm)	269-12445	300
Microsoft Windows Operating System (WnEntorSA ALNG UpgrdSAPk MVL Pltfm)	CW2-00309	300
Microsoft Enterprise CAL Suite	76A-00010	230

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(IDENTICAL ALNG LcsApk MVL Pltfm UsrCAL svcs)		
VMWARE LICENSES		
NOTE: Our VMware VPP registration number is V78194046. Bidders should quote this number when contacting VMware distributors for pricing.		
Primary Data Centre		
VMware vSphere with Operations Management Enterprise Plus Acceleration Kit (VEPL)	VSS-VEPL-AK-C	1
3 Years Production Support for VEPL	VSS-VEPL-AK-P-SSS-C	1
VMware vSphere with Operations Management Enterprise Plus for 1 processor	VSS-OEPL-C	8
3 years Production Support for VPP L2 VMware vSphere with Operations Management Enterprise Plus for 1 processor	VSS-OEPL-P-SSS-C	8
Disaster Recovery Site		
VMware vSphere with Operations Management Enterprise Plus Acceleration Kit (VEPL)	VSS-VEPL-AK-C	1
3 Years Basic Support for VEPL	VSS-VEPL-AK-G-SSS-C	1

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

1. DEFINITIONS

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

"Costs" means the buy-in price from an external supply for Lots 1, 2 or 3 or the cost of manufacture for Lot 4;

"Mark-Up" means the percentage uplift that will be applied to the Costs, excluding any other supply chain rebates and shipping/delivery;

2. GENERAL PROVISIONS

- 2.1 This Call Off Schedule details:
- 2.1.1 the Call-Off Contract Charges for the Goods 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.
- 3.2 The Supplier acknowledges and agrees that:
 - 3.2.1 in accordance with paragraph 2 of Framework Schedule 3 (Pricing Structure), the Call Off Contract Charges can in no event exceed the Framework Prices set out in Annex 2 to Framework Schedule 3 (Charging Structure); and
 - 3.2.2 subject to paragraph 8 of this Call Off Schedule (Adjustment of Call Off Contract Charges), the Call Off Contract Charges cannot be increased during the Call Off Contract Period.

4. COSTS AND EXPENSES

- 4.1 The Call Off Contract Charges include all costs and expenses relating to the Goods and/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. NOT USED

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.

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 7.5 of this Call Off Schedule and in accordance with the provisions of this Call Off Contract.
- 7.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Customer may specify):
 - 7.2.1 contains:
 - 7.2.1.1 all appropriate references, including the unique Order reference number RM5224 30-8551
 - 7.2.1.2 a detailed breakdown of the Delivered Goods, including the Milestone(s) (if any) and any other charges, for example, Delivery, and Deliverable(s) within this Call-Off Contract to which the Delivered Goods relate, against the applicable due and payable Call Off Contract Charges; and
 - 7.2.2 shows separately:
 - 7.2.2.1 the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 17.2.1 and the tax point date relating to the rate of VAT shown; and
 - 7.2.3 is exclusive of any 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 The Supplier shall accept the Government Procurement Card as a means of payment for the Goods 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.
- 7.4 All payments due by one Party to the other shall be made within 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.

7.5 The Supplier shall submit invoices directly to:
Accounts Payable

Equality and Human Rights Commission

3rd Floor, Arndale House

Arndale Centre

Manchester

M4 3AQ

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 16.2 of this Call Off Contract (Legislative Change);

8.1.2 in accordance with Clause 17.1.4 (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 Call Off Contract Charges in accordance with Clause 18 (Benchmarking);

8.1.4 where all or part of the Call Off Contract Charges are reviewed and reduced in accordance with paragraph 9 of this Call Off Schedule (Supplier Periodic Assessment of Call Off Contract Charges);

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.

9.2 Such assessments by the Supplier under paragraph 9 shall be carried out on 1 September and 1 March 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 12.1.4 below.

