

Crown Commercial Service

Framework Schedule 4

Call Off Terms for Management Consultancy Services

TABLE OF CONTENTS

A.	PRELIMINARIES	5
1.	DEFINITIONS AND INTERPRETATION.....	5
2.	DUE DILIGENCE.....	6
3.	REPRESENTATIONS AND WARRANTIES	7
4.	CALL OFF GUARANTEE.....	8
B.	DURATION OF CALL OFF CONTRACT	8
5.	CALL OFF CONTRACT PERIOD.....	8
C.	CALL OFF CONTRACT PERFORMANCE	9
6.	PROJECT PLAN	9
7.	SERVICES.....	10
8.	SERVICES.....	12
9.	NOT USED	13
10.	NOT USED	13
11.	STANDARDS AND QUALITY	13
12.	NOT USED	14
13.	NOT USED	14
14.	NOT USED	14
15.	NOT USED	14
16.	BUSINESS CONTINUITY AND DISASTER RECOVERY.....	14
17.	DISRUPTION.....	14
18.	SUPPLIER NOTIFICATION OF CUSTOMER CAUSE.....	14
19.	CONTINUOUS IMPROVEMENT.....	15
D.	CALL OFF CONTRACT GOVERNANCE.....	15
20.	NOT USED	15
21.	REPRESENTATIVES	15
22.	RECORDS, AUDIT ACCESS AND OPEN BOOK DATA.....	16
23.	CHANGE	17
E.	PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS.....	19
24.	CALL OFF CONTRACT CHARGES AND PAYMENT	19
25.	PROMOTING TAX COMPLIANCE	21
26.	BENCHMARKING	21
F.	SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS.....	22
27.	KEY PERSONNEL	22
28.	SUPPLIER PERSONNEL	23
29.	STAFF TRANSFER	24
30.	SUPPLY CHAIN RIGHTS AND PROTECTION	25

G.	PROPERTY MATTERS.....	29
	31. CUSTOMER PREMISES	29
	32. CUSTOMER PROPERTY	30
	33. SUPPLIER EQUIPMENT	30
H.	INTELLECTUAL PROPERTY AND INFORMATION	31
	34. INTELLECTUAL PROPERTY RIGHTS	31
	35. SECURITY AND PROTECTION OF INFORMATION	37
	36. PUBLICITY AND BRANDING	46
I.	LIABILITY AND INSURANCE.....	46
	37. LIABILITY.....	46
	38. INSURANCE.....	48
J.	REMEDIES AND RELIEF.....	49
	39. CUSTOMER REMEDIES FOR DEFAULT	49
	40. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE.....	51
	41. FORCE MAJEURE	52
K.	TERMINATION AND EXIT MANAGEMENT	53
	42. CUSTOMER TERMINATION RIGHTS.....	53
	43. SUPPLIER TERMINATION RIGHTS	55
	44. TERMINATION BY EITHER PARTY	56
	45. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION ...	56
	46. CONSEQUENCES OF EXPIRY OR TERMINATION	57
L.	MISCELLANEOUS AND GOVERNING LAW	58
	47. COMPLIANCE	58
	48. ASSIGNMENT AND NOVATION.....	59
	49. WAIVER AND CUMULATIVE REMEDIES	60
	50. RELATIONSHIP OF THE PARTIES	60
	51. PREVENTION OF FRAUD AND BRIBERY	60
	52. SEVERANCE.....	61
	53. FURTHER ASSURANCES	62
	54. ENTIRE AGREEMENT	62
	55. THIRD PARTY RIGHTS.....	62
	56. NOTICES	62
	57. DISPUTE RESOLUTION	63
	58. GOVERNING LAW AND JURISDICTION.....	64
	CALL OFF SCHEDULE 1: DEFINITIONS	65
	CALL OFF SCHEDULE 2: SERVICES.....	88
	ANNEX 1: THE SERVICES.....	88
	ANNEX 2: NOT USED	88

CALL OFF SCHEDULE 3:CALL OFF CONTRACT CHARGES, PAYMENT & INVOICING	89
ANNEX 1: CALL OFF CONTRACT CHARGES	94
ANNEX 2: PAYMENT TERMS/PROFILE	94
CALL OFF SCHEDULE 4: PROJECT PLAN	95
1. INTRODUCTION	95
2. PROJECT PLAN	95
CALL OFF SCHEDULE 5: NOT USED	96
CALL OFF SCHEDULE 6: NOT USED	97
CALL OFF SCHEDULE 7: SECURITY	98
ANNEX 1: SECURITY POLICY	109
ANNEX 2: SECURITY MANAGEMENT PLAN	110
CALL OFF SCHEDULE 8: BUSINESS CONTINUITY AND DISASTER RECOVERY	111
CALL OFF SCHEDULE 9: EXIT MANAGEMENT	117
CALL OFF SCHEDULE 10: STAFF TRANSFER	127
ANNEX TO PART A: PENSIONS	136
ANNEX TO PART B: PENSIONS	144
ANNEX TO SCHEDULE 10: LIST OF NOTIFIED SUB-CONTRACTORS	156
CALL OFF SCHEDULE 11: DISPUTE RESOLUTION PROCEDURE	157
CALL OFF SCHEDULE 12: VARIATION FORM	163
CALL OFF SCHEDULE 13: TRANSPARENCY REPORTS	164
ANNEX 1: LIST OF TRANSPARENCY REPORTS	165
CALL OFF SCHEDULE 14: ALTERNATIVE AND/OR ADDITIONAL CLAUSES	166
CALL OFF SCHEDULE 15: MOD DEFCONS AND DEFFORMS	176
CALL OFF SCHEDULE 16: CALL OFF TENDER	177
CALL OFF SCHEDULE 17: PROCESSING DATA	180
ANNEX A: DATA SHARING AGREEMENT	180

PART 2 – 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 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 Services.
- E. On the basis of the Call Off Tender, the Customer selected the Supplier to provide the 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 warrants 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 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 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. PROJECT PLAN

6.1 Formation of Project Plan

- 6.1.1 Where a Project Plan has not been agreed and included in Call Off Schedule 4 (Project 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 Project Plan prior to the commencement of the provision of the Services, the Supplier's draft must contain information at the level of detail necessary to manage the project effectively and as the Customer may require. The draft Project 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 Project 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 Project Plan by the applicable date assigned to that Deliverable in the Project Plan so as to ensure that each Milestone identified in the Project Plan is Achieved on or before its Milestone Date.
- 6.1.4 The Supplier shall monitor its performance against the Project 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 Project Plan

- 6.2.1 Subject to Clause 6.2.2, the Supplier shall keep the Project 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 Services. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Project 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 Project 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

- 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 Project Plan, Clause 6.4 (Delay Payments) shall apply.

6.4 Delay Payments

6.4.1 If Delay Payments have been included in the Project 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 Project 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 42 (Customer Termination Rights) except Clause 42.7 (Termination Without Cause); or
 - (ii) the delay exceeds the number of days (the "**Delay Period Limit**") specified in Call Off Schedule 4 (Project 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 Project 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 49 (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 37 (Liability).

7. SERVICES

7.1 Provision of the 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 Services and the performance of its obligations under this Call Off Contract.

7.1.2 The Supplier shall ensure that the Services:

- (a) comply in all respects with the description of the Services in Call Off Schedule 2 (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 Services in accordance with this Call Off Contract;
- (b) subject to Clause 23.1 (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 Services;
- (c) ensure that any Services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Services shall enable the Deliverables 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 Services are fully compatible with any Customer Property or Customer Assets described in Call Off Schedule 4 (Project 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 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 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 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 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 Services;
- (k) deliver the Services in a proportionate and efficient manner; and
- (l) 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. SERVICES

8.1 General application

8.1.1 This Clause 8 shall apply if any Services have been included in Annex 1 of Call Off Schedule 2 (Services).

8.2 Time of Delivery of the Services

8.2.1 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).

8.3 Location and Manner of Delivery of the Services

8.3.1 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.

8.3.2 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.

8.4 Undelivered Services

8.4.1 In the event that any of the Services are not Delivered in accordance with Clauses 7.1 (Provision of the Services), 8.2 (Time of Delivery of the Services) and 8.3 (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.

8.4.2 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 Services), 8.2 (Time of Delivery of the Services) and 8.3 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

8.5 Obligation to Remedy of Default in the Supply of the Services

8.5.1 Subject to Clauses 34.9.2 and 34.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 8.4.2 (Undelivered Services) and 39 (Customer Remedies for Default)), the Supplier shall, where practicable:

- (a) remedy any breach of its obligations in Clause 8 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.

8.6 Continuing Obligation to Provide the Services

8.6.1 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 43.1 (Termination on Customer Cause for Failure to Pay) for failure by the Customer to pay undisputed Call Off Contract Charges.

9. NOT USED

10. NOT USED

11. STANDARDS AND QUALITY

11.1 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.

11.2 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 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.

11.3 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 Services is explained to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.

11.4 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 (Services and Key Performance Indicators) and shall be implemented within an agreed timescale.

11.5 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.

12. NOT USED

13. NOT USED

14. NOT USED

15. NOT USED

16. BUSINESS CONTINUITY AND DISASTER RECOVERY

16.1 This Clause 16 shall apply if the Customer has so specified in the Call Off Order Form.

16.2 The Parties shall comply with the provisions of Call Off Schedule 8 (Business Continuity and Disaster Recovery).

17. DISRUPTION

17.1 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.

17.2 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.

17.3 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 Services in accordance with its obligations under this Call Off Contract.

17.4 If the Supplier's proposals referred to in Clause 17.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.

17.5 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 18 (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.

18. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

18.1 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 43.1.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall:

18.1.1 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.

19. CONTINUOUS IMPROVEMENT

19.1 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Services in accordance with this Clause 19 with a view to reducing the Customer's costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the 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:

- 19.1.1 the emergence of new and evolving relevant technologies which could improve the Sites and/or the provision of the Services, and those technological advances potentially available to the Supplier and the Customer which the Parties may wish to adopt;
- 19.1.2 new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support Services in relation to the Services;
- 19.1.3 changes in business processes and ways of working that would enable the Services to be provided at lower costs and/or at greater benefits to the Customer; and/or
- 19.1.4 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 Services.

19.2 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.

19.3 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

20. NOT USED

21. REPRESENTATIVES

21.1 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.

21.2 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 28 (Supplier Personnel).

21.3 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.

22. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

22.1 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 Services provided under it, any Sub-Contracts and the amounts paid by the Customer.

22.2 The Supplier shall:

22.2.1 keep the records and accounts referred to in Clause 22.1 in accordance with Good Industry Practice and Law; and

22.2.2 afford any Auditor access to the records and accounts referred to in Clause 22.1 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 22.1, 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 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 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 records relating to the Supplier's performance of the provision of the 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.

22.3 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 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.

22.4 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:

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

22.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and

22.4.3 access to the Supplier Personnel.

22.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 22, 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.

23. CHANGE

23.1 Variation Procedure

23.1.1 Subject to the provisions of this Clause 23 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**".

23.1.2 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.

23.1.3 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 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 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.

23.1.4 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.

23.1.5 Subject to 23.1.4, 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 Services and the proposed Variation.

23.1.6 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 Services in accordance with this Call Off Contract or where the Supplier can show evidence of substantial work being carried out to provide the 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.

23.1.7 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.

23.2 Legislative Change

23.2.1 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 Services is reasonably foreseeable at the Call Off Commencement Date.

23.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 23.2.1(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 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

- (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 Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 19 (Continuous Improvement), has been taken into account in amending the Call Off Contract Charges.

23.2.3 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 23.2.1(b)) shall be implemented in accordance with the Variation Procedure.

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

24. CALL OFF CONTRACT CHARGES AND PAYMENT

24.1 Call Off Contract Charges

- 24.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the 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).
- 24.1.2 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 22 (Records, Audit Access and Open Book Data), 35.4 (Transparency and Freedom of Information) and 35.5 (Protection of Personal Data).
- 24.1.3 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.
- 24.1.4 If at any time during this Call Off Contract Period the Supplier reduces its Framework Prices for any Services which are provided under the Framework Agreement (whether or not such 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 Services under this Call Off Contract by the same amount.

24.2 VAT

- 24.2.1 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.
- 24.2.2 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 24.2 (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.

24.3 Retention and Set Off

24.3.1 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.

24.3.2 If the Customer wishes to exercise its right pursuant to Clause 24.3.1 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.

24.3.3 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 obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

24.4 Foreign Currency

24.4.1 Any requirement of Law to account for the 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.

24.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 24.4.1 by the Supplier.

24.5 Income Tax and National Insurance Contributions

24.5.1 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 Services by the Supplier or any Supplier Personnel.

24.5.2 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 Services, then, in addition to its obligations under Clause 24.5.1, 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 24.5.1, 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 24.5.2(a); and/or
 - (ii) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with Clause 24.5.1 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.

25. PROMOTING TAX COMPLIANCE

25.1 This Clause 25 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.

25.2 If, at any point during the Call Off Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

25.2.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and

25.2.2 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.

25.3 In the event that the Supplier fails to comply with this Clause 25 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.

26. BENCHMARKING

26.1 Notwithstanding the Supplier's obligations under Clause 19 (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 Services, against other suppliers providing Services substantially the same as the Services during the Call Off Contract Period.

26.2 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 26.1 above.

26.3 The Customer shall be entitled to disclose the results of any benchmarking of the Call Off Contract Charges and provision of the Services to the Authority and any Contracting Authority (subject to the Contracting Authority entering into reasonable confidentiality undertakings).

26.4 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.

- 26.5 Where, as a consequence of any benchmarking carried out by the Customer, the Customer decides improvements to the Services should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Customer.
- 26.6 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 Services, facilitate their delivery to any other Contracting Authority and/or any alterations or variations to the Charges or the provision of the 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

27. KEY PERSONNEL

- 27.1 This Clause 27 shall apply where the Customer has specified Key Personnel in the Call Off Order Form.
- 27.2 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.
- 27.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Call Off Contract Period.
- 27.4 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.
- 27.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Call Off Schedule 9 (Exit Management) unless:
- 27.5.1 requested to do so by the Customer;
 - 27.5.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 27.5.3 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
 - 27.5.4 the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 27.6 The Supplier shall:
- 27.6.1 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);
 - 27.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 27.6.3 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;
 - 27.6.4 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 Services; and

27.6.5 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.

