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END USER COMPUTING

CALL OFF SCHEDULE 4

DISPUTE RESOLUTION PROCEDURE

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1. OVERVIEW

1.1. This Call Off Schedule sets out the Dispute Resolution Procedure.

2. INTRODUCTION

2.1. If a Dispute arises then:

2.1.1. the Customer Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

2.1.2. if such attempts are not successful within 20 Working Days of the Dispute first arising either Party may give to the other a Dispute Notice.

2.2. The Dispute Notice shall set out:

2.2.1. the material particulars of the Dispute;

2.2.2. the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

2.2.3. if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in Paragraph 2.6 of this Call Off Schedule, the reason why.

2.3. Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Call Off Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

2.4. Subject to Paragraph 3.2 of this Call Off Schedule, the Parties shall seek to resolve Disputes:

2.4.1. first by commercial negotiation (as prescribed in Paragraph 3 of this Call Off Schedule);

2.4.2. then by mediation (as prescribed in Paragraph 4 of this Call Off Schedule); and

2.4.3. lastly by recourse to arbitration (as prescribed in Paragraph 6 of this Call Off Schedule) or litigation (in accordance with Clause 46 of this Call Off Contract (Governing Law and Jurisdiction)).

2.5. Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 5 of this Call Off Schedule) where specified under the provisions of this Call Off Contract and may also be referred to Expert Determination as specified in Paragraph 5 of this Call Off Schedule.

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- 2.6. In exceptional circumstances where the use of the times in this Call Off Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 2.7. If the use of the Expedited Dispute Timetable is determined in accordance with Paragraph 2.6 of this Call Off Schedule or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- 2.7.1. in Paragraph 3.2.3, ten (10) Working Days;
- 2.7.2. in Paragraph 4.2, ten (10) Working Days;
- 2.7.3. in Paragraph 5.2, five (5) Working Days; and
- 2.7.4. in Paragraph 6.2, ten (10) Working Days.
- 2.8. If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

- 3.1. Following the service of a Dispute Notice, the Customer and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Customer's senior representative and the Supplier's senior representative, as such representatives are notified by one Party to the other from time to time.
- 3.2. If:
- 3.2.1. either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
- 3.2.2. the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this Paragraph 3 of this Call Off Schedule; or

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3.2.3. the Parties have not settled the Dispute in accordance with Paragraph 3.1 of this Call Off Schedule within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation (a “**Mediation Notice**”) in accordance with Paragraph 4 of this Call Off Schedule.

4. MEDIATION

- 4.1. If a Mediation Notice is served, the Parties shall attempt to resolve the Dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Call Off Contract. A copy of the Mediation Notice shall be sent to CEDR by the party issuing it.
- 4.2. If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3. If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4. Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

5. EXPERT DETERMINATION

- 5.1. If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to an information technology technical, financial technical or other aspect of a technical nature and the Dispute has not been resolved by discussion or mediation, then the Customer may request (consent to which request will not be unreasonably withheld or delayed) by written notice to the Supplier that the Dispute is referred to an Expert for determination.
- 5.2. Where the Parties agreed to use Expert Determination, the Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society) or CEDR at the election of the Customer.
- 5.3. The Expert shall act on the following basis:

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- 5.3.1. he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- 5.3.2. the Expert's Determination shall (in the absence of manifest error or fraud) be final and binding on the Parties;
- 5.3.3. the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 5.3.4. the Expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the Parties within a maximum of three (3) months of the matter being referred to the Expert;
- 5.3.5. the Parties are entitled to make submissions to the Expert including oral submissions and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision;
- 5.3.6. any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
- 5.3.7. all proceedings under this Paragraph 5 must be conducted, and the Expert's decision shall be written, in the English language;
- 5.3.8. the process shall be conducted in private and shall be confidential; and
- 5.3.9. the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6. ARBITRATION

- 6.1. The Customer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 6.4 of this Call Off Schedule.
- 6.2. Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 6.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 46 of this Call Off Contract (Governing Law and

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Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

6.3. If:

- 6.3.1. the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 6.4 of this Call Off Schedule shall apply;
- 6.3.2. the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 46 of this Call Off Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
- 6.3.3. the Customer does not serve a Counter Notice within the fifteen (15) Working Days period referred to in Paragraph 6.2 of this Call Off Schedule, the Supplier may either commence arbitration proceedings in accordance with Paragraph 6.4 of this Call Off Schedule or commence court proceedings in the courts in accordance with Clause 46 of this Call Off Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

6.4. In the event that any arbitration proceedings are commenced pursuant to Paragraphs 6.1 to 6.3 of this Call Off Schedule, the Parties hereby confirm that:

- 6.4.1. all Disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to Paragraphs 6.4.6 to 6.4.8 of this Call Off Schedule);
- 6.4.2. the number of arbitrators shall be three (3);
- 6.4.3. the arbitration shall be administered by the LCIA;
- 6.4.4. the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 6.4.5. if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 6.4.6. the chair of the arbitral tribunal shall be British;

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6.4.7. the arbitration proceedings shall take place in London and in the English language; and

6.4.8. the seat of the arbitration shall be London.

7. URGENT RELIEF

7.1. Notwithstanding any other provision of this Call Off Schedule, either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

7.1.1. for interim or interlocutory remedies in relation to this Call Off Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or

7.1.2. where compliance with Paragraphs 2.1 of this Call Off Schedule and/or referring the Dispute to mediation would leave insufficient time for that Party to commence proceedings before the expiry of an applicable limitation period.