10. NOT USED

11. NOT USED

12. IMPLEMENTATION OF ADJUSTED CALL OFF CONTRACT CHARGES

12.1 Variations in accordance with the provisions of this Call Off Schedule 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 16.2 (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;

12.1.2 in accordance with Clause 17.1.4 (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;

12.1.3 in accordance with Clause 18 (Benchmarking) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.3 of this Call Off Schedule or

12.1.4 on 1 June for assessments made on 1 May and on 1 January for assessments made on 1 December where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.4 of this Call Off Schedule.

12.2 The Parties shall amend the Call Off Contract Charges shown in Annex 1 to this Call Off Schedule to reflect such variations.

ANNEX 1: CALL OFF CONTRACT CHARGES

Product and Description	SKU/Part Number	Quantity	3 Year Price excl. VAT	3 Year Price incl. VAT
Windows Server 2012 Standard	P73-05897	11		
(WinSrvStd ALNG LicSAPK MVL 2Proc)				
Windows Server 2012 Data Centre	P71-07280	10		
(WinSrvDataCt ALNG LicSAPK MVL 2Proc)				
Exchange Server 2013 Enterprise	395-02412	4		
(ExchSrvEnt ALNG LicSAPK MVL)				
Remote Desktop Services User CAL	6VC-01252	230		
(WinRMDesktopSrvCAL ALNG LicSAPK MVL UserCAL)				
SQL Server 2014 Enterprise Per Core	7JC-00341	2		
(SQLSrvEntCore ALNG LicSAPK MVL 2Lic CoreLic)				
SharePoint Server 2013	H04-00232	1		
(SharePntSrv ALNG LicSAPK MVL)				
Microsoft Office Professional Plus	268-12445	300		
(OfficeProPlus ALNG LicSAPK MVL Pftm)				
Microsoft Windows Operating System	CW2-00308	300		
(WinEntorSA ALNG UpdngSAPK MVL Pftm)				
Microsoft Enterprise CAL Suite	78A-00010	230		
(EntCAL ALNG LicSAPK MVL Pftm UserCAL wSrvcs)				
Microsoft Total Price				

VMWARE CHARGES
NOTE: Our VMware VEEB configuration includes 5 VMTXES. Business support is included in the license fee. VMware support is available for pricing.
Primary Data Centre

10	VMware vSphere with Operations Management Enterprise Plus Acceleration KII (VEPL)	VSS-VEPL-AK-C	1		
11	3 Years Production Support for VEPL	VSS-VEPL-AK-P-SSS-C	1		
12	VMware vSphere with Operations Management Enterprise Plus for 1 processor	VSS-OEPL-C	8		
13	3 years Production Support for VPP L2 VMware vSphere with Operations Management Enterprise Plus for 1 processor	VSS-OEPL-P-SSS-C	8		
14	VMware vSphere with Operations Management Enterprise Plus Acceleration KII (VEPL)	VSS-VEPL-AK-C	1		
15	3 Years Basic Support for VEPL	VSS-VEPL-AK-G-SSS-C	1		
VMware Total Price					

Grand Total Price

ANNEX 2: PAYMENT TERMS/PROFILE

The Supplier shall invoice the Customer for the full payment due upon confirmation by the Customer that the Customer has received full entitlement to the Goods. Please also refer to Section 8 of the Statement of Requirement.

Payment Trigger	Value
Microsoft Enterprise Agreement Year 1	100% payment of first year charge
Microsoft Enterprise Agreement Year 2	100% payment of second year charge
Microsoft Enterprise Agreement Year 3	100% payment of third year charge
VMware licenses, support and maintenance	100% payment of full 3 year charges upon activation of license entitlement

CALL OFF SCHEDULE 4: IMPLEMENTATION PLAN, CUSTOMER RESPONSIBILITIES (AND KEY PERSONNEL)

1. INTRODUCTION

1.1 This Call Off Schedule specifies:

- 1.1.1 In Part A, the Implementation Plan in accordance with which the Supplier shall provide the Goods; and
- 1.1.2 In Part B, the Customer Responsibilities in respect of facilitating the Supplier's achievement of the Implementation Plan.

