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Commercial  
Service

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**Call Off Order Form and Call Off Terms for the  
Management Consultancy Framework Agreement**

**RM3745**

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**FRAMEWORK SCHEDULE 4**

**CALL OFF ORDER FORM AND CALL OFF TERMS**

## PART 1 – CALL OFF ORDER FORM

### SECTION A

This Call Off Order Form is issued in accordance with the provisions of the Framework Agreement for the provision Regional Delivery Partnership support of dated 18 September 2018.

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

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

Order Number	RM3745 – A003
From	Highways England ("CUSTOMER")
To	PricewaterhouseCoopers LLP ("SUPPLIER")

### SECTION B

#### 1. CALL OFF CONTRACT PERIOD

1.1.	Commencement Date: 24 September 2018
1.2.	Expiry Date: End date of Initial Period 21 December 2018 End date of Extension Period N/A Minimum written notice to Supplier in respect of extension: 4 weeks

#### 2. SERVICES

2.1	<p><b>Services required:</b></p> <p>In Call Off Schedule 2 (Services)</p> <p>Please refer to <b>Communication and Engagement Support for RIP RDP Project - vFINAL.PDF</b></p>
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**3. PROJECT PLAN**

3.1.	<p><b>Project Plan:</b></p>	<p><i>Not required. Fortnightly governance meetings will be held with the Major Projects business partner, Deborah Lawrence (or her nominated representative) and Internal Communications to agree which areas of focus will deliver most value, and:</i></p>
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		<input type="checkbox"/> <i>Agree progress in previous two week period</i> <input type="checkbox"/> <i>Determine priorities for next period including what the PwC resources will do over the next two weeks.</i> <input type="checkbox"/> <i>Agree any outputs over the next period</i> <input type="checkbox"/> <i>Discuss any areas where intervention may be required to maintain progress</i>
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#### 4. CONTRACT PERFORMANCE

4.1.	<b>Standards:</b> As per Clause 11
4.2	<b>Service Levels/Service Credits:</b> Not applied
4.3	<b>Critical Service Level Failure:</b> Not applied
4.4	<b>Performance Monitoring:</b> Not applied
4.5	<b>Period for providing Rectification Plan:</b> In Clause 39.2.1(a) of the Call Off Terms

#### 5. PERSONNEL

5.1	<b>Key Personnel:</b> [REDACTED]
5.2	<b>Relevant Convictions (Clause 28.2 of the Call Off Terms):</b>

#### 6. PAYMENT

6.1	<b>Call Off Contract Charges (including any applicable discount(s), but excluding VAT):</b> In Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)
6.2	<b>Payment terms/profile</b> In Annex 2 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)

	<p>The Consultant includes on his invoices the requisition number and, where appropriate, the purchase order number. The Consultant submits with each invoice such records as the Employer requires, including weekly timesheets, with activities, and details of expenses.</p> <p>The Consultant notifies the Employer of the name and address of his bank, the account name and number, the bank sort code and any other details required to make direct payments into that account.</p> <p>The Consultant provides any additional information to the Employer that is requested for the purpose of checking invoices for correctness.</p> <p>Payments will be made within 30 days of receipt of invoice</p>
<b>6.3</b>	<p><b>Reimbursable Expenses:</b></p> <p><b>Permitted</b></p>
<b>6.4</b>	<p><b>Customer billing address (paragraph 7.6 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)):</b></p> <p><b>Highways England, The Cube, 199 Wharfside, Birmingham, B1 1RN</b></p>
<b>6.5</b>	<p><b>Call Off Contract Charges fixed for (paragraph 8.2 of Schedule 3 (Call Off Contract Charges, Payment and Invoicing)):</b></p> <p><b>3 Call Off Contract Months from the Call Off Commencement Date</b></p>
<b>6.6</b>	<p><b>Supplier periodic assessment of Call Off Contract Charges (paragraph 9.2 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)) will be carried out on:</b></p> <p><b>0 of each Call Off Contract Year during the Call off Contract Period</b></p>
<b>6.7</b>	<p><b>Supplier request for increase in the Call Off Contract Charges (paragraph 10 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)):</b></p> <p><b>Not Permitted</b></p>