27.6.6 shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.

27.7 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.

28. SUPPLIER PERSONNEL

28.1 Supplier Personnel

28.1.1 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 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 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) subject to Call Off Schedule 10 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
- (d) 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;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) 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;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and

- (h) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.

28.1.2 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 Services of the relevant person(s).

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

28.2 Relevant Convictions

28.2.1 This sub-clause 28.2 shall apply if the Customer has specified Relevant Convictions in the Call Off Order Form.

28.2.2 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 Services without Approval.

28.2.3 Notwithstanding Clause 28.2.2, for each member of Supplier Personnel who, in providing the 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 Services any person who has a Relevant Conviction or an inappropriate record.

29. STAFF TRANSFER

29.1 Not used.

29.2 The Parties agree that :

29.2.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Call Off Schedule 10 (Staff Transfer) shall apply as follows:

- (a) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Call Off Schedule 10 (Staff Transfer) shall apply;
- (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Call Off Schedule 10 (Staff Transfer) shall apply;

- (c) where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Call Off Schedule 10 (Staff Transfer) shall apply; and
 - (d) Part C of Call Off Schedule 10 (Staff Transfer) shall not apply;
- 29.2.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Call Off Schedule 10 (Staff Transfer) shall apply and Parts A and B of Call Off Schedule 10 (Staff Transfer) shall not apply; and
- 29.2.3 Part D of Call Off Schedule 10 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;
- 29.3 The Supplier shall both during and after the Call Off Contract Period indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

30. SUPPLY CHAIN RIGHTS AND PROTECTION

30.1 Appointment of Sub-Contractors

- 30.1.1 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 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.
- 30.1.2 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 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.
- 30.1.3 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 30.1.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-Contract; and
 - (b) any further information reasonably requested by the Customer.
- 30.1.4 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 30.1.2 (or, if later, receipt of any further information requested pursuant to Clause 30.1.3), 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 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 goods 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.

30.1.5 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 30.1.2; and
 - (ii) any further information requested by the Customer pursuant to Clause 30.1.3; 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 30.2 (Appointment of Key Sub-Contractors).

the Supplier may proceed with the proposed appointment.

30.2 Appointment of Key Sub-Contractors

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

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

30.2.3 Except where the Authority and the Customer have given their prior written consent under Clause 30.2.1, 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 35.1 (Security Requirements), 35.2 (Protection of Customer Data) and 35.5 (Protection of Personal Data);
 - (ii) FOIA requirements set out in Clause 35.4 (Transparency and Freedom of Information);
 - (iii) the obligation set out in Clause 36.3 (Publicity and Branding);
 - (iv) the keeping of records in respect of the Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data;
 - (v) the conduct of audits set out in Clause 22 (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 42 (Customer Termination Rights), 44 (Termination by Either Party) and 46 (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 Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;
- (h) a provision, where a provision in Call Off Schedule 10 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be.

30.3 Supply Chain Protection

30.3.1 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 30.3.1.

30.3.2 The Supplier shall pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice.

- 30.3.3 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.
- 30.3.4 Notwithstanding any provision of Clauses 35.3 (Confidentiality) and 36 (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).
- 30.3.5 The Supplier shall ensure that all Sub-Contracts with Sub-Contractors require the Sub-Contractor to comply with Clause 36.3 (Publicity and Branding).

30.4 Termination of Sub-Contracts

30.4.1 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 42 (Customer Termination Rights) except Clause 42.7 (Termination Without Cause); and/or
 - (ii) the relevant Sub-Contractor or its Affiliates embarrass the Customer or other Crown Bodies; cause, permit, contribute or is in any way connected to material adverse publicity relating to or affecting the Customer or other Crown Bodies or the Framework; or bring the Customer or other Crown Bodies into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer or other Crown Bodies, regardless of whether or not such act or omission is related to the Supplier's obligations under this Framework Agreement; 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.

30.5 Competitive Terms

- 30.5.1 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, goods or services used by the Supplier or the Supplier Personnel in the supply of the 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 30.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.
- 30.5.2 If the Customer exercises the option pursuant to Clause 30.5.1, then the Call Off Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.
- 30.5.3 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 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.

30.6 Retention of Legal Obligations

- 30.6.1 Notwithstanding the Supplier's right to Sub-Contract pursuant to Clause 30 (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

31. CUSTOMER PREMISES

31.1 Licence to occupy Customer Premises

- 31.1.1 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).
- 31.1.2 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.
- 31.1.3 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 31.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 31.1.4 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.

31.1.5 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.

31.2 Security of Customer Premises

31.2.1 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.

31.2.2 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.

32. CUSTOMER PROPERTY

32.1 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.

32.2 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.

32.3 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.

32.4 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.

32.5 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.

32.6 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 Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.

32.7 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.

33. SUPPLIER EQUIPMENT

33.1 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 Services.

33.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.

- 33.3 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.
- 33.4 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.
- 33.5 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 Services in accordance with this Call Off Contract.
- 33.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.
- 33.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- 33.7.1 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
 - 33.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.

H. INTELLECTUAL PROPERTY AND INFORMATION

34. INTELLECTUAL PROPERTY RIGHTS

34.1 Allocation of title to IPR

34.1.1 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.

34.1.2 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 34.1, 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).

34.1.3 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.

34.1.4 Unless the Customer otherwise agrees in advance in writing (and subject to Clause 34.10.3):

- (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.

34.2 Assignments granted by the Supplier: Project Specific IPR

34.2.1 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 34.2.1 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.

34.2.2 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.

34.2.3 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.

34.3 Licences granted by the Supplier: Supplier Background IPR

34.3.1 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 Services (or substantially equivalent 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.

34.3.2 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 34.3.1 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 34.3.1 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.

34.3.3 In the event the licence of the Supplier Background IPR is terminated pursuant to Clause 34.3.2, 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.

34.4 Customer's right to sub-license

34.4.1 The Customer may sub-license:

- (a) the rights granted under Clause 34.3.1 (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 34.3.1 (Licence granted by the Supplier: Supplier Background IPR) for purposes relating to the Services (or substantially equivalent 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 34.3.1 (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.

34.5 Customer's right to assign/novate licences

34.5.1 The Customer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 34.3 (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.

34.5.2 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 34.3 (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 34.3 (Licence granted by the Supplier: Supplier Background IPR).

34.5.3 If a licence granted in Clause 34.3 (Licence granted by the Supplier: Supplier Background IPR) is novated under Clause 34.5.1 or there is a change of the Customer's status pursuant to Clause 34.5.2 (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.

34.6 Third Party IPR

34.6.1 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 34.3 (Licence granted by the Supplier: Supplier Background IPR)

and Clause 34.5.1 (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 34.3 (Licences granted by the Supplier: Supplier Background IPR) and Clause 34.5.1 (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.

34.6.2 Should the Supplier become aware at any time, including after termination, which 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.

34.6.3 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 34.2.3 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.

34.7 Licence granted by the Customer

34.7.1 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 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 35.3 (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.

34.8 Termination of licenses

34.8.1 Subject to Clause 34.3 (Licence granted by the Supplier: Supplier Background IPR), all licences granted pursuant to Clause 34 (Intellectual Property Rights) (other than those granted pursuant to Clause 34.6 (Third Party IPR) and 34.7 (Licence granted by the Customer)) shall survive the Call Off Expiry Date.

34.8.2 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 34.3 (Licence granted by the Supplier: Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

34.8.3 The licence granted pursuant to Clause 34.7 (Licence granted by the Customer) and any sub-licence granted by the Supplier in accordance with Clause 34.7.1 (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.

34.9 IPR Indemnity

34.9.1 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.

34.9.2 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 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 Services.

34.9.3 If the Supplier elects to procure a licence in accordance with Clause 34.9.2(a) or to modify or replace an item pursuant to Clause 34.9.2(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 Services including the additional costs of procuring, implementing and maintaining the substitute items.

34.10 Open Source Publication

34.10.1 Subject to Clause 34.10.3, 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 Call Off Commencement Date (such date to be notified by the Customer to the Supplier).

34.10.2 Subject to Clause 34.10.3, 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 34.10.1; and
- (f) do not contain any malicious software.

34.10.3 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 34.10.2(e) and which have not been Approved for exclusion under Clause 34.10.4 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.

34.10.4 Where the Customer has Approved a request by the Supplier under Clause 34.1.4, 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 34.10.4 (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.

35. SECURITY AND PROTECTION OF INFORMATION

35.1 Security Requirements

- 35.1.1 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.
- 35.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 35.1.3 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 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.
- 35.1.4 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 Services in accordance with its existing obligations.

35.2 Protection of Customer Data

- 35.2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer Controller is the Controller and the Supplier is the Processor unless otherwise specified in Schedule Y Processing Personal Data). The only processing that the Processor is authorised to do is listed in Schedule 16 (Processing Personal Data) by the Controller and may not otherwise be determined by the Processor.
- 35.2.2 The Processor shall notify the Controller immediately if it considers that any of the Buyer's instructions infringe the Data Protection Legislation.
- 35.2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 35.2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Call Off Contract:
- (a) process that Personal Data only in accordance with Schedule 16 (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

- (b) ensure that it has in place Protective Measures which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Call Off Contract (and in particular Schedule 16 (Processing Personal Data));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) 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 Controller or as otherwise permitted by this Call Off Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavors to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Call Off Contract unless the Processor is required by Law to retain the Personal Data.

- 35.2.5 Subject to Clause 35.2.7, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Call Off Contract;
 - (e) receives 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; or
 - (f) becomes aware of a Data Loss Event.
- 35.2.6 The Processor's obligation to notify under Clause 35.2.5 shall include the provision of further information to the Controller in phases, as details become available.
- 35.2.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 35.2.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 35.2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 35.2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

- 35.2.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 35.2.11 Before allowing any Sub-processor to process any Personal Data related to this Call Off Contract, the Processor must:
 - (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 23.11 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 35.2.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 35.2.13 The Buyer may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Call Off Contract).
- 35.2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than 30 Working Days' notice to the Supplier to amend this Call Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Clauses applicable to Joint Controllers only (refer to 10.15 of the Order Form)

In respect of Personal Data identified in Schedule Y (Authorised Processing Template) as under Joint Control Clause Z.1-Z.16 shall not apply and shall be replaced by Schedule X (Data Sharing Agreement) which must be entered into by both Parties.

35.3 Confidentiality

- 35.3.1 For the purposes of Clause 35.3, 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.
- 35.3.2 Except to the extent set out in Clause 35.3 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.

- 35.3.3 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 35.4 (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 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.
- 35.3.4 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.
- 35.3.5 Subject to Clause 35.3.2, 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 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.
- 35.3.6 Where the Supplier discloses Confidential Information of the Customer pursuant to Clause 35.3.5, 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.
- 35.3.7 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 35.3.7(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 35.3.

35.3.8 Nothing in Clause 35.3 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.

35.3.9 In the event that the Supplier fails to comply with Clauses 35.3.2 to 35.3.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

35.4 Transparency and Freedom of Information

35.4.1 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.

35.4.2 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.

35.4.3 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).

- 35.4.4 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.
- 35.4.5 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.
- 35.4.6 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 35.3.7(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.
- 35.4.7 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.
- 35.4.8 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.

35.5 Protection of Personal Data

35.5.1 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.

35.5.2 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 35.1 (Security Requirements) and 35.2 (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 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 35.5.2 and Clauses 35.1 (Security Requirements), 35.2 (Protection of Customer Data) and 35.3 (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 35.5.2(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 35.5.2 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

35.5.3 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 35.5.3(b) to 35.5.3(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.

35.5.4 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.

36. PUBLICITY AND BRANDING

36.1 The Supplier shall not use the Customer's name or brand without Approval.

36.2 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 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.

36.3 The Supplier shall:

36.3.1 ensure that neither it nor any of its Affiliates, Sub-Contractors, sub-contractors, employees, agents, servants or representatives

- (a) embarrass the Customer or other Crown Bodies;
- (b) cause, permit, contribute or is in any way connected to material adverse publicity relating to or affecting the Customer, other Crown Bodies and/or the Contract; or
- (c) brings the Customer or other Crown Bodies into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer or other Crown Bodies,

regardless of whether or not such acts or omissions are related to the Supplier's obligations under the Call Off Contract.

36.3.2 comply with any steps set out in paragraph 10.13 of the Call Off Order Form.

I. LIABILITY AND INSURANCE

37. LIABILITY

37.1 Unlimited Liability

37.1.1 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 Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be excluded or limited by Law.

37.1.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clauses 34.9 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

37.2 Financial Limits

37.2.1 Subject to Clause 37.1 (Unlimited Liability), the Supplier's total aggregate liability:

- (a) NOT USED;
- (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 a sum equal to one hundred and twenty-five per cent (125%) 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 sum equal to one hundred and twenty-five percent (125%) 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 sum equal to one hundred and twenty-five percent (125%) 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.

37.2.2 Subject to Clauses 37.1 (Unlimited Liability) and 37.2 (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.

37.3 Non-recoverable Losses

37.3.1 Subject to Clause 37.1 (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).

37.4 Recoverable Losses

37.4.1 Subject to Clause 37.2 (Financial Limits), and notwithstanding Clause 37.3 (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 Services for the remainder of the Call Off Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement 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.

37.5 Miscellaneous

37.5.1 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.

37.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 37.2 (Financial Limits).

37.5.3 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).

38. INSURANCE

38.1 This Clause 38 will only apply where specified in the Call Off Order Form or elsewhere in this Call Off Contract.

38.2 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.

38.3 Without limitation to the generality of Clause 38.2 the Supplier shall ensure that it maintains the policy or policies of insurance as stipulated in the Call Off Order Form.

38.4 The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause 38 for six (6) years after the Call Off Expiry Date.

- 38.5 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause 38 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.
- 38.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause 38 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.
- 38.7 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.
- 38.8 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

39. CUSTOMER REMEDIES FOR DEFAULT

39.1 Remedies

39.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising and subject to the exclusive financial remedy provisions in Clause 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 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 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 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 45 (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 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 Services only (whereupon the relevant provisions of Clause 45 (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;

39.1.2 Where the Customer exercises any of its step-in rights under Clauses 39.1.1(c)(ii) or 39.1.1(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 Services by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Services.

39.2 Rectification Plan Process

39.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 39.1.1(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).

39.2.2 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).

39.2.3 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.

39.2.4 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.

