

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-licence is on terms no broader than those granted to the Customer; and
 - (ii) the sub-licence 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-licence 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, that the Project Specific IPRs contain any Intellectual Property Rights for which the Customer does not have a licence, then the Supplier must notify the Customer within 10 days of what those rights are and which parts of the Project Specific IPRs they are found in.
- 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 Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 35.2.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call Off Contract or as otherwise Approved by the Customer.
- 35.2.3 To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified by the Customer in the Call Off Order Form and, in any event, as specified by the Customer from time to time in writing.
- 35.2.4 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 35.2.5 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with any BCDR Plan or otherwise. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 35.2.6 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 35.2.7 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 35.2.8 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Supplier may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Call Off Schedule 8 (Business Continuity and Disaster Recovery) or as otherwise required by the Customer, and the Supplier

shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or

- (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Call Off Schedule 8 (Business Continuity and Disaster Recovery) or as otherwise required by the Customer.

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 Clause 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;