## 7. LIABILITY AND INSURANCE

<b>7.1</b>	<p><b>Estimated Year 1 Call Off Contract Charges:</b></p> <p>The sum of £199,920</p>
<b>7.2</b>	<p><b>Supplier's limitation of Liability (Clause 37.2.1 of the Call Off Terms);</b></p> <p>In Clause 37.2.1 of the Call Off Terms</p>
<b>7.3</b>	<p><b>Insurance (Clause 38.3 of the Call Off Terms):</b></p>

## 8. TERMINATION AND EXIT

<b>8.1</b>	<p><b>Termination on material Default (Clause 42.2.1(c) of the Call Off Terms):</b></p>
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	In Clause 42.2.1(c) of the Call Off Terms
<b>8.2</b>	<b>Termination without cause notice period (Clause 42.7.1 of the Call Off Terms):</b> In Clause 42.7.1 of the Call Off Terms
<b>8.3</b>	<b>Undisputed Sums Limit:</b> In Clause 43.1.1 of the Call Off Terms
<b>8.4</b>	<b>Exit Management:</b> Not applied

## 9. SUPPLIER INFORMATION

<b>9.1</b>	<b>Supplier's inspection of Sites, Customer Property and Customer Assets:</b> Not applicable
<b>9.2</b>	<b>Commercially Sensitive Information:</b> All information provided should be treated as commercially sensitive and should not be published, unless in agreement with Highways England.

## 10. OTHER CALL OFF REQUIREMENTS

<b>10.1</b>	<b>Recitals (in preamble to the Call Off Terms):</b> Recital A
<b>10.2</b>	<b>Call Off Guarantee (Clause 4 of the Call Off Terms):</b> Not required
<b>10.3</b>	<b>Security:</b> See Security requirements under Clause 35
<b>10.4</b>	<b>ICT Policy:</b> Highways England's ICT Policy
<b>10.5</b>	<b>Testing:</b> Not applied
<b>10.6</b>	<b>Business Continuity &amp; Disaster Recovery:</b> Not applied  <b>Disaster Period:</b> For the purpose of the definition of "Disaster" in Call Off Schedule 1 (Definitions) the "Disaster Period" shall be N/A
<b>10.7</b>	NOT USED
<b>10.8</b>	<b>Protection of Customer Data (Clause 35.2.3 of the Call Off Terms):</b>
<b>10.9</b>	<b>Notices (Clause 56.6 of the Call Off Terms):</b> Customer's postal address and email address:

	<p><b>Highways England, Procurement, Lateral, 8 City Walk, Leeds, LS11 9AT</b>  ██████████@highwaysengland.co.uk</p> <p>Supplier's postal address and email address:  <b>PricewaterhouseCoopers LLP</b>  <b>1 Embankment Place</b>  <b>London WC2N 6RH</b>  ██████████@pwc.com</p>
<b>10.10</b>	<p><b>Transparency Reports</b>  In Call Off Schedule 13 (Transparency Reports)</p>
<b>10.11</b>	<p><b>Alternative and/or additional provisions (including any Alternative and/or Additional Clauses under Call Off Schedule 14 and if required, any Customer alternative pricing mechanism):</b>  Not applicable</p>
<b>10.12</b>	<p><b>Call Off Tender:</b>  In Schedule 15 (Call Off Tender) – N/A</p>
<b>10.13</b>	<p><b>Publicity and Branding (Clause 36.3.2 of the Call Off Terms)</b></p>

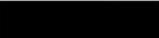
**FORMATION OF CALL OFF CONTRACT**

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

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

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

**For and on behalf of the Supplier:**

Name and Title	 Partner
Signature	
Date	17/10/2018

**For and on behalf of the Customer:**

Name and Title	 PROUREMENT DELIVERY PARTNER
Signature	
Date	17/10/18

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## 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 17 (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