39.2.5 If the Customer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

40. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

40.1 If the Supplier has failed to:

40.1.1 Achieve a Milestone by its Milestone Date;

40.1.2 Not Used;

40.1.3 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 18 (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 42 (Customer Termination Rights) except Clause 42.7 (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 Project 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) Not used.

40.2 In order to claim any of the rights and/or relief referred to in Clause 40.1, the Supplier shall:

40.2.1 comply with its obligations under Clause 18 (Supplier Notification of Customer Cause); and

40.2.2 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.
- 40.3 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.
- 40.4 Without prejudice to Clause 8.6 (Continuing obligation to provide the Services, if a Dispute arises as to:
 - 40.4.1 whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or
 - 40.4.2 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.
- 40.5 Any Variation that is required to the Project Plan or to the Call Off Contract Charges pursuant to Clause 40 shall be implemented in accordance with the Variation Procedure.

41. FORCE MAJEURE

- 41.1 Subject to the remainder of Clause 41 (and, in relation to the Supplier, subject to its compliance with any obligations in Clause 16 (Business Continuity and Disaster Recovery)), a Party may claim relief under Clause 41 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.
- 41.2 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.
- 41.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under Clause 41 to the extent that consequences of the relevant Force Majeure Event:
 - 41.3.1 are capable of being mitigated by any of the provision of any Services, including any BCDR Services, but the Supplier has failed to do so; and/or
 - 41.3.2 should have been foreseen and prevented or avoided by a prudent provider of Services similar to the Services, operating to the standards required by this Call Off Contract.
- 41.4 Subject to Clause 41.5, 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 Services affected by the Force Majeure Event.
- 41.5 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.

41.6 Where, as a result of a Force Majeure Event:

41.6.1 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 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;

41.6.2 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 39.1.1(b) and 39.1.1(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) Not used;
- (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 Services (or part of the Services) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.

41.7 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.

41.8 Relief from liability for the Affected Party under Clause 41 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 41.7.

K. TERMINATION AND EXIT MANAGEMENT

42. CUSTOMER TERMINATION RIGHTS

42.1 Termination in Relation to Call Off Guarantee

42.1.1 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.

42.2 Termination on Material Default

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

- (a) Not used;
- (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 Clause 37.2.1(b) (Liability);
- (d) 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 (Project Plan), 8.4.2 (Services), 17.4 (Disruption), 22.5 (Records, Audit Access and Open Book Data), 25 (Promoting Tax Compliance), 35.3.9 (Confidentiality), 51.6.2 (Prevention of Fraud and Bribery), Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Call Off Schedule 10 (Staff Transfer);
- (e) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Customer, capable of remedy;
- (f) 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; and/or
- (g) the Supplier fails to comply with any of Clause 36.3 (Publicity and Branding).

42.2.2 For the purpose of Clause 42.2.1, 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.

42.3 Termination in Relation to Financial Standing

42.3.1 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 Services under this Call Off Contract; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Call Off Contract.

42.4 Termination on Insolvency

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

42.5 Termination on Change of Control

42.5.1 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.

42.5.2 The Supplier shall ensure that any notification made pursuant to Clause 42.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

42.5.3 The Customer may terminate this Call Off Contract by issuing a Termination Notice under Clause 42.5 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.

42.6 Termination for breach of Regulations

42.6.1 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).

42.7 Termination Without Cause

42.7.1 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).

42.8 Termination in Relation to Framework Agreement

42.8.1 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.

42.9 Termination In Relation to Benchmarking

42.9.1 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).

42.10 Termination in Relation to Variation

42.10.1 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.

43. SUPPLIER TERMINATION RIGHTS

43.1 Termination on Customer Cause for Failure to Pay

43.1.1 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 43.1.1 (the "**Undisputed Sums Limit**"), and the said undisputed sum due remains outstanding for forty (40) 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 24.3 (Retention and Set off).

43.1.2 The Supplier shall not suspend the supply of the Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part).

44. TERMINATION BY EITHER PARTY

44.1 Termination for continuing Force Majeure Event

44.1.1 Either Party may, by issuing a Termination Notice to the other Party, terminate this Call Off Contract in accordance with Clause 41.6.1(a) (Force Majeure).

45. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

45.1 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.

45.2 Any suspension of this Call Off Contract under Clause 45.1 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.

45.3 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 Services and the Call Off Contract Charges, provided that the Supplier shall not be entitled to:

45.3.1 an increase in the Call Off Contract Charges in respect of the provision of the 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 42 (Customer Termination Rights) except Clause 42.7 (Termination Without Cause); and

45.3.2 reject the Variation.

46. CONSEQUENCES OF EXPIRY OR TERMINATION

46.1 Consequences of termination under Clauses 42.1 (Termination in Relation to Call Off Guarantee), 42.2 (Termination on Material Default), 42.3 (Termination in Relation to Financial Standing), 42.8 (Termination in Relation to Framework Agreement), 42.9 (Termination in Relation to Benchmarking) and 42.10 (Termination in Relation to Variation)

46.1.1 Where the Customer:

(a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 46.1; and

(b) then makes other arrangements for the supply of the 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.

46.2 Consequences of termination under Clauses 42.7 (Termination without Cause) and 43.1 (Termination on Customer Cause for Failure to Pay)

46.2.1 Where:

(a) the Customer terminates (in whole or in part) this Call Off Contract under Clause 42.7 (Termination without Cause); or

(b) the Supplier terminates this Call Off Contract pursuant to Clause 43.1 (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 42.7 (Termination without Cause).

46.2.2 The Customer shall not be liable under Clause 46.2.1 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.

46.3 Consequences of termination under Clause 44.1 (Termination for Continuing Force Majeure Event)

46.3.1 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 44.1 (Termination for Continuing Force Majeure Event).

46.4 Consequences of Termination for Any Reason

46.4.1 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 22 (Records, Audit Access & Open Book Data), 34 (Intellectual Property Rights), 35.3 (Confidentiality), 35.4 (Transparency and Freedom of Information) 35.5 (Protection of Personal Data), 37 (Liability), 46 (Consequences of Expiry or Termination), 52 (Severance), 54 (Entire Agreement), 55 (Third Party Rights) 57 (Dispute Resolution) and 58 (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 10 (Staff Transfer), 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.

46.5 Exit management

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

L. **MISCELLANEOUS AND GOVERNING LAW**

47. **COMPLIANCE**

47.1 Health and Safety

47.1.1 The Supplier shall perform its obligations under this Call Off Contract (including those in relation to the 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.

47.1.2 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

47.1.3 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.

47.2 Equality and Diversity

47.2.1 The Supplier shall:

- (a) perform its obligations under this Call Off Contract (including those in relation to provision of the 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).

47.3 Official Secrets Act and Finance Act

47.3.1 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.

47.4 Environmental Requirements

47.4.1 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.

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

48. ASSIGNMENT AND NOVATION

48.1 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.

48.2 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:

48.2.1 any other Contracting Authority; or

48.2.2 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

48.2.3 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 48.2.

48.3 A change in the legal status of the Customer shall not, subject to Clause 48.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.

48.4 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 48.2.3 (the "Transferee" in the rest of this Clause 48.4) the right of termination of the Customer in Clause 42.4 (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 42.4 (Termination on Insolvency) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee).

49. WAIVER AND CUMULATIVE REMEDIES

- 49.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 56 (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.
- 49.2 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.

50. RELATIONSHIP OF THE PARTIES

- 50.1 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.

51. PREVENTION OF FRAUD AND BRIBERY

- 51.1 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:
- 51.1.1 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
 - 51.1.2 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.
- 51.2 The Supplier shall not during the Call Off Contract Period:
- 51.2.1 commit a Prohibited Act; and/or
 - 51.2.2 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.
- 51.3 The Supplier shall during the Call Off Contract Period:
- 51.3.1 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;
 - 51.3.2 keep appropriate records of its compliance with its obligations under Clause 51.3.1 and make such records available to the Customer on request;
 - 51.3.3 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 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

- 51.3.4 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.
- 51.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 51.1, or has reason to believe that it has or any of the Supplier Personnel have:
- 51.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 51.4.2 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
 - 51.4.3 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.
- 51.5 If the Supplier makes a notification to the Customer pursuant to Clause 51.4, 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 22 (Records, Audit Access and Open Book Data).
- 51.6 If the Supplier breaches Clause 51.3, the Customer may by notice:
- 51.6.1 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
 - 51.6.2 immediately terminate this Call Off Contract for material Default.
- 51.7 Any notice served by the Customer under Clause 51.4 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).

52. SEVERANCE

- 52.1 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.
- 52.2 In the event that any deemed deletion under Clause 52.1 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.
- 52.3 If the Parties are unable to resolve the Dispute arising under Clause 52 within twenty (20) Working Days of the date of the notice given pursuant to Clause 52.2, 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 52.

53. FURTHER ASSURANCES

53.1 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.

54. ENTIRE AGREEMENT

54.1 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.

54.2 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.

54.3 Nothing in Clause 54 shall exclude any liability in respect of misrepresentations made fraudulently.

55. THIRD PARTY RIGHTS

55.1 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 and 1.4, 2.3 and 2.8 of Part D of Call Off Schedule 10 (Staff Transfer) and the provisions of paragraph 9.9 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.

55.2 Subject to Clause 55.1, 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.

55.3 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.

55.4 Any amendments or modifications to this Call Off Contract may be made, and any rights created under Clause 55.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

56. NOTICES

56.1 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 56, an e-mail is accepted as being "in writing".

56.2 Subject to Clause 56.3, 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 56.3 and 56.4).	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 st 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.

56.3 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™ 1st Class or other prepaid in the manner set out in the table in Clause 56.2:

56.3.1 any Termination Notice (Clause 42 (Customer Termination Rights)),

56.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 45 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 49 (Waiver and Cumulative Remedies))
- (c) Default or Customer Cause; and

56.3.3 any Dispute Notice.

56.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 56.3 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™ 1st Class delivery (as set out in the table in Clause 56.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

56.5 Clause 56 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).

56.6 For the purposes of Clause 56, the address and email address of each Party shall be as specified in the Call Off Order Form.

57. DISPUTE RESOLUTION

57.1 The Parties shall resolve Disputes arising out of or in connection with this Call Off Contract in accordance with the Dispute Resolution Procedure.

57.2 The Supplier shall continue to provide the Services in accordance with the terms of this Call Off Contract until a Dispute has been resolved.

58. GOVERNING LAW AND JURISDICTION

- 58.1 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.
- 58.2 Subject to Clause 57 (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:

"Achieve"	means in respect of a Milestone, to successfully complete it to the Customer's satisfaction, and "Achieved" , "Achieving" and "Achievement" shall be construed accordingly;
"Acquired Rights Directive"	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;
"Additional Clauses"	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;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Affiliates"	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;
"Alternative Clauses"	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;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Approved Sub-Licensee"	means any of the following: <ul style="list-style-type: none">a) a Central Government Body;b) any third party providing Services to a Central Government Body; and/orc) 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;
"Auditor"	means: <ul style="list-style-type: none">a) the Customer's internal and external auditors;b) the Customer's statutory or regulatory auditors;c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;d) HM Treasury or the Cabinet Office;

	<ul style="list-style-type: none"> e) any party formally appointed by the Customer to carry out audit or similar review functions; and f) successors or assigns of any of the above;
"Authority"	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") 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;
"BACS"	means the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
"BCDR Services"	means the Business Continuity Services and Disaster Recovery Services;
"BCDR Plan"	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;
"Business Continuity Services"	has the meaning given to it in paragraph 4.2.2 of Call Off Schedule 8 (Business Continuity and Disaster Recovery);
"Call Off Commencement Date"	means the date of commencement of this Call Off Contract set out in the Call Off Order Form;
"Call Off Contract"	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;
"Call Off Contract Charges"	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;
"Call Off Contract Period"	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date;
"Call Off Contract Year"	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;
"Call Off Expiry Date"	means: <ul style="list-style-type: none"> (a) the end date of the Call Off Initial Period or any Call Off Extension Period; or (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;
"Call Off Extension Period"	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;

"Call Off Guarantee"	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);
"Call Off Guarantor"	means the person acceptable to the Customer to give a Call Off Guarantee;
"Call Off Initial Period"	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;
"Call Off Order Form"	means the order form applicable to and set out in Part 1 of this Call Off Contract;
"Call Off Procedure"	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);
"Call Off Schedule"	means a schedule to this Call Off Contract;
"Call Off Tender"	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);
"Call Off Terms"	means the terms applicable to and set out in Part 2 of this Call Off Contract;
"Central Government Body"	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: <ul style="list-style-type: none"> a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
"Change of Control"	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	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;
"Charging Structure"	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);
"Commercially Sensitive Information"	means the Confidential Information listed in the Call Off Order Form (if any) comprising of commercially sensitive information relating to: -

- a) the pricing of the Services;
- b) details of the Supplier's IPR;
- c) the Supplier's business and investment plans; and/or
- d) the Supplier's trade secrets;

which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;

"Comparable Supply"	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
"Continuous Improvement Plan"	means a plan for improving the provision of the Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);
"Contracting Authority"	means the Authority, the Customer and any other bodies listed in the OJEU Notice;
"Control"	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;
"Controller"	has the meaning given in the GDPR;
"Conviction"	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;
"Costs"	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services: <ul style="list-style-type: none"> 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"> i) base salary paid to the Supplier Personnel; ii) employer's national insurance contributions; iii) pension contributions; iv) car allowances; v) any other contractual employment benefits; vi) staff training;

- vii) work place accommodation;
 - viii) work place IT equipment and tools reasonably necessary to provide the 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 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 Services where the Call Off Contract Charges for those 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 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 26 (Benchmarking); and
- g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

"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;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Customer"	means the customer(s) identified in the Call Off Order Form;
"Customer Assets"	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 Services;
"Customer Background IPR"	means: <ul style="list-style-type: none"> 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; b) IPRs created by the Customer independently of this Call Off Contract; and/or c) Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract;
"Customer Cause"	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;
"Customer Data"	means: <ul style="list-style-type: none"> 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"> i) are supplied to the Supplier by or on behalf of the Customer; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or b) any Personal Data for which the Customer is the Data Controller;
"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 the provision of the Services (or any of them);
"Customer Property"	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;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to this Call Off Contract;
"Customer Responsibilities"	means the responsibilities of the Customer set out in Call Off Schedule 4 (Project 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;
"Customer's Confidential Information"	means: <ul style="list-style-type: none"> 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;
"Data Controller"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Processor"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Protection Legislation" or "DPA"	means <ul style="list-style-type: none"> i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; ii) the DPA to the extent that it relates to processing of personal data and privacy; iii) all applicable Law about the processing of personal data and privacy;
"DPA"	means the Data Protection Act 2018 as amended from time to time;
"Data Protection Officer"	has the meaning given in GDPR;
"Data Subject"	has the meaning given to it in GDPR;
"Data Subject Access Request"	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