PART A: IMPLEMENTATION PLAN

2. GENERAL

2.1 The Implementation Plan is set out below:

2.2 The Milestones to be Achieved are identified below:

Milestone	Deliverables	Duration	Milestone Date	Customer Responsibilities	Milestone Payments	Delay Payments
1	Contract signed by both parties	1 day	10 March 2015	Prepare final terms for Supplier acceptance	£0	NOT APPLICABLE
2	Licenses entitlement activated	1 day	20 March 2015	Confirm receipt of Goods	100% Year 1 costs	NOT APPLICABLE

2.3 The Milestones will be Achieved in accordance with [Call Off Schedule 5 (Testing)]the Test Plan annexed to the Implementation Plan). ~ Not Applicable

PART B: CUSTOMER RESPONSIBILITIES

3. GENERAL

3.1 The Customer Responsibilities associated with the Milestones identified in the Implementation Plan are set out in the column entitled Customer Responsibilities in the Implementation Plan.

PART C: KEY PERSONNEL

4. GENERAL

- 4.1 The Supplier has assigned the following Key Personnel to this Call-Off Contract in the Key Roles detailed below:

- Public Sector Sales Manager (Escalations)

Phoenix Software
Blenheim House
York Road
Pocklington
York
YO42 1NS
UK

REDACTED

Keith Martin can be contacted for escalation purposes. For general enquiries please always use the below Account Manager details.

- External Account Manager

Phoenix Software
Blenheim House
York Road
Pocklington
York
YO42 1NS
UK

REDACTED

- Internal Account Manager

Phoenix Software
Blenheim House
York Road
Pocklington
York
YO42 1NS
UK

REDACTED

[CALL OFF SCHEDULE 5: TESTING] - NOT APPLICABLE

1. DEFINITIONS

- 1.1 In this Schedule, the following definitions shall apply:
"Test Strategy" a strategy for the conduct of Testing as described further in Paragraph 3;

2. INTRODUCTION

- 2.1 This schedule sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Test Plans. The primary purpose of Testing shall be to demonstrate to the Customer's satisfaction that the Goods have been supplied and implemented in accordance with the requirements of this Contract, and that they are ready for operational use.

3. TEST STRATEGY

- 3.1 The Supplier shall develop the final Test Strategy as soon as practicable but in any case no later than the date specified in the Implementation Plan (or such other period as the Parties may agree).
- 3.2 The final Test Strategy shall include:
- 3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;
- 3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
- 3.2.3 the procedure to be followed should a Deliverable fail a Test or where a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
- 3.2.4 the procedure to be followed to sign off each Test; and
- 3.2.5 the process for the production and maintenance of reports relating to Tests.

4. TEST PLANS

- 4.1 The Supplier shall develop Test Plans for the Approval of the Customer as soon as practicable but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.
- 4.2 Each Test Plan shall include as a minimum:
- 4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested;
- 4.2.2 a detailed procedure for the Tests to be carried out, including:
- 4.2.3 the timetable for the Tests including start and end dates;
- 4.2.4 the Testing mechanism and the detailed success criteria;

4.2.5 dates and methods by which the Customer can inspect Test results.

4.2.6 the mechanism for ensuring the quality, completeness and relevance of the Tests;

4.2.7 the process with which the Customer will review Test Issues and progress on a timely basis; and

4.2.8 the re-Test procedure, the timetable and the resources which would be required for re-Testing.

4.3 The Customer shall not unreasonably withhold or delay its Approval of the Test Plans and the Supplier shall implement any reasonable requirements of the Customer in the Test Plans.

5. TESTING

5.1 When the Supplier has completed the provision of the Goods in respect of a Milestone it shall submit any Deliverables relating to that Milestone for Testing.

5.2 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Customer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.

5.3 If the Supplier successfully completes the requisite Tests, the Customer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Services are implemented in accordance with this Contract.