“Deductions”	means 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), 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;
"Delay"	means: <ul style="list-style-type: none"> 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 Project 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 Project Plan;
“Delay Period Limit”	shall be the number of days specified in Call Off Schedule 4 (Project Plan) for the purposes of Clause 6.4.1(b)(ii);
"Deliverable"	means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Project Plan (if any) or at any other stage during the performance of this Call Off Contract;
"Delivery"	means delivery in accordance with the terms of and accepted by the Customer and "Deliver" and "Delivered" shall be construed accordingly;
"Disaster"	means the occurrence of one or more events which, either separately or cumulatively, mean that the 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 “Disaster Period”);
"Disaster Recovery Services"	means the Services embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster, as detailed further in Call Off Schedule 8 (Business Continuity and Disaster Recovery);
"Disclosing Party"	means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient;
"Dispute"	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 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"	means 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 Call Off Schedule 11 (Dispute Resolution Procedure);
"Documentation"	means descriptions of the Services, 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"> 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 Services; c) is required by the Supplier in order to provide the Services d) has been or shall be generated for the purpose of providing the 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: <ul style="list-style-type: none"> 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;

"Environmental Policy"

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;

"Environmental Information Regulations or EIRs"

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;

"Estimated Year 1 Call Off Contract Charges"

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;

"Exit Plan"

means the exit plan described in paragraph 5 of Call Off Schedule 9 (Exit Management);

"Expedited Dispute Timetable"

means the timetable set out in paragraph 5 of Call Off Schedule 11 (Dispute Resolution Procedure);

"FOIA"

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;

"Force Majeure"

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 this 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 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;

"Force Majeure Notice"

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;

"Former Supplier"

means a supplier supplying the Services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

"Framework Agreement"

means the framework agreement between the Authority and the Supplier referred to in the Call Off Order Form;

"Framework Commencement Date"

means 04 September 2018;

"Framework Period"

means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;

"Framework Price(s)"	means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);
"Framework Schedule"	means a schedule to the Framework Agreement;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"Further Competition Procedure"	means the further competition procedure described in paragraph 3 of Framework Schedule 5 (Call Off Procedure);
"General Anti-Abuse Rule"	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;
"General Change in Law"	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;
"Good Industry Practice"	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;
"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;
"Government Procurement Card"	means the Government's preferred method of purchasing and payment for low value goods or services https://www.gov.uk/government/publications/government-procurement-card--2 ;
"GDPR"	means the General Data Protection Regulation (Regulation (EU) 2016/679)
"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"	has the meaning given to it in section 1159 of the Companies Act 2006;
"ICT Policy"	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;
"Impact Assessment"	has the meaning given to it in Clause 23.1.3 (Variation Procedure);
"Project Plan"	means the plan set out in the Call Off Schedule 4 (Project Plan);
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
"Insolvency Event"	means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable): <ul style="list-style-type: none"> 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 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;

"Intellectual Property Rights" or "IPR"	<p>means</p> <ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights having equivalent or similar effect in any country or jurisdiction;
"IPR Claim"	<p>means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the 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;</p>
"Key Performance Indicators" or "KPIs"	<p>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 (Services and Key Performance Indicators);</p>
"Key Personnel"	<p>means the individuals (if any) identified as such in the Call Off Order Form;</p>
"Key Role(s) "	<p>has the meaning given to it in Clause 27.1 (Key Personnel);</p>
"Key Sub-Contract"	<p>means each Sub-Contract with a Key Sub-Contractor;</p>
"Key Sub-Contractor"	<p>means any Sub-Contractor:</p> <ul style="list-style-type: none"> 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 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"	<p>means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;</p>

"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;
"LED"	means the Law Enforcement Directive (Directive (EU) 2016/680)
"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;
"Man Day"	means 8 Man Hours;
"Man Hours"	means the hours spent by the Supplier Personnel properly working on the provision of the 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 Project 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 Project Plan by which the Milestone must be Achieved;
"Milestone Payment"	means a payment identified in the Project Plan to be made 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: <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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 Services;
- b) operating expenditure relating to the provision of the Services including an analysis showing:
 - i) 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;
 - 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 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 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 Services placed by the Customer with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;
"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;
"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 " Parties " shall mean both of them;
"Personal Data"	has the meaning given to it in GDPR;
"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 " Process " and " Processed " shall be interpreted accordingly;
"Prohibited Act"	means any of the following: <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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;

"Protective Measures"

appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

"Processor"

has the meaning given in the GDPR;

"Processor Personnel"

all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any sub-contractor of the Processor

"Personal Data Breach"

has the meaning given in the GDPR

"Recipient"	means the Party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party;);
"Rectification Plan"	means the rectification plan pursuant to the Rectification Plan Process;
"Rectification Plan Process"	means the process set out in Clause 39.2 (Rectification Plan Process);
"Registers"	has the meaning given to in Call Off Schedule 9 (Exit Management);
"Regulations"	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
"Reimbursable Expenses"	has the meaning given to it in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
"Related Supplier"	means any person who provides Services to the Customer which are related to the Services from time to time;
"Relevant Conviction"	means a Conviction that is relevant to the nature of the Services to be provided or as specified in the Call Off Order Form;
"Relevant Requirements"	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;
"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Relief Notice"	has the meaning given to it in Clause 40.2.2 (Supplier Relief Due to Customer Cause);
"Replacement Services"	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;
"Replacement Sub-Contractor"	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);
"Replacement Supplier"	means any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services 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 Services or an apparent request for such information under the FOIA or the EIRs;
"Restricted Countries"	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;
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph 4 of Call Off Schedule 7 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 4 of Call Off Schedule 7 (Security) and as updated from time to time;
"Security Policy"	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;
"Security Policy Framework"	the current HMG Security Policy Framework that can be found at https://www.gov.uk/government/publications/security-policy-framework ;
"Service Transfer"	means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
"Service Transfer Date"	means the date of a Service Transfer;
"Services"	means the services to be provided by the Supplier to the Customer as referred to in Annex 1 of Call Off Schedule 2 (Services);
"Sites"	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"> a) the Services are (or are to be) provided; or b) the Supplier manages, organises or otherwise directs the provision or the use of the Services.
"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;
"Staffing Information"	has the meaning give to it in Call Off Schedule 10 (Staff Transfer);
"Standards"	means any: <ul style="list-style-type: none"> 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;

- b) standards detailed in the specification in Framework Schedule 2 (Services and Key Performance Indicators);
- c) standards detailed by the Customer in the Call Off Order Form or agreed between the Parties from time to time;
- d) relevant Government codes of practice and guidance applicable from time to time.

"Statement of Requirements"

means a statement issued by the Customer detailing its requirements in respect of Services issued in accordance with the Call Off Procedure;

"Sub-Contract"

means any contract or agreement (or proposed contract or agreement) pursuant to which a third party:

- a) provides the Services (or any part of them);
- b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or
- c) is responsible for the management, direction or control of the provision of the Services (or any part of them);

"Sub-Contractor"

means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;

"Sub-processor"

any third party appointed to process Personal Data on behalf of the Supplier related to this agreement

"Supplier"

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

"Supplier Assets"

means all assets and rights used by the Supplier to provide the Services 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,

"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 this Call Off Contract;
"Supplier Non-Performance"	has the meaning given to it in Clause 40.1 (Supplier Relief Due to Customer Cause);
"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 Profit"	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;
"Supplier Profit Margin"	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;
"Supplier Representative"	means the representative appointed by the Supplier named in the Call Off Order Form;
"Supplier's Confidential Information"	means <ul style="list-style-type: none"> 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.
"Template Call Off Order Form"	means the template Call Off Order Form in Annex 1 of Framework Schedule 4 (Template Call Off Order Form and Template Call Off Terms);
"Template Call Off Terms"	means the template terms and conditions in Annex 2 of Framework Schedule 4 (Template Call Off Order Form and Template Call Off Terms);
"Tender"	means the tender submitted by the Supplier to the Authority, a copy of which is annexed or referred to in Framework Schedule 21;

"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 which is or will be used by the Supplier for the purpose of providing the Services;
"Transferring Customer Employees"	those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;
"Transferring Former Supplier Employees"	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;
"Transferring Supplier Employees"	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.
"Transparency Reports"	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;
"Undelivered Services"	has the meaning given to it in Clause 8.4.1 (Services);
"Undisputed Sums Time Period"	has the meaning given to it Clause 43.1.1 (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 to it in Clause 23.1 (Variation Procedure);
"Variation Form"	means the form set out in Call Off Schedule 12 (Variation Form);
"Variation Procedure"	means the procedure set out in Clause 23.1 (Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Worker"	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) https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees applies in respect of the Services;
"Working Day"	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: THE SERVICES

1. PURPOSE

1.1 The College of Policing is seeking to procure the expertise of an external provider with experience of organisational change and the policing landscape. The work will assist and support the College to complete detailed design and implementation of a new Target Operating Model (TOM).

1.2 The preference would be for a provider whose team were already Home Office security cleared (to the level stipulated at 15.1) to enable work to proceed quickly without delay. Work will need to be conducted primarily under remote working arrangements but may involve some travel to the College's London office and possibly other College sites (as listed at 18.2).

2. BACKGROUND TO THE CONTRACTING AUTHORITY

2.1 The College of Policing supports professional development by sharing and developing evidence-based knowledge and good practice and setting the standards in policing. Set requirements, accredit, quality assure and help everyone in policing to learn, develop and achieve their potential. The College also promotes diversity and wellbeing, and help to nurture and select leaders at every level. Making it easy to access knowledge, disseminate good practice, and make sure that the best ideas are shared. Identify, coordinate, monitor and develop good practice, standards, guidance and content based on practical evidence and research.

2.2 Further information is available on the College website: www.college.police.uk

3. BACKGROUND AND OVERVIEW OF REQUIREMENT

3.1 In 2018 the College undertook work to refresh and clarify its core purpose and priorities. Feedback from across policing and from our staff told us that the college needed to change to be recognised as a professional body which understands the challenges faced by officers and staff. If our products and services are not seen to be relevant, they will fail to be used and to make a difference, reduce crime and keep people safe. The College was in danger of trying to be 'everything to everyone' and priorities need to be set and communicated more clearly in order to deliver. Our structure and processes can be bureaucratic and don't encourage collaboration, innovation or agility.

3.2 In response to these challenges the College developed a 'Plan on page' clarifying its purpose and principal functions (Annex 1). Our Plan on a page sets out who the College is and what it does, focussing on sharing knowledge and good practice, setting standards and supporting professional development.

3.3 The Transforming our College programme was set up to help us bring this Plan on a page to life. Our vision for Transforming our College is to modernise the organisation so it is better able to help everyone in policing to make a difference, reduce crime and keep people safe. By transforming the way it works, the college will strengthen our connection with policing. The college will set and clearly communicate our priorities, and reform our structure and processes to reduce bureaucracy and encourage collaboration, innovation and agility.

3.4 Being more connected to operational policing will enable us to be more responsive to the challenges they face. The college will build on the high quality products and services that they already develop, to not only drive improvements across the service, but also to act as a reliable source of practical knowledge, information and advice to help the policing workforce in their day to day roles.

3.5 The college will be more in touch with operational policing, demonstrating in the way they work, that they understand the complex demands and pressures the police service face in their day to day work. This will help us to gain credibility and the trust of the police service and will help make the College of Policing a relevant and valued source of information and support.

3.6 Our programme will develop and embed a robust process for defining organisational priorities, together with new capabilities to scope, plan, deliver and review our products and services to ensure they meet those priorities.

3.7 The College will introduce new ways of working so they are more collaborative, more coordinated and have a clear overview of all of our work and how they are allocating our resources.

3.8 The College will seek digital solutions to help us improve resource allocation across the organisation, and to track the usage and delivery of our products and services. The College will also use digital technology to support us in managing and developing the skills and capabilities of our staff, to streamline decision making and to enable collaboration, innovation and agility across our ways of working.

3.9 The College will work more proactively – building stronger relationships with our stakeholders to involve them in shaping our products and services. They will make smarter use of data and information to help provide policing with an insight into the challenges they face in the future and how best to deal with them.

Organisational Design

3.10 In June 2019, the programme initiated an organisational design project to inform development of a new operating model that would help transform the way they work to deliver on this vision. The project recommended that the College move to a capability-led model, requiring leaders and employees to work within a matrix structure to deliver externally-facing products and services (Annex 2). The model features several key changes, such as:

- The majority of external facing services provided in project-based formats;
- Heavily dependent on mature prioritisation and project scoping, planning and delivery processes;
- Establishes collective capabilities for designing and delivering learning, guidance, skills and knowledge transfer products and services;
- Requires accessibility and transparency of resource allocation according to College priorities;

- Requires programme delivery to be professionalised and driven rather than add bureaucracy to delivery;
- Recognises technology/digital platform development and delivery as a critical frontline capability.

3.11 The Transforming our College programme is taking forward delivery of this model. The College have structured further design and implementation work around four workstreams (WS):

- WS 1 focuses on prioritisation and strategic planning;
- WS 2 focuses how the College should manage our resources, projects and programmes;
- WS 3 focuses on defining and designing our capabilities;
- WS 4 focuses on changes to culture and behaviours.

3.12 This work is currently being led by small teams within the College. A summary of project outcomes across these workstreams is attached at Annex 3. At portfolio level are other internal change initiatives interdependent with the programme. These include: roll out of a new website; implementation of Office 365; and introduction of a new Enterprise Resource Planning system. This ERP implementation will be an off-the-shelf adoption of the Home Office METIS system, creating a need for processes to adapt to its architecture.

3.13 The primary purpose of the Transforming our College programme is not to make financial savings, the organisational design and ways of working are based on our requirement for a scalable model that enables the College to be adaptable, agile and responsive to the needs of policing. Project 1 in the programme will determine core organisational priorities and determine 'fixed' and 'flexible' demand and the resources required to deliver them. The future organisation will be structured and sized to enable delivery of an agreed portfolio of work, reflecting these priorities.

3.14 The final organisational size of the College is not yet known as it also depends upon future budget settlements and the College's ability to attract additional income. The programme is expected to deliver efficiencies in terms of improved outputs and business processes. These improvements will be measured through benefits realisation (see Annex 6).

3.15 During the recent Covid-19 outbreak the College has adapted to deliver new products and services for policing through remote working, such as a new online assessment process. Through this crisis our staff have embraced the challenge and delivered complex programmes of work in short timescales, working across teams, maximising the benefits offered by a digital environment. This is the essence of what is being advocated for the future College. The Transforming our College programme will deliver a model that enables agile and innovative ways of working to become a hallmark of our organisation.

3.16 Extensive stakeholder consultation across policing has already taken place as part of setting the College's future direction and do not see further engagement as a key part of this delivery partner requirement. However, the National Police Chiefs' Council has initiated a project to design its own new operating model. This is a key dependency for workstream 1 within Transforming our College.

What is Needed

3.17 The College is looking for a supplier with extensive experience of working alongside clients in implementing/delivering public sector organisational change, and who can bring additional capability and capacity to successfully deliver our transformation programme, building on and releasing the value of design work already carried out. A budget to support detailed design, delivery and implementation of a final TOM is available for this work, ring fenced to the current financial year. Our requirement includes a focus on knowledge transfer and capacity building. This will ensure that a capability to internally manage ongoing change and continuous improvement is developed within the College.

4. SCOPE OF REQUIREMENT

4.1 The requirement is to support the College of Policing to complete the detailed design and delivery of its full target operating model and its delivery and implementation. This requirement should be delivered at pace within a timescale to the end of March 2021.

4.2 The requirement covers the following areas:

Strategic advice and input at programme and portfolio level to support design and delivery planning. This includes support in assuring and validating the programme blueprint for the future organisation and a tranced programme delivery plan. At portfolio level, strategic planning support is required in identifying interdependencies and scheduling delivery of organisation-wide change initiatives including Transforming our College, Office 365, ERP replacement and the new website. This should ensure that these changes are introduced with effective governance in place to provide a clear view of dependencies, and that the rate of change introduction across the workforce allows the College to optimise the value of improvements to capabilities and service delivery.

Business analysts to support co-design and co-delivery of College-led change activity. To provide additional capacity and expertise including critical challenge and quality assurance. To support design, build and delivery of key project outputs ensuring outcomes meet user needs, are aligned to the programme blueprint and implementation of change.

Design and delivery of specific aspects of organisational build. Within the boundary of the 'To Be' capability-led model, lead the detailed design of core capabilities starting with design and set up of a corporate development capability; then a product design, delivery, development and assurance capability. Once completed, support detailed design of the final organisational structure, key roles and plan to manage staff transition to new structures.

5. THE REQUIREMENT

5.1 The College requires expertise in public sector organisational change to provide critical support to delivery across the programme. Further detail on the requirement is set out below.

Strategic advice and input at programme and portfolio level to support design and delivery planning:

- Review, validate and finalise the programme blueprint articulating the 'To Be' state of the College's final target operating model. Identify any actions necessary to strengthen the blueprint and clearly define future operations, and any further projects required to deliver the programme outcomes and benefits (a programme benefit map is attached as Annex 6).
- Design and establish a portfolio management framework to coordinate and support effective management of the College's future operations. This includes setup of processes for organisational governance, management controls, planning, prioritisation, scheduling, analysis and reporting. Planning and estimating of capacity and resources across the organisation.
- Review, validate and finalise the overall programme delivery plan to support design, transition and delivery of the final target operating model, including identifying tranches.
- Develop and embed tools and business processes which support delivery of the College's change portfolio, by enabling outcome dependencies and conflicts to be identified and resolved.

Business analysts to support co-design and co-delivery of College-led change activity across our four workstreams:

- Provide additional capacity, capability and quality assurance – working alongside College teams to ensure solutions developed meet business needs within identified timescales.
- Support the preparation of relevant project documentation including project work plans, workforce communications and wider reporting requirements.
- Impact and benefit analysis – ensuring that business requirements are fully developed, agreed and understood, and that business changes represent the 'best value soonest' solution to priority business needs. This will require balancing of benefits against the pain of change and identifying and working to avoid/minimise dis-benefits. This should build on the programme's existing benefits mapping (see Annex 6).
- Work with College business change managers and wider workforce to manage and embed delivery of change, track and realise benefits as set out in the benefits realisation plan.
- Knowledge transfer. Develop best practice guidance/methodologies capable of being shared across the organisation to facilitate continuous improvement (as part of a knowledge transfer and capacity building plan (see 10.1)).

Design and delivery of specific aspects of organisational build. Key responsibilities will include:

- Design and set up the College's Corporate Development Capability including people, skills and competencies; processes; information and enabling technologies; (building on outcomes from WS1 and WS2). This capability should be resourced through defining skills requirements and roles, then redeploying existing internal staff, with skills gaps addressed through learning and development. There may be limited scope for external recruitment by exception.
- Design improved business connectivity across product design, development, delivery and assurance

functions including setting out workflow and interconnectivity across these areas (and wider business) and any new/skills requirements to support collaborative, agile delivery of priority programmes.

- Detailed design and delivery of final organisational structure, including roles, accountabilities, sizing and transition plan, working collaboratively with the College HR teams.

6. KEY DELIVERABLES AND MILESTONES

6.1 Workstream/project deliverables and timeframes are set out in Annex 3.

7. MANAGEMENT INFORMATION/REPORTING

7.1 For the duration of the contract, the provider will be required to report to the Programme Director of the Transforming our College Programme, the Programme Manager, SRO and programme board using predefined reporting templates at regular checkpoints/meetings as agreed with the College.

7.2 In addition to regular reporting – review points will be built into the contract:

- Review point 1 will take place following completion of programme blueprint and programme delivery plan.
- Subsequent review points will take place at points to be defined by the programme blueprint and delivery plan of key identified deliverables. This should include at least one review point to take place following establishment of key capabilities in corporate development, product design, development and delivery. At this point the College will take stock of progress to understand next steps for change.

8. CONTINUOUS IMPROVEMENT

8.1 There is a specific requirement to ensure a capability to deliver ongoing improvement is designed and established as part of the College's corporate development function. Wider benefits and lessons learned should be set out for the Executive team at the conclusion of the contract.

9. SUSTAINABILITY

9.1 All bids should include a knowledge transfer and capacity building plan to set out how the provider will deliver knowledge transfer into the College over the duration of the contract. Specifically this plan needs to detail how the supplier will ensure Portfolio, Programme and Project Management knowledge transfer will be achieved, as well as embedding the skills for organisational/capability design and ongoing development. The plan should set out how supplier resources are to be integrated within College of Policing teams. This will be important to building internal College capability and capacity to sustain successful management and delivery of change over the long term without reliance on external support.

10. QUALITY

10.1 The contractual outputs should be fit for purpose and of sufficient quality to fully satisfy the specifics set out in this statement of requirements. Where appropriate, agents of the potential provider should possess industry-recognised qualifications in areas that reasonably require a level of specialist expertise.

11. PRICE

11.1 Suppliers are expected to provide an overall cost of services as part of the bidding process.

11.2 Following development of the programme blueprint and delivery plan – a detailed breakdown of the overall cost of services will be required.

11.3 The overall cost must include all costs associated with the supply of services and any travel to the College's London site or other sites on the College estate (see 18.2).

11.4 The budget available to complete this work is a capped cost of £700,000.00 (ex VAT) although it's hoped that the full amount will not be required to complete this piece of work.

11.5 Please note that the pricing will be assessed on a blended rate. 80% of the weighting is allocated to the capped cost and 20% the time and materials aspect. Total spend should not exceed £700,000.00 (ex VAT).

11.6 Prices are to be submitted via the e-Sourcing Suite Appendix E excluding VAT.

12. STAFF AND CUSTOMER SERVICE

12.1 The College requires the potential supplier to provide sufficient level of resource throughout the duration of the Contract in order to consistently deliver a quality service.

12.2 All staff assigned to the Contract shall have the relevant qualifications and experience to deliver the Contract and industry-recognised accreditation as appropriate.

12.3 The potential supplier shall ensure that staff understand the College's vision, purpose and priorities and will provide excellent customer service to the College throughout the duration of the Contract.

13. SERVICE LEVELS AND PERFORMANCE

13.1 The College will measure the supplier's delivery by monitoring progress against agreed milestone dates and contribution towards deliverables set out in Annex 3, the knowledge transfer and capacity building plan, and deliverables to be contained in the programme delivery plan (to be produced in the first three weeks).

13.2 In addition, the College will track delivery by monitoring for evidence that outputs and capabilities contained in the programme delivery plan are successfully embedded through business change, and are contributing towards benefits set out in the benefits realisation plan.

13.3 In relation specifically to knowledge transfer and capacity building, the College will measure supplier delivery by monitoring evidence of improving College capability to independently apply and sustain change.

13.4 With regards to end of contract exit or early exit, the potential provider will hand over all information gathered to the College of Policing. Robust project management must be used throughout the programme to standards agreed with the College.

13.5 The potential supplier will be expected to provide a team with the following key capabilities: Expertise relevant to the requirements set out at section 5 and

extensive experience of working alongside a client in implementing/delivering public sector organisational change.

13.6 The College of Policing will commit resources to support the programme as set out in the programme structure attached at Annex 4.

14. SECURITY AND CONFIDENTIALITY REQUIREMENTS

14.1 Subject to a risk assessment from the College, the potential provider's staff who work on this contract may need to hold or be willing to undergo vetting to Non Police Personnel Vetting Level 2 through the College of Policing's vetting process before the contract award.

14.2 The content of this Statement of Requirements, information obtained in the course of the Contract and the results/deliverables of the Contract are strictly confidential. The potential provider will refrain from sharing any information pertaining to the Contract with any third parties without the express written consent of the College.

15. PAYMENT INVOICING

15.1 Invoices must be submitted quoting the valid Purchase Order and following instructions on the Purchase Order. Invoices can be submitted electronically to: payables@college.pnn.police.uk

15.2 Payment can only be made following satisfactory delivery of pre-agreed certified products and deliverables as stated in section 6 and Annex 3.

15.3 Before payment can be considered, invoices must include a detailed elemental breakdown of work completed and the associated costs.

16. CONTRACT MANAGEMENT

16.1 Attendance at Contract Review meetings shall be at the supplier's own expense. However, given the current Covid-19 working environment (all College staff are working from home) it is expected that initially these meetings will be held via video/audio-conferencing technology.

17. LOCATION - DELIVERY APPROACH

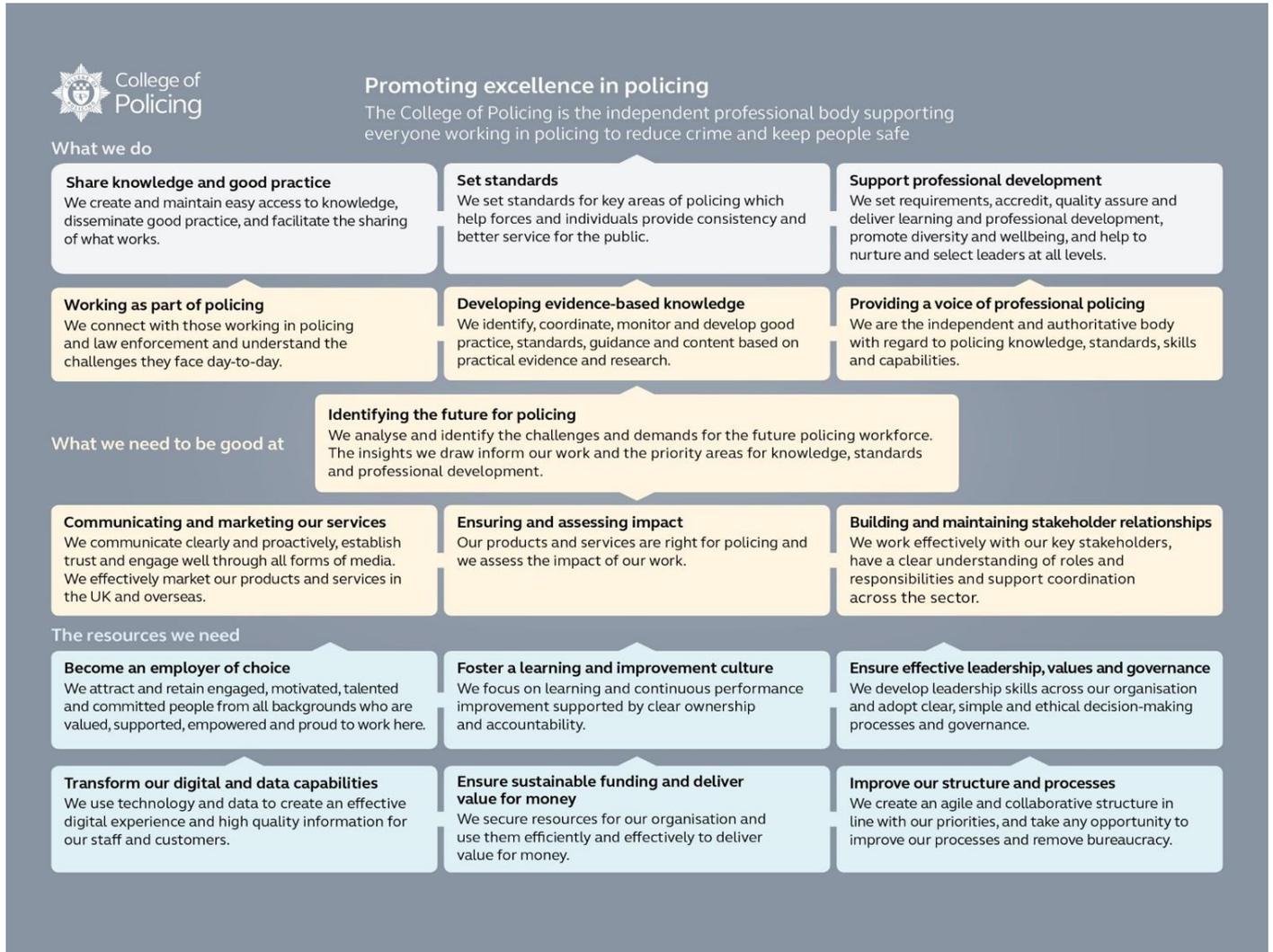
17.1 Potential suppliers will also need to accommodate and include methodologies for delivering solutions that will work in the current Covid-19 working environment where currently all College staff are working from home. Additionally potential suppliers must have the ability to embed lessons learned from working at home / the remote working environment into any long term model.