6. TEST ISSUES

6.1 Where a Test Issue is identified by the Supplier, the Parties shall agree how such Test Issue shall be dealt with and any failure to agree by the Parties shall be resolved in accordance with the Dispute Resolution Procedure.

7. TEST QUALITY AUDIT

7.1 Without prejudice to its rights pursuant to Clause 30, the Customer or an agent or Temporary Worker appointed by the Customer may perform ongoing quality audits in respect of any part of the Testing.

7.2 If the Customer has any concerns following an audit in accordance with paragraph 7.1 above the Customer will discuss such concerns with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Supplier detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.

7.3 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

8. OUTCOME OF TESTING

8.1 The Customer will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.

8.2 If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:

8.2.1 the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or

8.2.2 the Parties shall treat the failure as a Supplier's Default.

ANNEX 1: SATISFACTION CERTIFICATE

To: [insert name of Supplier]
From: [insert name of Customer]
[insert Date dd/mm/yyyy]

Dear Sir,

SATISFACTION CERTIFICATE

Milestone:

We refer to the agreement ("Call Off Contract") relating to the provision of the [Goods] between the [insert Customer name] ("Customer") and [insert Supplier name] ("Supplier") dated [insert Call Off Commencement Date dd/mm/yyyy].

The definitions for terms capitalised in this certificate are set out in the Call Off Contract.

[We confirm that all of the Milestones have been successfully Achieved by the Supplier in accordance with the Test relevant to those Milestones.]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

CALL OFF SCHEDULE 8: NOT USED

PART A: NOT USED

ANNEX 1 TO PART A: NOT USED
ANNEX 2 TO PART A: NOT USED

PART B: NOT USED

CALL OFF SCHEDULE 7: STANDARDS

STANDARDS

NOT APPLICABLE

CALL OFF SCHEDULE 8: SECURITY

1. DEFINITIONS

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

"Branch of Security" the occurrence of:

any unauthorised access to or use of the Goods, the Sites and/or any 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

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 requirements in Annex 1 (Security) to this Call Off Schedule 8 and the Security Policy;

"ISMS"

the information security management system developed by the Supplier in accordance with paragraph 2 (ISMS) as updated from time to time in accordance with this Schedule 8;

"Security Policy Framework"

the HMG Security Policy Framework (available from the Cabinet Office); and

"Security Tests"

has the meaning given in paragraph 5.1 (Testing of the ISMS).

2. ISMS

2.1 By the date specified in the Implementation Plan the Supplier shall develop and submit to the Customer for the Customer's Approval an information security management system for the purposes of this Call Off Contract, which:

2.1.1 if required by the Implementation Plan, shall have been tested in accordance with Call Off Schedule 5 (Testing); and

2.1.2 shall comply with the requirements of paragraphs 2.3 to 2.5 of this Call Off Schedule 8 (Security).

2.2 The Supplier acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.

2.3 The ISMS shall:

2.3.1 unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Goods and all processes associated with the delivery of the Goods, 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;

2.1.4 meet the relevant standards in ISO/IEC 27001; and

2.1.5 at all times provide a level of security which:

a) is in accordance with Good Industry Practice, Law and this Call Off Contract;

b) complies with the Security Policy;

c) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Items 1-4);

d) meets any specific security threats to the ISMS;

e) complies with ISO/IEC 27001 and ISO/IEC 27002 in accordance with paragraph 6 (Compliance of the ISMS with ISO/IEC 27001);

f) complies with the security requirements as set out in Annex 1 (Security) to this Call Off Schedule 8; and

g) complies with the Customer's ICT policies.

2.4

Subject to Clause 23 (Security And Protection of Information) the references to standards, guidance and policies set out in paragraph 2.3 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.

2.5

In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 2.3, the Supplier shall immediately notify the Customer Representative of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.

2.6

If the ISMS submitted to the Customer pursuant to paragraph 2.1 is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with the Call Off Schedule 8. If the ISMS is not Approved by the Customer, the Supplier shall amend it within 10 Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Customer. If the Customer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph 2 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 2.3 to 2.5 shall be deemed to be reasonable.