17.2 Work will need to be conducted primarily under remote working arrangements but may involve some travel to the College's London office and possibly other College sites at Ryton on Dunsmore, Harrogate (North Yorkshire) and Harperley Hall (County Durham). As stated at 12.3 any travel costs should be included in the overall cost.

17.3 Appropriate Social Distancing measures will be in place during any site visits. Details will be provided prior to arrival.

Please see attached the annexes to the Statement of Requirements. These are also supplied as standalone documents.

Annex 1: Plan on page



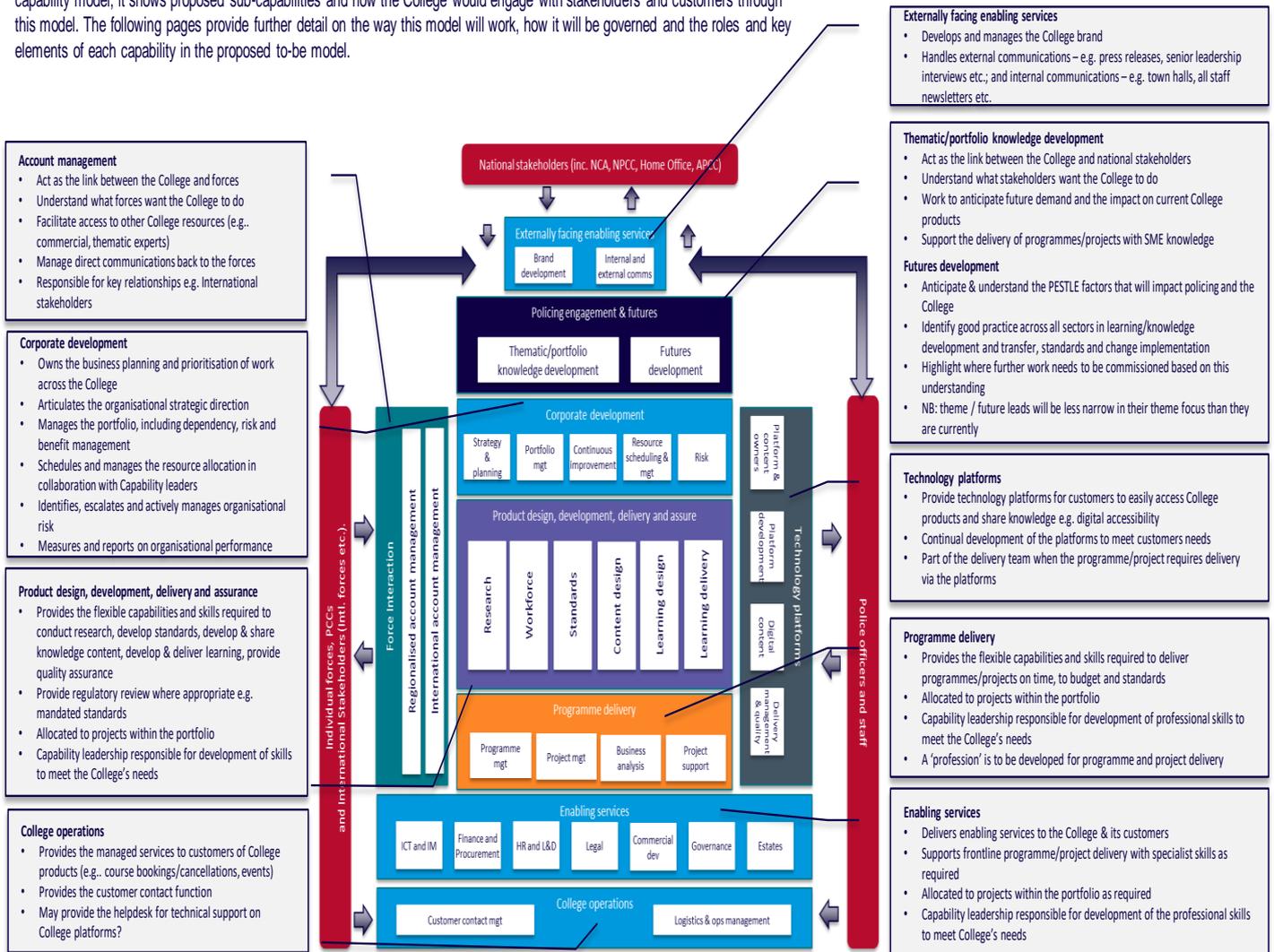
Annex 2: Capability Led Model



Transforming
our College

Future organisational design

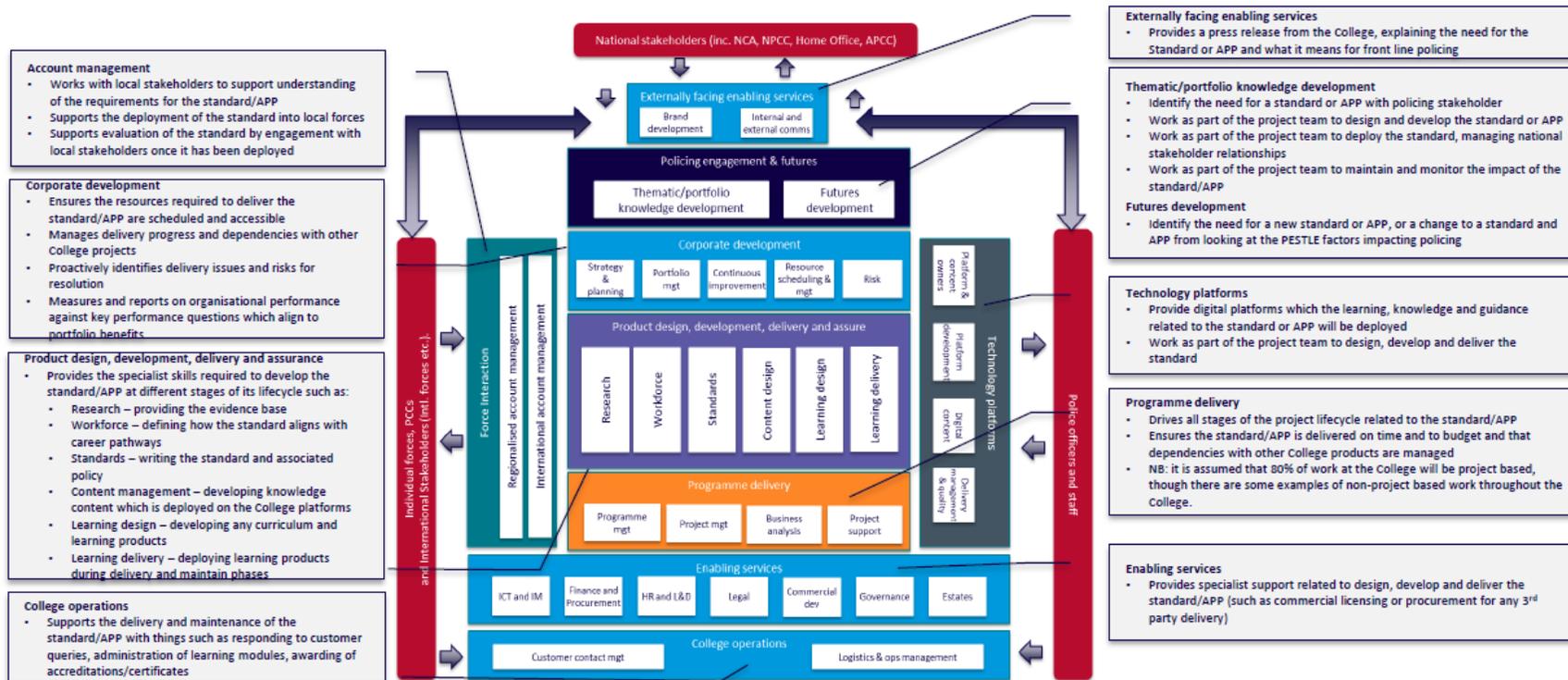
The diagram below summarises the capabilities within the future organisational design. This diagram is an iteration of the initial capability model, it shows proposed sub-capabilities and how the College would engage with stakeholders and customers through this model. The following pages provide further detail on the way this model will work, how it will be governed and the roles and key elements of each capability in the proposed to-be model.





How the design will enable agile delivery of programmes/projects

The majority of work delivered by the College can be considered as a 'project'. For example, setting a standard or APP would follow a project lifecycle of 1) plan the project 2) design the standard 3) develop the standard and associated products 4) deliver the standard with the Police Service 5) maintain and monitor the impact of the standard 6) then refresh or close down the standard. The diagram below shows how capabilities contribute to the project lifecycle. A number of capabilities will not always be tasked according to a project's lifecycle, as indicated.





Future organisational model: benefits

Employees

- Opportunity to develop broader career pathways and recognise where wider skills already exist beyond directorates e.g. learning design and development in the policing standards team.
- Clear accountabilities for capability development.
- Opportunity to upskill Tier 2 leadership to carry responsibility for end to end project delivery and outcomes (from a team of mixed capabilities across the College).
- Tighter support on workload levels with oversight of resource capacity, work underway and incoming demand (dependent on centralised demand prioritisation and effective project scoping).
- Admin support can be allocated according specific project and programme requirements to support sustainability and consistency in supply.
- Oversight of capability and capacity is possible at all times – pulled together and managed by capability leads and the information is then used for real time resource allocation and demand planning.

Forces

- Clear accountabilities for project and programme delivery and outcomes, with ownership at Exec level for 'sub-portfolios' (groups) of these.
- Accessibility of external digital platform design and delivery to the full project scope (dependent on effective process to scope and resource pieces of work, end to end).
- Recognises the importance of centralising relationships with Forces by providing a senior level ownership above each.

NPCC, Home Office and HMIC

- Opportunity to inform future business planning with outcomes of the horizon scanning capability.
- Transparency over total demand and work in progress across the College (dependent on effective process to channel and prioritise demand for both frontline projects and horizon scanning work through a centralised mechanism).

The Future College

- Scalability and flexibility of resource pools to support future funding and demand changes.
- Will support the breakdown of silos by encouraging cross-College working with collective outcomes.
- Recognition of critical profession in project skills, including customer experience, PMO, project mgt etc.
- Individual and organisational targets linked to project performance – i.e. outcomes delivered by each project/programme.

Annex 3: Requirements and WS summaries

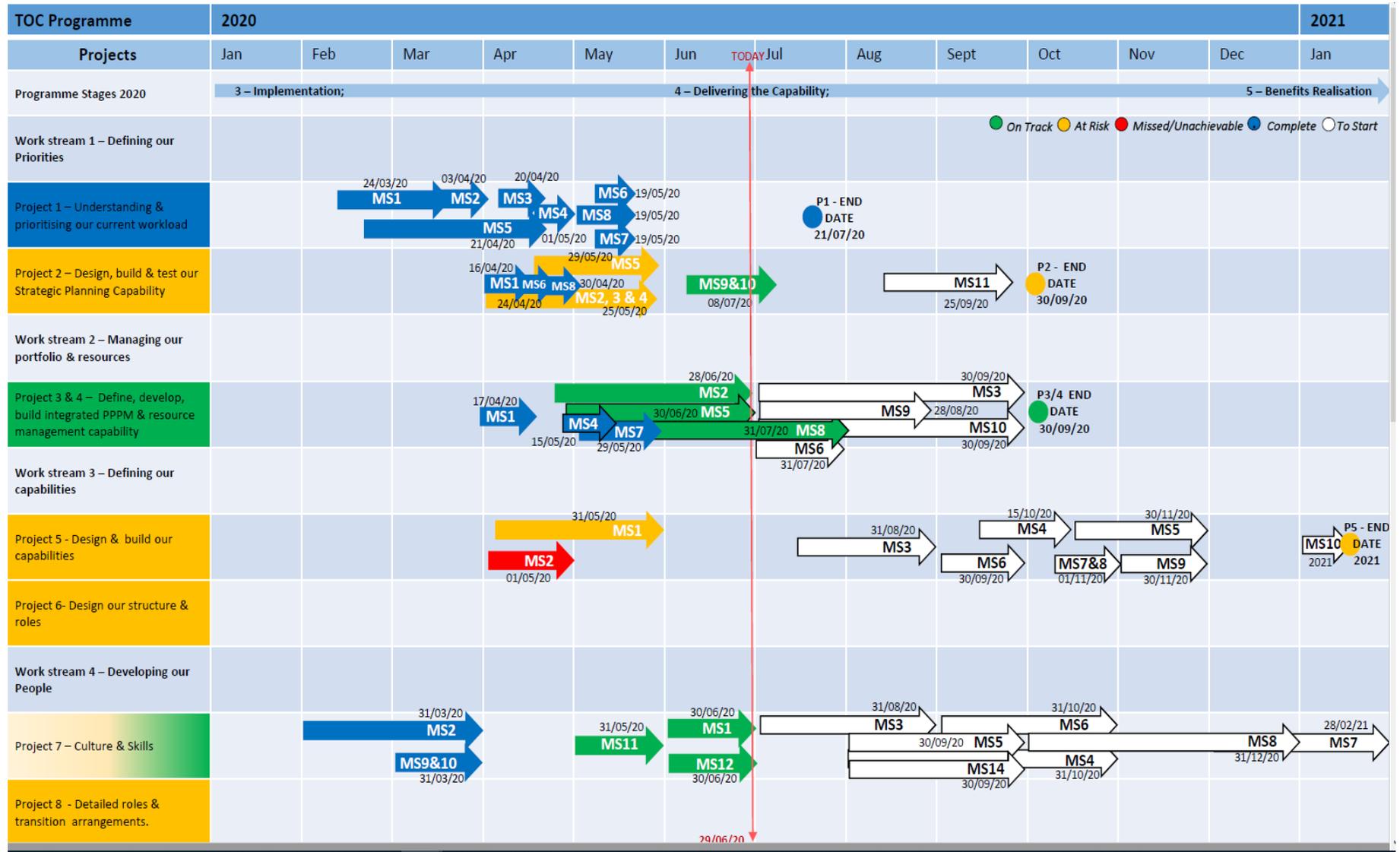
Table 1: External support requirements summary

Areas of support	Support required/key deliverables and timescales
<p>1. Strategic support at programme and portfolio level</p>	<p>Strategic advice and input to complete detailed design and delivery of the College's final TOM including responsibility for successful transition and implementation arrangements. <i>Ongoing through to end of implementation phase.</i></p> <ul style="list-style-type: none"> Assure, validate and finalise programme blueprint setting out the 'To Be' state of the College's final TOM. <i>To be completed within first three weeks.</i> Review/ finalise overall delivery plan to support design, transition and implementation of final TOM. Setting out programme wide delivery schedule/ key activity, milestones, resourcing requirements and to identify subsequent review points. <i>To be completed within the first three weeks.</i> Design and establish a new capability at portfolio level to enable effective ongoing management of the full breadth of College change activity. To include setting up processes for organisational governance, management controls, planning, prioritisation, scheduling and resourcing of College priority programmes and BAU delivery. <i>Initiated at start of contract - suppliers to indicate expected delivery period as part of bids.</i>
<p>2. Support to co-design and co-deliver College led change activity</p>	<p>Business analyst support to each of the work streams within the programme to:</p> <ul style="list-style-type: none"> Provide additional capacity, expertise, critical challenge and quality assurance. To support design, build and delivery of key project outputs ensuring outcomes meet user needs and are aligned to programme blueprint. To help manage transition, implement and embed change. <p><i>Ongoing through to end of implementation phase. Breakdown of costs to be provided following finalisation of blue print and detailed delivery plan.</i></p>
<p>3. External supplier led organisational design and delivery outputs</p>	<p>To lead on design and delivery of specific areas of organisational build:</p> <ul style="list-style-type: none"> Design and set up the College's Corporate Development function including people, skills and competencies; processes; information and enabling technologies. <i>As a priority and within 10 weeks.</i> Design improved business connectivity across product design, development, delivery and assurance functions including setting out workflow and interconnectivity across these areas (and wider business) and any new capability/ skills requirements to support collaborative, agile delivery of priority programmes. Detailed design of final organisational structure, including roles, accountabilities, sizing and transition plan working collaboratively with the College HR team. <p><i>Completed by early 2021. Suppliers to provide detailed delivery schedule/milestones/costing following completion of programme blueprint and delivery plan. Work to initiate following agreement of detailed delivery schedule.</i></p>

Annex 4: Implementation Structure

Redacted

Annex 5: Implementation Plan



WORKSTREAM 1				WORKSTREAM 2			
PROJECT 1		PROJECT 2		PROJECT 3 AND 4			
MS 1	Agree and test definition of fixed/core deliverables	MS 1	Paper on proposed scoping approach for digital, leadership and diversity signed off by SMT	MS 1	Validate agreed scope and approach with programme leads		
MS 2	Hold 9 x Tier 2 121s to review the proposed "fixed" deliverables	MS 2	Digital - document outlining our understanding of issues, current work and where there are gaps/opportunities to do more - drafted	MS 2	Definition of Portfolio Management agreed		
MS 3	Draft shortlist of proposed "fixed" deliverables	MS 3	Leadership - document outlining our understanding of issues, current work and where there are gaps/opportunities to do more drafted	MS 3	Draft of recommendations for options selection		
MS 4	Shortlist of "fixed" deliverables agreed	MS 4	Diversity - document outlining our understanding of issues, current work and where there are gaps/opportunities to do more drafted	MS 4	Implementation Plan signed off		
MS 5	Develop resource estimate template	MS 5	Documents outlining our understanding of issues, current work and where there are gaps/opportunities to do more approved by relevant business units	MS 5	Definition agreed		
MS 6	Resource Estimates Finalised	MS 6	Final revisions to scoping manual	MS 6	Draft of recommendations for options selection		
MS 7	Full Catalogue of fixed deliverables finalised and agreed by SMT	MS 7	Hold training, challenge and practice session on scoping process for projects leads (COVID-19 dependent)	MS 7	Implementation Plan signed off		
MS 8	Fixed catalogue of deliverables handed over to Project 3	MS 8	Scoping process agreed with senior sponsor for testing (linked to perennial challenges board)	MS 8	Definition agreed		
		MS 9	All design sessions for designing scanning stage of new capability completed	MS 9	Draft of recommendations for options selection		
		MS 10	Design for Scanning Stage agreed with Senior Sponsor	MS 10	Implementation Plan signed off		
		MS 11	Model for decision stage agreed with senior sponsor				
WORKSTREAM 3				WORKSTREAM 4			
PROJECT 5		PROJECT 6		PROJECT 7		PROJECT 8	
MS 1	Develop & circulate draft methodology for capability design			MS 1	Final set of core values and agreed leadership behaviours to Programme Board and Executive for sign-off		
MS 2	Complete 121 discussions and group calls			MS 2	Use Tone of Voice workshops to introduce the concept of core values to the workforce		
MS 3	Capability designs to SMT & College Board for approval			MS 3	Launch core values (with leadership behaviours) - team brief, college knowledge, CEO vlog, intranet - initial comms activities		
MS 4	Complete skills gap analysis, working with HR & capability leads			MS 4	All-staff workshops to communicate our core values and supporting narrative delivered		
MS 5	Recommend blueprints to SMT & College Board for approval			MS 5	Develop proposals to implement values-based recruitment at the College based on findings based on research carried out		
MS 6	Complete 121 discussions and group calls			MS 6	New recruitment materials that incorporate core values, POP and TOC developed		
MS 7	Produce detailed description of Corporate Development capability & any supporting sub-capabilities			MS 7	Pilot of new values-based recruitment arrangements and evaluation report produced		
MS 8	Recommend capability design to SMT & College Board for approval			MS 8	New corporate induction materials incorporating our core values and behaviours (Induction pack/day materials) produced		Key milestones to be baselined once scope agreed at July TOC Programme Board
MS 9	Complete skills gap analysis, working with HR & capability leads			MS 9	Develop leadership objective and associated behaviours		
MS 10	Recommend blueprints to SMT & College Board for approval			MS 10	Incorporate leadership objective into new 2020/21 PDR documentation		
				MS 11	Research to identify effective leadership behaviours in matrix managed organisations completed		
				MS 12	Final set of leadership behaviours for signoff at Programme Board and Executive (along with core values)		
				MS 13	Leadership audit complete		
				MS 14	Costed Leadership Development Plan to Programme Board for sign-off		

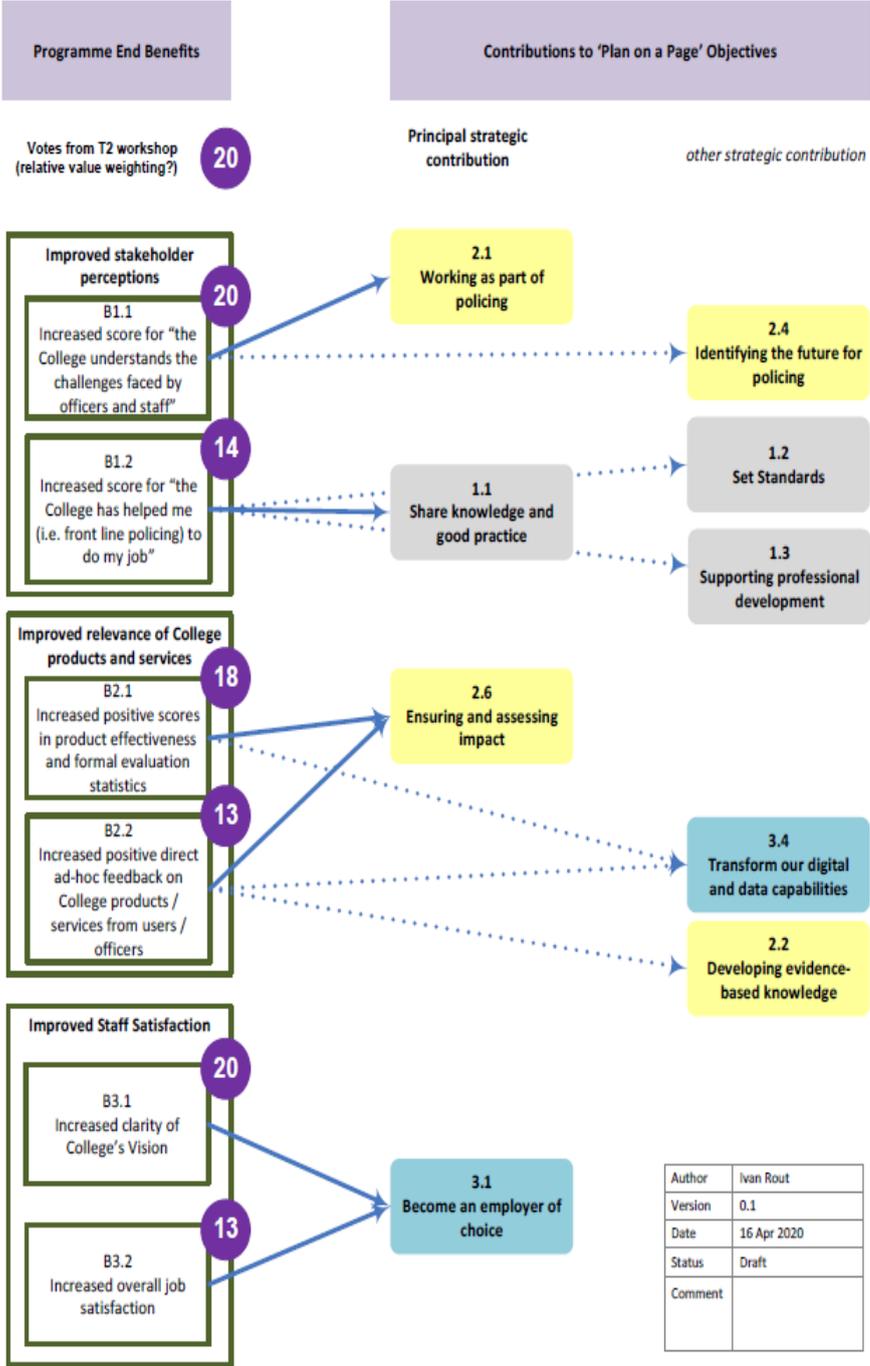
Key milestones to be developed with external delivery partner

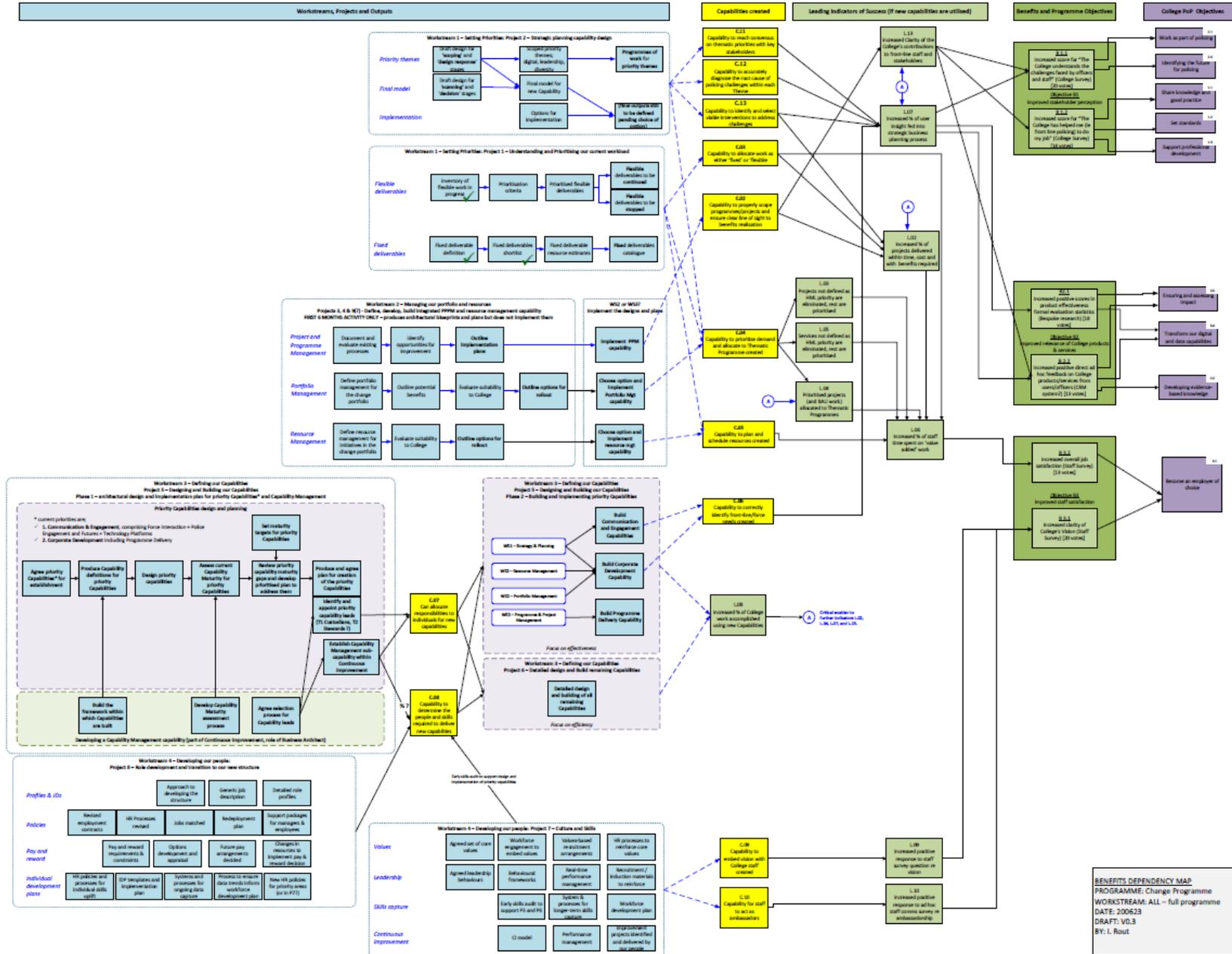
Key milestones to be baselined once scope agreed at July TOC Programme Board

Annex 6: Benefits Maps



End Benefits and Contributions





BENEFITS DEPENDENCY MAP
PROGRAMME: Change Programme
WORKSTREAM: ALL - full programme
DATE: 200623
DRAFT: VOL3
BY: I. Rout

Leading Indicators of Success (if new capabilities are utilised)

Benefits and Programme Objectives

INTERMEDIATE BENEFITS
(show that change is happening and things are getting better)

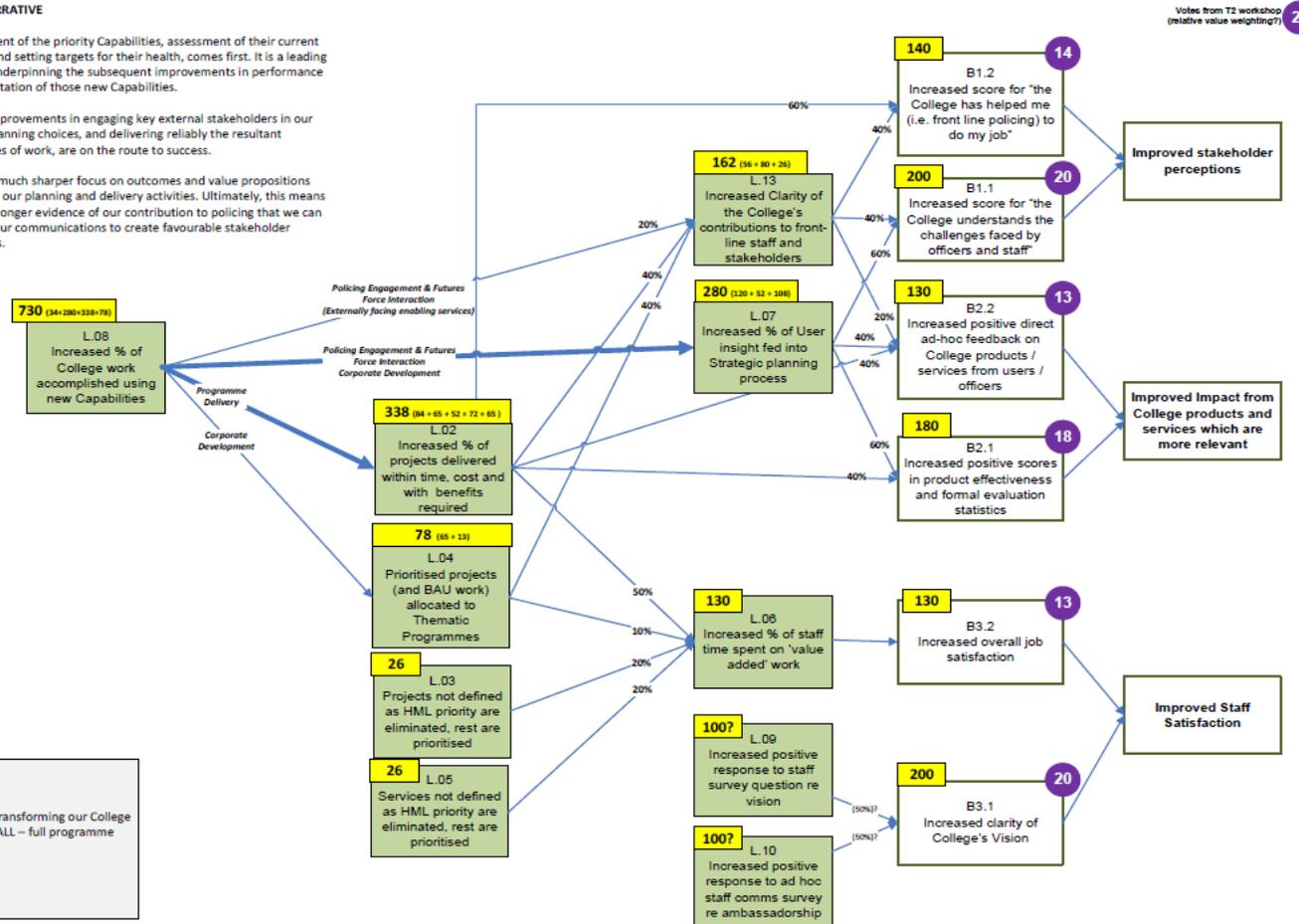
END BENEFITS
(demonstrate the ultimate success of the programme)

DRAFT NARRATIVE

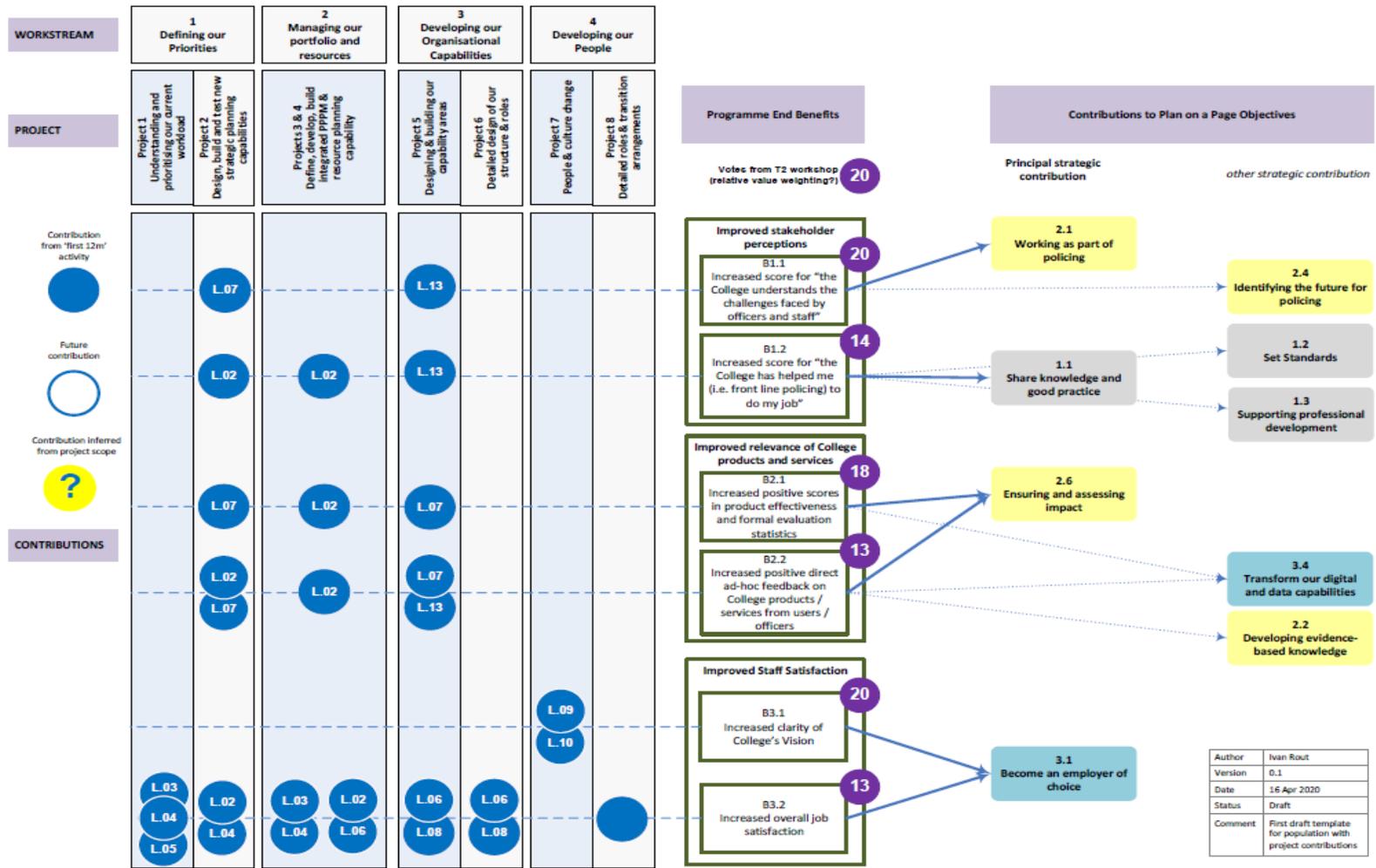
Establishment of the priority Capabilities, assessment of their current maturity, and setting targets for their health, comes first. It is a leading indicator underpinning the subsequent improvements in performance from exploitation of those new Capabilities.

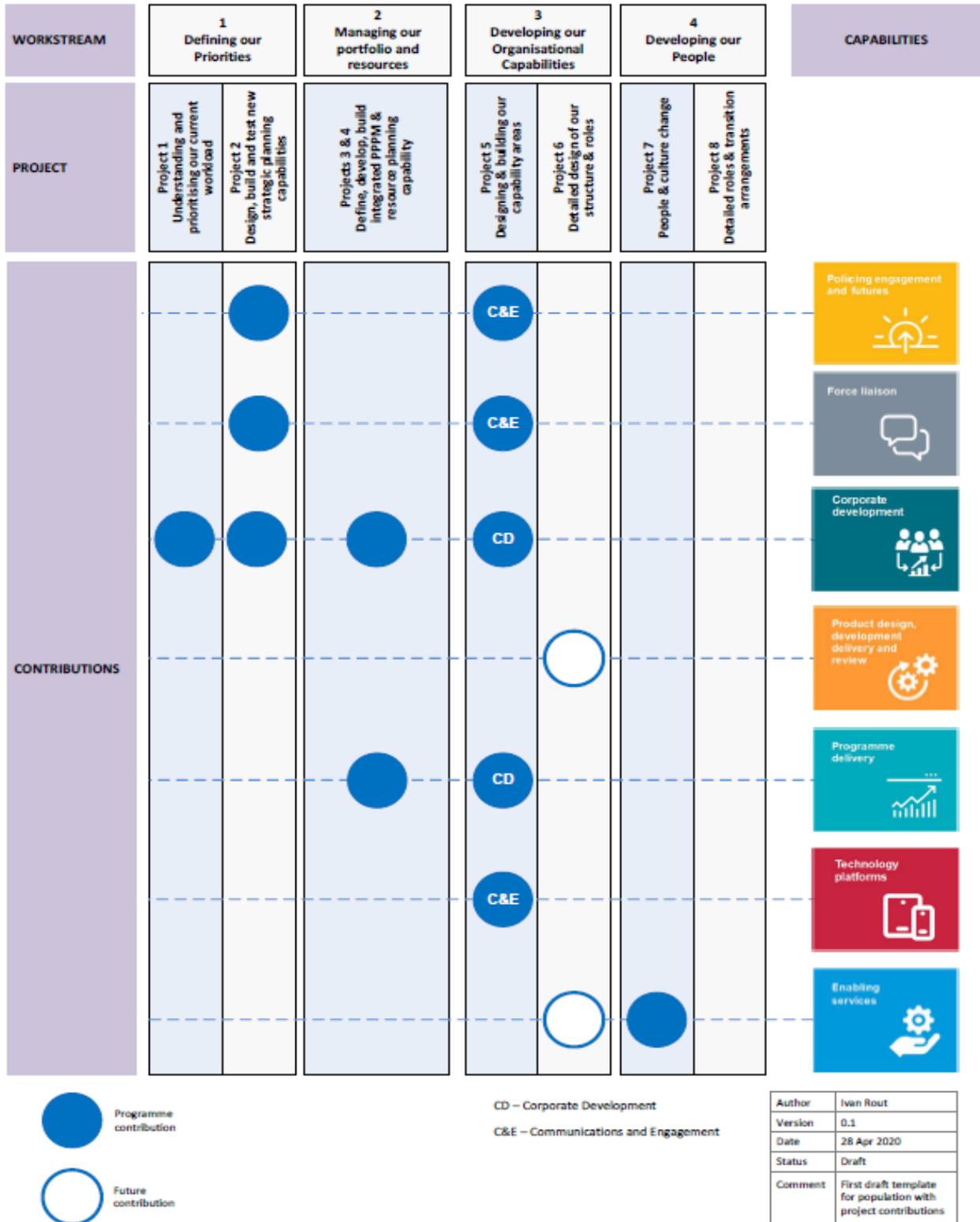
Notably, improvements in engaging key external stakeholders in our strategic planning choices, and delivering reliably the resultant programmes of work, are on the route to success.

We have a much sharper focus on outcomes and value propositions throughout our planning and delivery activities. Ultimately, this means we have stronger evidence of our contribution to policing that we can include in our communications to create favourable stakeholder perceptions.



Principal project contributors to Programme Benefits





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:

"Reimbursable Expenses"	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: 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 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;
"Review Adjustment Date"	has the meaning given to it in paragraph 10.1.2 of this Call Off Schedule 3;
"Supporting Documentation"	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 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.

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 Services 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. 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 Services, including the Milestone(s) (if any) and Deliverable(s) within this Call Off Contract to which the Delivered Services relate, against the applicable due and payable Call Off Contract Charges; and

7.2.2 shows separately:

- (a) NOT USED;
- (b) the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 24.2.1 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 (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/PN_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 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 23.2 of this Call Off Contract (Legislative Change);
 - 8.1.2 in accordance with Clause 24.1.4 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 19 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 26 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
- 8.2 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.
- 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. NOT USED

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 23.2 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 24.1.4 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 19 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 26 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;

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

Redacted

ANNEX 2: PAYMENT TERMS/PROFILE

Refer to paragraph 6.2 of the Order Form (Attachment 5a).

CALL OFF SCHEDULE 4: PROJECT PLAN

1. INTRODUCTION

1.1 This Call Off Schedule 4 specifies the Project Plan in accordance with which the Supplier shall provide the Services.

2. PROJECT PLAN

2.1 The Project Plan is set out in paragraph 3.1 of the Order Form (Attachment 5a).

CALL OFF SCHEDULE 16: CALL OFF TENDER

REDACTED

College of Policing ITT Response | Question 5.4 Please provide details of successful knowledge transfer and capacity building you have delivered in other similar projects and how it benefitted those organisations. What experience did you gain from this and what specifically will you bring to

CALL OFF SCHEDULE 6: NOT USED

CALL OFF SCHEDULE 7: SECURITY

SHORT FORM – PARAGRAPHS 1 TO 5. Refer to 10.3 of the Order Form.

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 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 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 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 Services and/or the Customer Data; and
- 3.2.5 complies with the Customer's ICT Policy.

3.3 Subject to Clause 35 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 Services, processes associated with the provision of the 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 Services;
- (d) unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the provision of the 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 Services;
- (e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the provision of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the 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 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 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: