



Crown
Commercial
Service

CALL-OFF CONTRACT

BEHAVIOURAL INSIGHTS

REFERENCE NUMBER

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ATTACHMENT 5

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Call-Off Contract –Call-Off Terms

This Call-Off Contract is made on the [] day of [] 201●
between:

The [*insert name of Customer*] with offices at [*insert address*] (“the **Customer**”);

and

[*Insert name of Supplier*] a company registered in [*England and Wales*] under Company Number [*insert registered company number*] whose registered office is at [*insert registered office address*] (“the **Supplier**”),

Both the Customer and the Supplier can be referred to as a “**Party**” or together the “**Parties**”.

INTRODUCTION

- (1) The Supplier is one of a number of agencies appointed by the Crown Commercial Service (**CCS**) to the Framework Agreement and is therefore able to enter into this Call-Off Contract to provide the Services to the Customer.
- (2) This Call-Off Contract, made between the Customer and the Supplier, sets out the terms of the Supplier’s appointment as a provider of the Services to the Customer. The Services will be delivered according to the terms of this Call-Off Contract, any agreed Statement of Work, and the Framework Agreement.
- (3) The Supplier’s appointment has been confirmed in the Letter of Appointment.
- (4) The Parties agree that the Services and associated Deliverables shall be supplied in accordance with the terms of the Framework Agreement and this Call-Off Contract.
- (5) Following the successful completion of a Further Competition Procedure, the Letter of Appointment, these Call-Off Terms and any Statement of Work will become binding.

IT IS AGREED:

1. APPOINTMENT & STATEMENTS OF WORK

- 1.1. Throughout the Term of this Call-Off Contract, the Supplier will perform the Services and (where relevant) supply the Deliverables to the Customer in accordance with agreed Statements of Work.
- 1.2. Subject to Clause 1.4 the Parties may agree new Projects to be delivered under this Call-Off Contract by agreeing a new Statement of Work. This must be done in writing and using the form set out at Schedule 2. Once both Parties have signed a Statement of Work, it automatically forms part of this Call-Off Contract.
- 1.3. Any schedule attached to a Statement of Work will describe in detail the different types of Services to be provided under that Statement of Work. A schedule attached to a Statement of Work only applies to the relevant Project to be delivered under that Statement of Work, and not to any other Statement of Work, or to the provision of the Services as a whole.
- 1.4. Where a Statement of Work would result in:
 - 1.4.1 a variation of the Services procured under this Call-Off Contract;
 - 1.4.2 an increase in the Charges agreed under this Call-Off Contract; or
 - 1.4.3 a change in the economic balance between the Parties to the detriment of the Customer that is not provided for in this Call-Off Contract,the relevant term(s) will be dealt with as a proposed Variation to this Call-Off Contract in accordance with the Variation procedure set out in Clause 9.

2. TERM

- 2.1. This Call-Off Contract starts on the **Effective Date** and ends on the **Expiry Date**, as stated in the Letter of Appointment. The Expiry Date may be changed in accordance with Clause 2.2 or Clause 23.
- 2.2. The Customer may extend this Call-Off Contract for any period up to the Extension Expiry Date by giving the Supplier notice in writing before the Expiry Date. The minimum notice which must be given in order to amend the Expiry Date is specified in the Letter of Appointment.
- 2.3. The revised date the contract will end (the **New Expiry Date**) will be set out in the notice given under Clause 2.2 above.
- 2.4. The terms and conditions of this Call-Off Contract will apply throughout any extended period.
- 2.5. Each Project starts on the Project Commencement Date and ends on the Project Completion Date, unless it is terminated earlier in accordance with Clause 23.

3. CALL-OFF GUARANTEE

- 3.1. Where the Customer has stated in the Letter of Appointment that this Call-Off Contract is conditional on receipt of a Guarantee, then, on or prior to the Effective Date (or on any other date specified by the Customer), the Supplier must provide:
 - 3.1.1. an executed Guarantee from a Guarantor; and

3.1.2. a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.

3.2. The Customer may at any time agree to waive compliance with the requirement in Clause 3.1 by giving the Supplier notice in writing.

4. CUSTOMER'S OBLIGATIONS

4.1. The Customer will give the Supplier instructions as to its requirements for the Services and Deliverables. These will be included in a Statement of Work and may include start and end dates for each stage of the proposed Services and Deliverables.

5. SERVICE DELAY, DELIVERY & RECTIFICATION

Service Delivery

5.1. The Supplier will give the Customer full and clear instructions as to any Customer Materials it reasonably requires to perform the Services and provide the Deliverables.

5.2. The Supplier will:

5.2.1 comply with all Law;

5.2.2 use all reasonable and proper skill and care in its performance of the Services and provision of the Deliverables;

5.2.3 comply with all reasonable Customer instructions regarding the Services and Deliverables, as long as these instructions do not materially amend the Statement of Work (unless the amendment has been agreed in accordance with Clause 9.1);

5.2.4 keep Customer Materials under its control safe and secure and in accordance with any security policy provided by the Customer; and

5.2.5 provide all Deliverables by any dates set out in the applicable Statement of Work or any other date(s) agreed by the parties in writing.

Delay

5.3. If the Customer materially breaches its obligations in connection with this Call-Off Contract (including its payment obligations), and consequently delays or prevents the Supplier from performing any of the agreed Services or providing any of the agreed Deliverables this will be a "**Customer Cause**". In the event of a Customer Cause, the Supplier will be granted an appropriate extension of time (to be approved by the Customer, acting reasonably) to perform the agreed Services or provide the agreed Deliverables. The Supplier will not be liable for any Losses incurred by the Customer as a result of Customer Cause, provided the Supplier complies with its obligations set out at Clause 5.4.

5.4. The Supplier must notify the Customer within 2 Working Days of the Supplier becoming aware that the Customer has breached, or is likely to breach, its obligations in connection with this Call-Off Contract. This notice must detail:

5.4.1 the Customer Cause and its actual or potential effect on the Supplier's ability to meet its obligations under this Call-Off Contract, and

5.4.2 any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause.

- 5.5. The Supplier must use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause. The Supplier must try to mitigate against any Losses that the Customer or the Supplier may incur, and the duration and consequences of any delay or anticipated delay.
- 5.6. If at any time the Supplier becomes aware that it may not be able to perform the Services or provide any Deliverables by any date set out in the applicable Statement of Work (or any other deadline agreed by the Parties in writing), this will constitute a Default and the Supplier will immediately notify the Customer of the Default and the reasons for the Default.
- 5.7. If the Default described in Clause 5.6 above is, in the Customer's opinion capable of remedy, the Customer may, up to 10 Working Days from being notified of the Default, instruct the Supplier to comply with the Rectification Plan Process.

Rectification Plan Process

- 5.8. If instructed to comply with the Rectification Plan Process by the Customer under Clause 5.7 above, the Supplier will submit a draft Rectification Plan to the Customer to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) from being instructed to do so. The Supplier shall submit a draft Rectification Plan even if the Supplier does not agree that the Default is capable of remedy.
- 5.9. The draft Rectification Plan shall set out:
 - 5.9.1 full details of the Default that has occurred, including the underlying reasons for it;
 - 5.9.2 the actual or anticipated effect of the Default; and
 - 5.9.3 the steps which the Supplier proposes to take to rectify or mitigate the Default and to prevent any recurrence of the Default, including timescales for such steps and for the rectification of the Default (where applicable).
- 5.10 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's reasoning behind the default. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined in accordance with paragraph 5 of Schedule 4 (Dispute Resolution Procedure).
- 5.11 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate. An example of an inadequate draft Rectification Plan is one which:
 - 5.11.1 is insufficiently detailed to be capable of proper evaluation;
 - 5.11.2 will take too long to complete;
 - 5.11.3 will not prevent reoccurrence of the Default;
 - 5.11.4 will rectify the Default but in a manner which is unacceptable to the Customer; or
 - 5.11.5 will not rectify the Default.
- 5.12 The Customer will tell the Supplier as soon as reasonably practicable if it agrees to or rejects the draft Rectification Plan.

5.13 If the Customer rejects the draft Rectification Plan, the Customer will give reasons for its decision in its rejection notice. The Supplier must take these reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit a revised draft of the Rectification Plan to the Customer for review within 5 Working Days (or such other period as agreed between the Parties) of the Customer's rejection notice.

5.14 If the Customer agrees the draft Rectification Plan, or any revised draft Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

6. SUPPLIER: OTHER APPOINTMENTS

6.1 Adverse public perception could have a detrimental impact on the Customers desired outcomes for the Project. To minimise this risk, the Supplier must not, without the Customers written consent, provide communication or campaign services to a third party during the Term of this Call-Off Contract where the provision of such services (in the reasonable opinion of the Customer):

6.1.1 has the potential to adversely affect the Customer's desired outcome of the Project or diminish the trust that the public places in the Customer; or

6.1.2 is likely to cause embarrassment to the Customer or bring the Customer into disrepute or may result in a conflict of interest for the Customer.

6.2 The only exception to this is if the Supplier provides communication services to an existing Customer, which the Customer had been informed about before entering into this Call-Off Contract.

6.3 If the Supplier becomes aware of a breach, or potential breach, of its obligations under Clause 6.1, the Supplier must notify the Customer immediately, providing full details of the nature of the breach and the likely impact on any Projects

6.4 If the Supplier breaches Clause 6.1, the Customer may terminate this Call-Off Contract, a Project, or any part of a Project with immediate effect in accordance with Clause 23.3.

7. CUSTOMER: OTHER APPOINTMENTS

7.1 Subject to Clause 6 the relationship between the Parties is non-exclusive. The Customer is entitled to appoint any other Supplier to perform services and produce deliverables which are the same or similar to the Services or Deliverables.

8. PERSONNEL

8.1 The Supplier must ensure that Supplier personnel who provide the Services:

8.1.1 are appropriately experienced, qualified and trained to provide the Services in accordance with this Call-Off Contracts;

8.1.2 apply all reasonable skill, care and diligence in providing the Services;

8.1.3 obey all lawful instructions and reasonable directions of the Customer and provide the Services to the reasonable satisfaction of the Customer, and

- 8.1.4 are vetted in accordance with Good Industry Practice and, where applicable, the security requirements of the Customer and the Standards.
- 8.2 The Supplier will be liable for all acts or omissions of the Supplier personnel. Any act or omission of a member of any Supplier personnel which results in a breach of this Call-Off Contract is a breach by the Supplier.
- 8.3 The Customer acknowledges and agrees that it may be necessary for the Supplier to replace the personnel providing the Services with alternative personnel with similar levels of seniority and experience.
- 8.4 The Supplier will seek to ensure that any Key Individual responsible for the provision of the Services will remain involved in the provision of the Services. If any Key Individual leaves the Supplier, or ceases to be involved in the provision of the Services for any reason (for example, if they are promoted to a different role within the Supplier), the Supplier will consult with the Customer and, subject to the Customer's prior Approval, appoint a suitable replacement.
- 8.5 If the Customer reasonably believes that any of the Supplier personnel are unsuitable to undertake work on this Call-Off Contract, it will notify the Supplier who will then end the person's involvement in providing the Services.

9. VARIATIONS AND CANCELLATIONS

- 9.1 Either Party may request a change to this Call-Off Contract, a Project or a Statement of Work. Any requested change must not amount to a material change of this Call-Off Contract (within the meaning of the Regulations and the Law). A change, once implemented, is called a "**Variation**".
- 9.2 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party. The requesting Party must give sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred by it.
- 9.3 Subject to Clause 9.5, the receiving Party must respond to the request within the time limits specified in the Variation Form. The 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.
- 9.4 If the Supplier requests a Variation, the Customer can ask the Supplier to carry out an assessment of the effects of the proposed Variation (an **Impact Assessment**). The Impact Assessment must consider:
- 9.4.1 the impact of the proposed Variation on the Services and Supplier's ability to meet its other obligations under this Call-Off Contract (including in relation to other Statements of Work);
 - 9.4.2 the initial cost of implementing the proposed Variation and any ongoing costs post-implementation;

- 9.4.3 any increase or decrease in the Contract Charges, any alteration in the resources or expenditure required by either Party and any alteration to the working practices of either Party;
 - 9.4.4 a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - 9.4.5 any other information the Customer reasonably asks for in response to the Variation request.
- 9.5 The Parties may agree to adjust the time limits specified in the Variation Form so the Impact Assessment can be carried out.
- 9.6 If the Parties agree the Variation, the Supplier will implement it, and be bound by it as if it was part of this Call-Off Contract.
- 9.7 Until a Variation is agreed, the Supplier must continue to perform and be paid for the Services as originally agreed, unless otherwise notified by the Customer.
- 9.8 Subject to Clauses 9.9 and 23.1 the Customer can ask the Supplier to suspend or cancel any Project or Statement of Work, or any part of a Project, including any plans, schedules or work in progress at any time, regardless of whether a Variation has been requested. Any request shall be made by an Authorised Customer Approver in writing The Supplier will take all reasonable steps to comply with any such request.
- 9.9 In the event of any cancellation under Clause 9.8, the Customer will pay the Supplier all Contract Charges reasonably and properly incurred by the Supplier during the Project Notice Period, provided that the Supplier uses all reasonable endeavours to mitigate any charges or expenses.

10. APPROVALS AND AUTHORITY

- 10.1 For the purposes of this Call-Off Contract, any reference to Customer Approval means written approval in one of the following ways:
- 10.1.1 the Customer issuing a purchase order bearing the signature of an Authorised Customer Approver, or
 - 10.1.2 e-mail from the individual business e-mail address of an Authorised Customer Approver, or
 - 10.1.3 the signature of an Authorised Customer Approver on the Supplier's documentation
- 10.2 Any reference to Supplier Approval means written approval in one of the following ways:
- 10.2.1 e-mail from the individual business e-mail address of an Authorised Supplier Approver, or
 - 10.2.2 the signature of an Authorised Supplier Approver on the Customer's documentation
- 10.3 The Supplier will seek the Customer's prior Approval of:

10.3.1 any estimates or quotations for any costs to be paid by the Customer that are not agreed in a Statement of Work; and

10.3.2 any creative treatments, including but not limited to scripts, messaging, storyboards, copy, layouts, design, artwork, or proposed marketing activity

10.3 The Supplier will seek the Customer's prior Approval of any draft Deliverables. The Customer's Approval will be the Supplier's authority to proceed with the use of the relevant Deliverables.

10.4 If the Customer does not approve of any matter requiring Approval, it must notify the Supplier of its reasons for disapproval within 14 days of the Supplier's request.

10.5 If the Customer delays approving or notifying the Supplier as to its disapproval, the Supplier will not be liable for any resulting delays or adverse impact caused to the delivery of the Project.

11. PROJECT MANAGEMENT

11.1 During the Term of this Call-Off Contract, the Supplier will:

11.1.1 keep the Customer fully informed as to the progress and status of all Services and Deliverables, by preparing and submitting written reports at such intervals and in such format as is agreed by the Parties.

11.1.2 promptly inform the Customer of any actual or anticipated problems relating to provision of the Deliverables.

11.2 During the Term, the Parties' respective project managers will arrange and attend meetings to review the status and progress of the Services, Deliverables and the Project(s), and to seek to resolve any issues that have arisen. These meetings will be held at locations and intervals as agreed by the parties.

11.3 Unless otherwise agreed in the Statement of Work, the Supplier will produce contact reports providing each Party with a written record of matters of substance discussed at meetings or in telephone conversations between the parties within 3 Working Days of such discussions. If the Customer does not question any of the subject matter of a contact report within 7 Working Days of its receipt, it will be taken to be a correct record of the meeting or telephone conversation.

12. FEES AND INVOICING

- 12.1. The Contract Charges for the Services will be the full and exclusive remuneration of the Supplier for supplying the Services. Unless expressly agreed in writing by the Customer in the Statements of Work, the Contract Charges will include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 12.2. All amounts stated are exclusive of VAT which will be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 12.3. The Supplier will invoice the Customer in accordance with the payment profile agreed in the Statements of Work. Each invoice will include all supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 12.4. The Customer will pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under this Call-Off Contract, withhold or reduce payments in the event of unsatisfactory performance.
- 12.5. If the Customer does not pay an undisputed amount properly invoiced by the due date, the Supplier has the right to charge interest on the overdue amount at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 12.6. If at any time during the Term the Supplier reduces its Framework Prices for Services provided in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Contract Charges for the Services under this Call-Off Contract by the same amount. This obligation applies whether or not the Services are offered in a catalogue provided under the Framework Agreement.
- 12.7. The Customer is entitled to deduct from any sum due any money that the Supplier owes the Customer. This includes any sum which the Supplier is liable to pay to the Customer in respect of breach of this Call-Off Contract. In these circumstances, the Supplier may not assert any credit, set-off or counterclaim against the Customer.
- 12.8. The Supplier will indemnify the Customer on a continuing basis against any liability (to include any interest, penalties or costs incurred, levied, demanded or assessed) on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT on payments made to the Supplier under this Call-Off Contract. Any amounts due under Clause 12.2 will be paid by the Supplier to the Customer not less than 5 Working Days before the date upon which the tax or other liability is payable by the Customer.
- 12.9. If there is a dispute between the Parties about an amount invoiced, the Customer will pay the undisputed amount by the due date. The Supplier will not suspend the supply of the Services in any Project, unless the Supplier is entitled to terminate that Project for a failure to pay undisputed sums in accordance with Clause 22.8.

13. THIRD PARTY AGENCIES: ASSIGNMENT AND SUB-CONTRACTING

Assignment and Sub-Contracting

- 13.1. Other than where a Sub-Contractor is agreed in the Letter of Appointment or a Statement of Work, the Supplier will not, without the prior Approval of the Customer, assign, sub-contract, novate or in any way dispose of the benefit or the burden of this Call-Off Contract or any part of it.
- 13.2. In requesting Approval to sub-contract, the Supplier will:
- 13.2.1 use reasonable care and skill in the selection of proposed Sub-Contractors;
 - 13.2.2 if the Customer requests, the Supplier will obtain more than one quote for a particular sub-contracted service; and
 - 13.2.3 provide the Customer with a business case for sub-contracting all or part of the Services, identifying why it is economically advantageous for the Supplier to sub-contract to its proposed sub-contractor. The Customer may reject the Supplier's request to appoint a proposed sub-contractor if it considers the proposed sub-contractor does not provide value for money.
- 13.3. If the Customer consents to the Supplier's proposed sub-contractor, it shall be a Sub-Contractor as the term is defined in Schedule 1 (Definitions).
- 13.4. In granting consent to any assignment, novation sub-contracting or disposal, the Customer may set additional terms and conditions it considers necessary.
- 13.5. The Supplier shall ensure that its Sub-Contractor does not further sub-contract all or part of the Services or Deliverables.
- 13.6. Any contracts the Supplier enters into with third party suppliers for Services and Deliverables ("**Sub-Contracts**") must be on terms that are in line with the Suppliers' standard contractual terms and conditions, must not permit further sub-contracting, and must not conflict with the terms of this Call-Off Contract.
- 13.7. Provided that the Supplier has notified the Customer of any significant restrictions or contract terms contained in any Sub-Contracts, the Customer hereby acknowledges that:
- 13.7.1. its right to use or otherwise benefit from any Services or Deliverables acquired under Sub-Contracts will be as set out in the Sub-Contracts; and
 - 13.7.2. it will be responsible for any reasonable and proper charges or liabilities (including cancellation payments) that the Supplier is directly liable for under Sub-Contracts only to the extent that that these are caused by an act or omission of the Customer or its Affiliates.
- 13.8. The Supplier will promptly provide the Customer with a copy of any Sub-Contract if requested to do so.
- 13.9. The Supplier will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 13.10. The Supplier will obtain the Customer's Approval before commissioning services from any Supplier Affiliate.

Supply Chain Protection

- 13.11. The Supplier will ensure that all Sub-Contracts contain provisions:

- 13.11.1. requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a Valid Invoice;
- 13.11.2. requiring the Supplier to verify any invoices submitted by a Sub-Contractor in a timely manner;
- 13.11.3. giving the Customer the right to publish the Supplier's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
- 13.11.4. giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply with legal obligations in the fields of environmental, social or labour law; and
- 13.11.5. requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards provisions to the same effect as those required by this Clause 13.11.

14. DISCOUNTS AND REBATES

- 14.1. The Supplier will disclose to the Customer any commission, discount or rebate earned by the Supplier arising in respect of third party costs directly related to the Projects. The Customer will receive the full benefit of such commission, discount or rebate.

15. CONFIDENTIALITY, TRANSPARENCY AND FREEDOM OF INFORMATION

CONFIDENTIALITY

- 15.1. For the purposes of the Clauses below, a Party which receives or obtains, directly or indirectly, Confidential Information is a "**Recipient**". A Party which discloses or makes available Confidential Information is a "**Disclosing Party**".
- 15.2. Unless a Recipient has express permission to disclose Confidential Information, it must:
 - 15.2.1. treat the Disclosing Party's Confidential Information as confidential and store it securely
 - 15.2.2. not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call-Off Contract or with the owner's prior written consent
 - 15.2.3. use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call-Off Contract, and
 - 15.2.4. 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.
- 15.3. The Recipient is entitled to disclose Confidential Information if:
 - 15.3.1. It is required to do so by Law (though in such cases, Clause 15.15 (Freedom of Information) applies to disclosures required under the FOIA or the EIRs)
 - 15.3.2. the need for such disclosure arises out of or in connection with:

- 15.3.3. any legal challenge or potential legal challenge against the Customer regarding this Call-Off Contract
- 15.3.4. the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination under Section 6(1) of the National Audit Act 1983, or
- 15.3.5. a Central Government Body review in respect of this Call-Off Contract or
- 15.3.6. 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. Such disclosure can only be made to the Serious Fraud Office.
- 15.4. If the Recipient is required by Law to disclose Confidential Information, it should notify the Disclosing Party as soon as reasonably practicable and to the extent permitted by Law. It may advise the Disclosing Party of what Law or regulatory body requires such disclosure and what Confidential Information it will be required to disclose.
- 15.5. Subject to Clauses 15.3 and 15.4, the Supplier may disclose Confidential Information, on a confidential basis, to:
 - 15.5.1. Supplier personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance under this Call-Off Contract, and
 - 15.5.2. its professional advisers for the purposes of obtaining advice in relation to this Call-Off Contract.
- 15.6. Where the Supplier discloses Confidential Information in such circumstances, it remains responsible for ensuring the persons to whom the information was disclosed comply with the confidentiality obligations set out in this Call-Off Contract.
- 15.7. The Customer may disclose the Confidential Information of the Supplier:
 - 15.7.1. to any Central Government Body, on the basis that the information may only be further disclosed to Central Government Bodies
 - 15.7.2. to Parliament, including any Parliamentary committees, or if required by any British Parliamentary reporting requirement
 - 15.7.3. if disclosure is necessary or appropriate in the course of carrying out its public functions
 - 15.7.4. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by a Central Government Body or Contracting Body (including any benchmarking organisation) for any purpose relating to or connected with this Call-Off Contract
 - 15.7.5. on a confidential basis for the purpose of the exercise of its rights under this Call-Off Contract, or
 - 15.7.6. to a proposed successor in title (transferee, assignee or novatee) to the Customer.

- 15.8. Any references to disclosure on a confidential basis means disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause 15.
- 15.9. Nothing in this Clause 15 will 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, as long as this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 15.10. If the Supplier fails to comply with this Clause 15, the Customer can terminate this Call-Off Contract.

TRANSPARENCY

- 15.11. Except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call-Off Contract (and any Transparency Reports submitted by the Supplier under it) is not Confidential Information. This will be made available in accordance with the procurement policy note 13/15 www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf and the Transparency Principles referred to therein.
- 15.12. The Customer will determine whether any of the content of this Call-Off Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but will have absolute discretion over the final decision.
- 15.13. Notwithstanding any other provision of this Call-Off Contract, the Supplier consents to the Customer publishing this Call-Off Contract in its entirety (including any agreed changes). Any information which is exempt from disclosure in accordance with the provisions of the FOIA will be redacted).
- 15.14. The Supplier will cooperate with the Customer to enable publication of this Call-Off Contract.

FREEDOM OF INFORMATION

- 15.15. The Customer is subject to the requirements of the FOIA and the EIRs. The Supplier will:
- 15.15.1. provide all necessary assistance to the Customer to enable it to comply with its Information disclosure obligations.
 - 15.15.2. send all Requests for Information it receives relating to this Call-Off Contract to the Customer as soon as practicable and within a maximum of 2 Working Days from receipt.
 - 15.15.3. provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days of the Customer's request.
- 15.16. The Supplier must not respond directly to a Request for Information without the Customer's prior Approval.

15.17. 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 will take reasonable steps to notify the Supplier of a Request for Information where it is permissible and reasonably practical for it to do so. However, the Customer will be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information are exempt from disclosure in accordance with the FOIA and/or the EIRs.

16. SUPPLIER WARRANTIES

16.1. The Supplier warrants that:

16.1.1. it has full capacity and authority to enter into this Call-Off Contract and that by doing so it will not be in breach of any obligation to a third party;

16.1.2. the personnel who perform the Services are competent and suitable do so;

16.2. The Supplier undertakes that:

16.2.1. the use of the Deliverables by the Customer in accordance with this Call-Off Contract and for the purposes set out in the Statement of Work will not infringe the copyright of any third party; and

16.2.2. as at the date they are delivered, the Deliverables of this Call-Off Contract may be used for the purposes set out in the Statement of Work and comply with all Advertising Regulations.

16.3. The Supplier hereby indemnifies the Customer against any Losses incurred by the Customer as a result of breach by the Supplier of its warranty and undertaking in Clauses 16.1 and 16.2.

17. CUSTOMER WARRANTIES

17.1. The Customer warrants that:

17.1.1. it has full capacity and authority to enter into this Call-Off Contract and that by doing so it will not be in breach of any obligation to a third party; and

17.1.2. the Customer Materials will not, when used in accordance with this Call-Off Contract and any written instructions given by the Customer, infringe third party copyright.

18. LIABILITY

18.1. Nothing in this Call-Off Contract will exclude or in any way limit either Party's liability for fraud, death or personal injury caused by its negligence.

18.2. Subject always to Clauses 18.1 and 18.3, the maximum amount the Supplier can be liable for in respect of all Defaults shall in no event exceed:

18.2.1. in relation to any Defaults occurring from the Effective Date to the end of the first Contract Year, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges estimated by the Customer for the first Contract Year;

- 18.2.2. in relation to any Defaults occurring in each subsequent Contract Year that commences during the remainder of the Term, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges payable to the Supplier under this Call-Off Contract in the previous Contract Year; and
- 18.2.3. in relation to any Defaults occurring in each Contract Year that commences after the end of the Initial Term, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges payable to the Supplier under this Call-Off Contract in the last Contract Year commencing during the Term;
- 18.3. Subject to Clause 18.1 and except for any claims arising under Clause 20.12, neither Party will be liable to the other in any situation for any:
- 18.3.1. loss of profits
 - 18.3.2. loss of goodwill or reputation
 - 18.3.3. loss of revenue
 - 18.3.4. loss of savings whether anticipated or otherwise; or
 - 18.3.5. indirect or consequential loss or damage of any kind
- 18.4. Without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all defaults, claims, losses or damages howsoever caused will in no event exceed the figure specified in the Letter of Appointment.

19. INSURANCE

- 19.1. The Supplier will hold insurance policies to the value sufficient to meet its liabilities in connection with this Call-Off Contract (including any specific insurance requirements as are set out in the Statements of Work). The Supplier will provide the Customer with evidence that such insurance is in place at the Customer's request.
- 19.2. The Supplier will effect and maintain the policy or policies of insurance as stipulated in the Letter of Appointment.
- 19.3. If, for whatever reason, the Supplier fails to comply with the provisions of this Clause 19 the Customer may make alternative arrangements to protect its interests. If the Customer does so, it may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 19.4. Any insurance effected by the Supplier will not relieve it of any liability under this Call-Off Contract. It is the Supplier's responsibility to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call-Off Contract.
- 19.5. The Supplier must ensure that the policies of insurance it holds pursuant to this Clause 19 are not cancelled, suspended or vitiated. The Supplier will use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any circumstance whereby the relevant insurer could give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1. The Supplier acknowledges that the Customer retains ownership of Customer Materials and all Intellectual Property Rights in them. This includes any modifications or adaptations of Customer Materials produced by the Supplier in the course of providing the Services and Deliverables. The Customer hereby grants to the Supplier a non-exclusive licence to use the Customer Materials during the applicable Project Term solely for the purposes of providing the Services and Deliverables.
- 20.2. **[FOR NON CROWN BODIES]** The Supplier hereby assigns to the Customer all of the Intellectual Property Rights in the Supplier Materials which are capable of being assigned (and in the case of copyright, by way of a present assignment of future copyright), together with the right to sue for past infringement of the Intellectual Property Rights in the Supplier Materials.] **[FOR CROWN BODIES, INCLUDING CENTRAL GOVERNMENT DEPARTMENTS]** The Supplier hereby:
- 20.2.1. assigns to the Customer all of the Intellectual Property Rights other than copyright and database rights in the Supplier Materials which are capable of being assigned, together with the right to sue for past infringement of such Intellectual Property Rights in the Supplier Materials; and
- 20.2.2. assigns to the Crown all of the copyright and database rights in the Supplier Materials which are capable of being assigned, together with the right to sue for past infringement of such copyright and database rights in the Supplier Materials. **[DELETE AS APPROPRIATE]**
- 20.3. All Intellectual Property Rights in the Supplier Proprietary Materials remain the property of the Supplier. The Supplier grants to the Customer a non-exclusive, royalty-free licence to use any Supplier Proprietary Materials as are included in the Deliverables, in the Territory, for the period of time and for the purposes set out in the Statement of Work.
- 20.4. Prior to delivery of the Deliverables to the Customer, the Supplier will obtain all licences or consents in respect of Third Party Materials that are required so the Customer can use these Third Party Materials for the purposes set out in the Statement of Work. The Supplier will notify the Customer of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party Materials.
- 20.5. The Supplier agrees:
- 20.5.1. at the Customer's request and expense, to take all such actions and execute all such documents as are necessary (in the Customer's reasonable opinion) to enable the Customer to obtain, defend or enforce its rights in the Supplier Materials and Deliverables; and
- 20.5.2. neither to do nor fail to do any act which would or might prejudice the Customer's rights under this Clause 20.
- 20.6. To the extent permitted by law, the Supplier shall ensure that all Moral Rights in the Supplier Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Supplier agrees not to assert any Moral Rights in respect of the Supplier Materials.

- 20.7. The Supplier will use its reasonable endeavours to ensure that all Moral Rights in Third Party Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Supplier will work with the owner or creator of the Third Party Materials to procure that Moral Rights are not asserted in respect of Third Party Materials. If the Supplier cannot obtain such waiver of (or agreement not to assert) such Moral Rights in respect of any Third Party Materials, the Supplier will notify the Customer and will obtain the Customer's Approval prior to incorporating such Third Party Materials into the Deliverables.
- 20.8. Unless expressly prohibited in a Statement of Work, the Supplier will be able during and after the Term to use any Deliverables which have been broadcast, published, distributed or otherwise made available to the public, and the Customer's name and logo for the purposes of promoting its work and its business including on the Supplier's website, in credentials pitches and in its showreel. Any other use by the Supplier shall be subject to the Customer's prior Approval.
- 20.9. During the Term, if the Supplier is asked to take part in a competitive pitch or other similar process for the Customer, then notwithstanding any of the previous provisions of this Clause 20, the Supplier will retain ownership of all Intellectual Property Rights in any Materials forming part of the pitch process. If the Supplier is successful in such pitch and the Parties agree that such Materials will be used in a Project the Supplier will assign all such Intellectual Property Rights to the Customer.
- 20.10. The Supplier is not liable in connection with this Call-Off Contract for any modifications, adaptations or amendments to any Deliverables made by the Customer or by a third party on the Customer's behalf after the Supplier has handed them over. The Supplier is also not liable if any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables arises due to the acts or omissions of the Customer or its Associates.
- 20.11. The terms of and obligations imposed by this Clause 20 continue after the termination of this Call-Off Contract.
- 20.12. The Supplier will indemnify the Customer in full against all costs, expenses, damages and losses (whether direct or indirect in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights in connection with the supply or use of the Services, if the claim is attributable to the acts or omission of the Supplier any of its Associates. This indemnity extends to any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer

21. AUDIT

- 21.1. The Supplier will keep and maintain full and accurate records and accounts of the operation of this Call-Off Contract, the Services provided under it, any Sub-Contracts and the amounts paid by the Customer for at least 7 years after the Expiry Date or New Expiry Date, or such longer period as the Parties agree.
- 21.2. The Supplier will:
- 21.2.1. keep the records and accounts referred to in Clause 21.1 in accordance with Good Industry Practice and Law, and

21.2.2. afford any Auditor access to the records and accounts referred to in Clause 21.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same to Auditors throughout the Term and the period specified in Clause 21.1. This is so the Auditor(s) can assess compliance by the Supplier and/or its Sub-Contractors with the Supplier's obligations under this Call-Off Contract, and in particular to:

- a) verify the accuracy of the 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 Supplier's and each Sub-Contractor's compliance with the applicable Laws;
- d) identify or investigate an actual or suspected act of fraud or bribery, impropriety or accounting mistakes or any breach or threatened breach of security. In these circumstances, the Customer is not obliged to inform the Supplier of the purpose or objective of its investigations;
- e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier or any Sub-Contractors or their ability to perform the Services;
- f) 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;
- g) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Call-Off Contract;
- h) 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
- i) enable the National Audit Office to carry out an examination under Section 6(1) of the National Audit Act 1983;
- j) 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;
- k) verify the accuracy and completeness of any information delivered or required by this Call-Off Contract;
- l) inspect the Customer Materials, including the Customer 's IPRs, equipment and facilities, for the purposes of ensuring that the Customer Materials are secure; and
- m) review the integrity, confidentiality and security of any Customer data.

- 21.3. The Customer will use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services (although 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.)
- 21.4. Subject to the Supplier's rights in respect of Confidential Information, the Supplier will, on demand, provide the Auditor(s) with all reasonable co-operation and assistance in providing:
- 21.4.1. all reasonable information requested by the Customer within the scope of the audit;
 - 21.4.2. reasonable access to sites controlled by the Supplier and to any equipment used in the provision of the Services; and
 - 21.4.3. access to the Supplier personnel.
- 21.5. The Parties agree that they will bear their own respective costs and expenses incurred during any Audit, unless the Audit reveals a default by the Supplier, whereby the Supplier will reimburse the Customer for the Customer's reasonable costs incurred in relation to the Audit.
- 21.6. If an Audit reveals that the Customer has been overcharged, the Supplier will reimburse to the Customer the amount of the overcharge within 30 days. If an Audit reveals the Supplier has been underpaid, the Customer shall pay to the Supplier the amount of the underpayment within 30 days.

22. TERMINATION

Customer Rights to Terminate

- 22.1. The Customer may, by giving not less than 3 month's written notice to the Supplier, terminate this Call-Off Contract without cause.
- 22.2. The Customer may terminate or cancel a Project at any time subject to Clause 9 and payment of all Contract Charges specifically set out at Clause 9.
- 22.3. The Customer may terminate this Call-Off Contract or a Project by written notice to the Supplier with immediate effect if the Supplier:
- 22.3.1. commits a material Default which cannot be remedied;
 - 22.3.2. repeatedly breaches any of the terms and conditions of this Call-Off Contract in such a manner as to indicate that it does not have the intention or ability to adhere to the terms and conditions;
 - 22.3.3. commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer within 30 days of receiving notice specifying the Default and requiring it to be remedied or in accordance with the Rectification Plan Process;
 - 22.3.4. breaches any of the provisions of Clauses 6.1 (Supplier: Other Appointments), 10 (Approvals and Authority), 15 (Confidentiality, Transparency and Freedom of Information), and 31 (Prevention of Fraud and Bribery);
 - 22.3.5. is subject to an Insolvency Event; or
 - 22.3.6. fails to comply with legal obligations.
- 22.4. The Supplier must notify the Customer as soon as practicable of any Change of Control or any potential Change of Control.
- 22.5. The Customer may terminate this Call-Off Contract with immediate effect by written notice to the Supplier within 6 Months of:
- 22.5.1. being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
 - 22.5.2. where no notification has been made, the date that the Customer becomes aware that a Change of Control is anticipated or is in contemplation or has occurred, but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- 22.6. The Customer may terminate this Call-Off Contract or a Project by giving the Supplier at least 14 days' notice if:
- 22.6.1. the Framework Agreement is terminated for any reason;
 - 22.6.2. the Parties fail to agree a Variation under Clause 9; or
 - 22.6.3. the Supplier fails to implement an agreed Variation.
- 22.7. Where this Call-Off Contract is conditional upon them Supplier procuring a Guarantee pursuant to Clause 3 (Call-Off Guarantee), the Customer may terminate this Call-Off Contract by issuing a notice of termination Notice to the Supplier where:
- 22.7.1. the Guarantor withdraws the Guarantee for any reason;

- 22.7.2. the Guarantor is in breach or anticipatory breach of the Guarantee;
- 22.7.3. an Insolvency Event occurs in respect of the Guarantor; or
- 22.7.4. the Guarantee becomes invalid or unenforceable for any reason whatsoever, and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Customer; or
- 22.7.5. the Supplier fails to provide the documentation required by Clause 3.1 by the date so specified by the Customer.

Supplier Rights to Terminate

22.8. The Supplier may terminate a Project and any Statement of Work in respect of that Project by written notice to the Customer if:

22.8.1. the Customer has not paid any undisputed amounts falling due under that Project, and

22.8.2. the undisputed sum due remains outstanding for 40 Working Days after the Customer has received a written notice of non-payment from the Supplier specifying:

- a) the Customer's failure to pay;
- b) the correct overdue and undisputed sum;
- c) the reasons why the undisputed sum is due; and
- d) the requirement on the Customer to remedy the failure to pay

This right of termination does not apply where the failure to pay is due to the Customer exercising its rights under this Call-Off Contract (including the right to set off under Clause 29).

23. CONSEQUENCES OF TERMINATION

23.1. Termination of a Project (and any Statement of Work in respect of that Project) in accordance with the terms of this Call-Off Contract by either Party shall not serve to terminate this Call-Off Contract, which will continue in full force and effect.

23.2. If this Call-Off Contract is terminated, all ongoing and outstanding Projects (and any Statements of Work in respect of those Projects) will also terminate on the same date as this Call-Off Contract.

23.3. Upon termination of this Call-Off Contract or a Project for any reason:

23.3.1. the Expiry Date or New Expiry Date shall be the date this Call-Off Contract terminates;

23.3.2. the Customer will pay the Supplier all Contract Charges falling properly due and payable to the Supplier prior to the date of termination (in accordance with Clause 9 where relevant);

23.3.3. each Party will, following a reasonable request by the other Party, promptly deliver or dispose of any and all materials and property belonging or relating to the other Party (including all Confidential Information) and all copies of the same, which are then in its possession, custody or control and which relate to all affected Projects. On the request of the other Party, each will certify in writing that the same has been done; and

23.3.4. the Supplier and its staff will vacate any premises of the Customer occupied for any purpose of providing the Services or Deliverables.

23.4. Any provisions of this Call-Off Contract which are to continue after termination will remain in full force and effect after this Call-Off Contract is terminated. Such provisions may include (but are not limited to):

23.4.1. Clause 15 (Confidentiality)

23.4.2. Clause 16 (Supplier warranties)

- 23.4.3. Clause 17 (Customer warranties)
- 23.4.4. Clause 18 (Liability)
- 23.4.5. Clause 19 (Insurance)
- 23.4.6. Clause 20 (Intellectual Property Rights)
- 23.4.7. Clause 21 (Audit)
- 23.4.8. Clause 23 (Consequences of Termination)
- 23.4.9. Clause 25 (Notices)
- 23.4.10. Clause 26 (Staff Transfer)
- 23.4.11. Clause 32 (General) and
- 23.4.12. Clause 34 (Governing law and jurisdiction)

24. FORCE MAJEURE

- 24.1. Neither Party will have any liability under or be in breach of this Call-Off Contract for any delays or failures in performance which result from circumstances beyond the reasonable control of the Party seeking to claim relief (a **Force Majeure Event** and the **Affected Party**).
- 24.2. Following a Force Majeure Event, the Affected Party must promptly notify the other Party in writing, both when the event causes a delay or failure in performance, and when the event has ended. If a Force Majeure Event continues for 60 consecutive Working Days, the Party not affected by the Force Majeure Event can suspend or terminate this Framework Agreement. They must do so in writing, and state the date from which the suspension or termination will come into effect.
- 24.3. If a Force Majeure event occurs, the Parties will use all reasonable endeavours to prevent and mitigate the impact, and continue to perform their obligations under this Call-Off Contract as far as is possible. Where the Supplier is the Affected Party, it will take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

25. NOTICES

- 25.1. Any notices sent under this Call-Off Contract must be in writing and sent by hand, by post or by email. The table below sets out deemed time of delivery and proof of service for each.

Notice delivered	Deemed time of delivery	Proof of service
In person	At the time of delivery	Proof that delivery was made (e.g. a signature is obtained)
By first class post, special delivery or other recorded delivery	2 Working Days from the date of posting	Proof that the envelope was addressed and delivered into the custody of the postal authorities
Email	09:00 hours on the first Working Day after sending	Dispatched in an emailed pdf to the correct email address without any error message

25.2. The address and email address of each Party will be:

25.2.1. Supplier:

25.2.2. Customer:

25.3. For the purpose of this Clause and calculating receipt all references to time are to local time in the place of receipt.

26. STAFF TRANSFER

26.1. The Parties agree that

26.1.1. if providing the Services means staff must be transferred from the Customer to the Supplier, where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 3 (Staff Transfer) will apply as follows:

- a) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Schedule 3 (Staff Transfer) will apply
- b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 3 (Staff Transfer) will apply
- c) where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 3 (Staff Transfer) will apply, and
- d) Part C of Schedule 3 (Staff Transfer) will not apply

26.2. Where providing the Services does not result in a Relevant Transfer, Part C of Schedule 3 (Staff Transfer) will apply and Parts A and B of Schedule 3 (Staff Transfer) shall not apply; and

26.3. Part D of Schedule 3 (Staff Transfer) will apply on the expiry or termination of the Services or any part of the Services.

26.4. Both during and after the Term, the Supplier will indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer due to any act or omission of the Supplier or any Supplier personnel.

27. THIRD PARTY RIGHTS

27.1. Except for CCS and the persons that the provisions of Schedule 3 of this Call-Off Contract confer benefits on, a person who is not a Party to this Call-Off Contract has no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

28. DATA PROTECTION, SECURITY AND PUBLICITY

28.1. In addition to its general security obligations under this Call-Off Contract, the Supplier shall comply with any security requirements specifically set out in the Statement of Work.

Data Protection

28.2. The Parties confirm that they will comply with any applicable Data Protection Legislation. For the purposes of this Clause, "Data Subject", "Personal Data" and "Processes(ing)" shall have the meanings given under Data Protection Legislation.

28.3. 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.

28.4. Where the Supplier is required to process Personal Data to perform its obligations under this Call-Off Contract, the Supplier will:

28.4.1. process Personal Data only in accordance with the Customer's instructions and its own duties under Data Protection Legislation;

28.4.2. ensure that it has in place appropriate security, 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;

28.4.3. not disclose or transfer the Personal Data to any third Party or Supplier personnel unless necessary for the provision of the Services;

28.4.4. obtain the prior written consent of the Customer before disclosing or transferring Personal Data to any third party (save where such disclosure or transfer is specifically authorised under this Call-Off Contract);

28.4.5. 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:

a) are aware of and comply with the Supplier's responsibilities under this Clause 28 and Clause 15 (Confidentiality, Transparency and Freedom of Information), and

- b) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 28.4.6. notify the Customer promptly if the Supplier receives any complaint, notice or communication that relates directly to its compliance with Data Protection Legislation and/or the processing of personal data under or in connection with this Call-Off Contract;
- 28.4.7. provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any such complaint, communication or request;
- 28.4.8. if requested by the Customer, provide a written description of the measures that the Supplier has taken and technical and organisational security measures in place, for the purpose of compliance with its Data Protection obligations in this Call-Off Contract around Data Protection;
- 28.4.9. use its reasonable endeavours to assist the Customer to comply with any obligations under the Data Protection Legislation.
- 28.5. The Supplier will not cause the Customer to breach any of the Customer's obligations under the Data Protection Legislation, to the extent the Supplier is aware (or ought reasonably to have been aware), that the same would be a breach of such obligations. It will not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission under Article 25(6) of Directive 95/46/EC without prior Approval from the Customer.
- 28.6. The Supplier will use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).
- 28.7. Notwithstanding Clause 28.6, if Malicious Software is found, the Parties will cooperate to reduce its impact. If Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, the Parties will assist each other to mitigate any losses and to restore the provision of the Services.

Customer Data

- 28.8. The Supplier will not store, copy, disclose, or use the Customer Data except as necessary to perform its obligations under this Call-Off Contract or as otherwise Approved by the Customer.
- 28.9. If any Customer Data is held and/or Processed by the Supplier, the Supplier must supply that Customer Data to the Customer, at the time and in the format the Customer requests.
- 28.10. The Supplier is responsible for preserving the integrity of any Customer Data it holds or processes, and preventing its corruption or loss.

- 28.11. The Supplier will perform secure back-ups of all Customer Data and ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) on request.
- 28.12. The Supplier will ensure that any system it uses to hold any Customer Data, including back-up data, is secure. This system must comply with any security requirements and any government security requirement policy relating to this Customer Data.
- 28.13. If any time the Supplier suspects or has any reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way, then the Supplier must notify the Customer immediately. This notification must contain information detailing the remedial action the Supplier proposes to take.

Publicity and Branding

- 28.14. The Supplier may not make any press announcements or publicise this Call-Off Contract or use the Customer's name or brand in any promotion or marketing or announcement of orders without Approval from the Customer.
- 28.15. The Supplier will seek the Customer's prior Approval before marketing their involvement in any Deliverable or draft Deliverable or entering into any industry awards or competition which will involve the disclosure of all or any part of any Deliverable or draft Deliverable.

29. RETENTION AND SET OFF

- 29.1. If the Supplier owes the Customer any money, the Customer may retain or set off this money against any amount owed to the Supplier under this Call-Off Contract or any other agreement between the Supplier and the Customer. In order to exercise this right, the Customer will, within 30 days of receipt of the relevant invoice, notify the Supplier of its reasons for retaining or setting off the relevant Contract Charges.
- 29.2. The Supplier will make any payments due to the Customer without any deduction. Deductions, whether by way of set-off, counterclaim, discount, abatement or otherwise, are not permitted unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer.

30. INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

- 30.1. 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 will:
- 30.1.1. 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, and
 - 30.1.2. 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 in connection with the provision of the Services by the Supplier or any Supplier Personnel.

30.2. If any 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 30.1, the Supplier must ensure that its contract with the Worker contains the following requirements:

30.2.1. that the Customer may, at any time during the Term, request that the Worker provides information to demonstrate how the Worker complies with the requirements of Clause 30.1, 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

30.2.2. that the Worker's contract may be terminated at the Customer's request if:

30.2.2.a. the Worker fails to provide the information requested by the Customer within the time specified by the Customer under Clause 30.2.1 and/or

30.2.2.b. the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with Clause 30.2.1, or confirms that the Worker is not complying with those requirements

30.2.3. 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.

31. PREVENTION OF FRAUD AND BRIBERY

31.1. The Supplier represents and warrants that neither it, nor to the best of its knowledge any of its staff or Sub-Contractors, have at any time prior to the Effective Date:

31.1.1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or

31.1.2. been listed by any government department or Supplier as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

31.2. The Supplier must not:

31.2.1. commit a Prohibited Act; or

31.2.2. do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

31.3. The Supplier shall during the Term:

31.3.1. establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

31.3.2. keep appropriate records of its compliance with its obligations under 31.3.1 and make such records available to the Customer on request;

- 31.3.3. if so required by the Customer, within 20 Working Days of the Effective Date, and annually thereafter, certify to the Customer in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Call-Off Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
- 31.4. have, maintain and (where appropriate) enforce an anti-bribery policy to prevent it and any Supplier staff or Sub-Contractors or any person acting on the Supplier's behalf from committing a Prohibited Act. This anti-bribery policy must be disclosed to the Customer on request.
- 31.5. The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 32.1, or has reason to believe that it has or any of the Supplier staff or Sub-Contractors have:
- 31.5.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 31.5.2. been listed by any government department or Supplier as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;
- 31.5.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call-Off Contract; or
- 31.5.4. otherwise suspects that any person or Party directly or indirectly connected with this Call-Off Contract has committed or attempted to commit a Prohibited Act.
- 31.6. If the Supplier makes a notification to the Customer under to Clause 32.5, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with Clause 21 (Audit).
- 31.7. If the Supplier breaches Clause 31.5, the Customer may by notice:
- 31.7.1. require the Supplier to remove any Supplier Personnel whose acts or omissions have caused the Supplier's breach from any Project; or
- 31.7.2. immediately terminate this Call-Off Contract for material Default.
- 31.8. Any notice served by the Customer under Clause 31.5 shall set out:
- 31.8.1. the nature of the Prohibited Act;
- 31.8.2. the identity of the Party who the Customer believes has committed the Prohibited Act;
- 31.8.3. the action that the Customer has elected to take; and
- 31.8.4. if relevant, the date on which this Call-Off Contract shall terminate.

32. GENERAL

- 32.1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Call-Off Contract, and that this Call-Off Contract is executed by its duly authorised representative.
- 32.2. This Call-Off Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Call-Off Contract on the basis of any representation that is not expressly incorporated into this Call-Off Contract.
- 32.3. Nothing in this Clause excludes liability for fraud or fraudulent misrepresentation.
- 32.4. Any entire or partial waiver or relaxation of any of the terms and conditions of this Call-Off Contract will be valid only if it is communicated to the other Party in writing, and expressly stated to be a waiver. A waiver of any right or remedy arising from a particular breach of this Call-Off Contract will not constitute a waiver of any right or remedy arising from any other breach of the same Call-Off Contract.
- 32.5. This Call-Off Contract does not constitute or imply any partnership, joint venture, Supplier, fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Call-Off Contract. Neither Party has, or has represented, any authority to make any commitments on the other Party's behalf.
- 32.6. Unless expressly stated in this Call-Off Contract, all remedies available to either Party for breach of this Call-Off Contract are cumulative and may be exercised concurrently or separately. The exercise of one remedy does not mean it has been selected to the exclusion of other remedies.
- 32.7. If any provision of this Call-Off Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Call-Off Contract. Any severance will not, so far as is possible, modify the remaining provisions. It will not in any way affect any other circumstances of or the validity or enforcement of this Call-Off Contract.

33. DISPUTE RESOLUTION

- 33.1. The Parties shall resolve Disputes in accordance with the Dispute Resolution Procedure.
- 33.2. The Supplier shall continue to provide the Services in accordance with the terms of this Call-Off Contract until a Dispute has been resolved.

34. GOVERNING LAW AND JURISDICTION

- 34.1. This Agreement will be governed by the laws of England and Wales.
- 34.2. Each Party submits to the exclusive jurisdiction of the courts of England and Wales and agrees that all disputes shall be conducted within England and Wales.

SCHEDULE 1

Definitions and Interpretation

1. INTERPRETATION

- 1.1. In this Call-Off Contract, any references to numbered Clauses and schedules refer to those within this Call-Off Contract unless specifically stated otherwise. If there is any conflict between this Call-Off Contract, the Letter of Appointment, the provisions of the Framework Agreement and the Statements of Work(s), the conflict shall be resolved in accordance with the following order of precedence:
 - 1.1.1. the Framework Agreement, except Framework Schedule 9 (Tender)
 - 1.1.2. the Letter of Appointment (except the Supplier Proposal)
 - 1.1.3. the Call-Off Contract Terms
 - 1.1.4. the Statement of Work
 - 1.1.5. the Supplier Proposal, and
 - 1.1.6. Framework Schedule 9 (Tender)
- 1.2. The definitions and interpretations used in this Call-Off Contract are set out in this Schedule 1.
- 1.3. Definitions which are relevant and used only within a particular Clause or Schedule are defined in that Clause or Schedule.
- 1.4. Unless the context otherwise requires:
 - 1.4.1. words importing the singular meaning include where the context so admits the plural meaning and vice versa
 - 1.4.2. words importing the masculine include the feminine and the neuter and vice versa
 - 1.4.3. the words 'include', 'includes' 'including' 'for example' and 'in particular' and words of similar effect will not limit the general effect of the words which precede them
 - 1.4.4. references to any person will include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind
 - 1.4.5. references to any statute, regulation or other similar instrument mean a reference to the statute, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted
 - 1.4.6. headings are included in this Call-Off Contract for ease of reference only and will not affect the interpretation or construction of this Call-Off Contract
 - 1.4.7. 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 be interpreted in accordance with the relevant market

sector/industry. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.5. In this Call-Off Contract, the following terms have the following meanings:

Approval	Formal Approval from one Party to another, given in accordance with Clause 10.1 or 10.2.
Associates	A Party's employees, officers, agents, sub-contractors or authorised representatives.
Authorised Supplier Approver	Any personnel of the Supplier who have the authority to contractually bind the Supplier in all matters relating to this Call-Off Contract. They must be named in the applicable Statement of Work, and the Customer must be notified if they change.
Authorised Customer Approver	Any personnel of the Customer who have the authority to contractually bind the Customer in all matters relating to this Call-Off Contract. They must be named in the applicable Statement of Work, and the Supplier must be notified if they change.
Call-Off Contract	This contract between the Customer and the Supplier (entered into under the provisions of the Framework Agreement), which consists of the terms set out in the Letter of Appointment, the Call-Off Terms, the Schedules and any Statement of Work.
Call-Off Terms	The terms and conditions set out in this Call-Off Contract including this Schedule 1 but not including any other Schedules or Statement of Work.
Central Government Body	A body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: Government Department; Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Supplier.
Change of Control	Change of Control has the same meaning as in section 416 of the Income and Corporation Taxes Act 1988.
Customer Affiliates	Any organisation associated with the Customer that will directly receive the benefit of the Services. Customer Affiliates must be named in a Statement of Work, or subsequently notified to the Supplier.
Customer Project Specification	The document containing the Customer's requirements issued as part of the Call-Off Process set out in Section 3 of the Framework Agreement.
Customer Cause	A situation where the Customer does not fulfil its obligations in connection with this Call-Off Contract (including its payment obligations), and as a consequence the Supplier is prevented from performing any of the agreed Services and/or providing any of the agreed Deliverables.

Customer Confidential Information	All Customer Data and any information that the Customer or CCS gives to Agencies that is designated as being confidential, or which ought to be reasonably be considered to be confidential (whether or not it is marked “confidential”). This may include information, however conveyed, that is politically or security sensitive and/or relates to the Customer’s business, affairs, developments, trade secrets, Know-How, personnel and suppliers.
Customer Data	Data, text, drawings, diagrams, images or sounds (together with any database made up of any of these), including any Customer’s Confidential Information, supplied to the Supplier by or on behalf of the Customer, or which the Supplier is required to generate, process, store or transmit in connection this Call-Off Contract, and any Personal Data for which the Customer is the Data Controller.
Customer Materials	Any Customer Data, Customer equipment, computer systems, software, documents, copy, Intellectual Property Rights, artwork, logos and any other materials or information owned by or licensed to the Customer which are provided to the Supplier or its Associates by or on behalf of the Customer.
Confidential Information	The Customer’s Confidential Information and/or the Supplier Confidential Information.
Contract Charges	All charges payable by the Customer for the Services provided under this Call-Off Contract calculated in accordance with Framework Schedule 3 (Charges Structure) and the Letter of Appointment including all Approved costs properly incurred by the Customer including but not limited to all Expenses, disbursement, taxes, sub-contractor or third party costs, and fees.
Contracting Body	CCS, the Customer and any other bodies listed in the OJEU Notice.
Contract Year	A consecutive 12- month period during the Term commencing on the Effective Date or each anniversary thereof.
Data Protection Legislation or DPA	All relevant Data Protection laws which apply, including: <ul style="list-style-type: none"> • in the UK, the Data Protection Act 1998 (as amended) and all applicable laws and regulations relating to processing of personal data and privacy, including any related guidance and codes of practice issued by the Information Commissioner or relevant government department • in EU countries, the EC Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (95/46/EC) and all local laws or regulations giving effect to this Directive, and • in non-EU countries, any similar or equivalent laws to those above including regulations or rules relating to data about individuals.
Default	Any breach of the obligations of the Supplier (including but not limited failing to provide any Deliverables by any date set out in the applicable Statement of Work (or any other deadline agreed by the Parties in writing), and abandonment of this Call-Off Contract in

	breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any of its staff howsoever arising in connection with or in relation to the subject-matter of this Call-Off Contract and in respect of which the Supplier is liable to the Customer.
Deliverables	The applied behavioural insights services that are to be provided as specified in a Statement of Work
Dispute	Any dispute, difference or question of interpretation arising out of or in connection with this Call-Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Call-Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure.
Dispute Resolution Procedure	The dispute resolution procedure set out in Call-Off Schedule 4 (Dispute Resolution Procedure).
Effective Date	The date this Call-Off Contract starts, as set out in the Letter of Appointment.
Environmental Information Regulations or EIRs	The Environmental Information Regulations 2004 together with any related guidance and/or codes of practice issued by the Information Commissioner or relevant Government department.
Expenses	Reasonable travelling, hotel, subsistence and other expenses incurred by the Supplier in connection with the supply of Services and Deliverables, provided that such Expenses have either received the Customer's prior Approval or are in accordance with any expenses policies which have been supplied to the Supplier and set out in the agreed Statement of Work.
Expiry Date	The date this Call-Off Contract ends, as set out in the Letter of Appointment.
Extension Expiry Date	The latest date this Call-Off Contract can end, as set out in the Letter of Appointment.
FOIA	The Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation.
Force Majeure	Means: <ul style="list-style-type: none"> • acts, events, omissions, happenings or non--happenings beyond the reasonable control of the affected Party • riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare • fire, flood, any disaster and any failure or shortage of power or fuel • an industrial dispute affecting a third party for which a substitute third party is not reasonably available

	<p>but does not mean</p> <ul style="list-style-type: none"> • any industrial dispute relating to the Supplier, its staff, or any other failure in the Supplier's (or a subcontractor's) supply chain • any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned, and • any failure of delay caused by a lack of funds
Framework Agreement	The framework agreement between Crown Commercial Service and the Supplier reference number: RM6004 referred to in the Letter of Appointment.
Framework Price(s)	The maximum charges the Supplier may charge as set out in Schedule 3 to the Framework Agreement.
Further Competition Procedure	The process of a Customer issuing a Project Specification and the Supplier submitting a proposal in response to such Project Specification, as set out in Framework Clause 3.10.
Good Industry Practice	Standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector.
Guarantee	A deed of guarantee that may be required under this Call-Off Contract in favour of the Customer in the form set out in Framework Schedule 9 (Guarantee) granted pursuant to Clause 3 (Call-Off Guarantee).
Guarantor	The person, in the event that a Guarantee is required under this Call-Off Contract, acceptable to the Customer to give a Guarantee.
Impact Assessment	The assessment to be carried out by a Party requesting a Variation in accordance with Clause 9.4.
Information	The same meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time
Insolvency Event	<p>Means, in respect of the Supplier [or Framework Guarantor (as applicable)]:</p> <ul style="list-style-type: none"> a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986; or b) a winding-up resolution is considered or passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

	<p>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</p> <p>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</p> <p>h) where the Supplier is an individual or partnership, any event analogous to these listed in this definition occurs in relation to that individual or partnership; or</p> <p>i) any event analogous to these listed in this definition occurs under the law of any other jurisdiction.</p>
Intellectual Property Rights or IPR	<p>The following rights, wherever in the world enforceable, or such similar rights, which have equivalent effect, including all reversions and renewals and all applications for registration:</p> <ul style="list-style-type: none"> • any patents or patent applications • any trade marks (whether or not registered) • inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration • copyright or design rights (whether registered or unregistered) • database rights • performer's property rights as described in Part II of the Copyright Designs and Patents Act 1988 and any similar rights of performers anywhere in the world • any goodwill in any trade or service name, trading style or get-up and • any and all other intellectual or proprietary rights
Key Individuals	Individuals named by the Supplier in the Letter or Appointment or Statement of Work as having a major responsibility for delivering the Services.
Law	Any law, subordinate legislation, bye-law, enforceable right, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier has to comply.
Letter of Appointment	The Letter of Appointment, substantially in the form set out in Framework Schedule 4, signed by both Parties and dated on the Effective Date.

Losses	Any losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses) to either Party subject to Clause 18.1 and 18.2.
Malicious Software	Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
Materials	Any artwork, copy, models, designs, photographs, commercial, feature film, character, music, voice over, sound recording, performance, book, painting, logo, software, or any other material protected by Intellectual Property Rights.
Moral Rights	All rights described in Part I, Chapter IV of the Copyright Designs and Patents act 1988 and any similar rights of authors anywhere in the world.
New Expiry Date	Has the meaning given to it in Clause 2.3
Personal Data	Personal Data has the same meaning as set out in the Data Protection Act 1998
Prohibited Act	<p>To directly or indirectly offer, promise or give any person working for or engaged by a Customer or CCS a financial or other advantage to:</p> <ol style="list-style-type: none"> a) induce that person to perform improperly a relevant function or activity b) reward that person for improper performance of a relevant function or activity c) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; d) commit any offence: <ul style="list-style-type: none"> • under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or • under legislation or common law concerning fraudulent acts; or • defrauding, attempting to defraud or conspiring to defraud the Customer ; or • any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK;
Project	Any project(s) agreed between the Parties from time to time by which the Supplier is to perform the Services which are the subject of this Call-Off Contract and supply Deliverables to the Customer as more fully described in the applicable Statement of Work;

Project Commencement Date	The date a Project will start, as set out in the relevant Statement of Work.
Project Completion Date	The date by which a Project is to be completed, as set out in the relevant Statement of Work.
Project Notice Period	The period of notice for cancellation of a Project as set out in the Statement of Work.
Project Term	The period during which the Services for each Project will be provided as specified in the applicable Statement of Work.
Purchase Order Number	The order number set out in the Letter of Appointment.
Rate Card	The Supplier's rate card set out in Framework Schedule 3.
Records	The accounts and information maintained by the Supplier related to the operation and delivery of this Call-Off Contract, including all expenditure which is reimbursable by the Customer, as are necessary for the provision of management information and to enable the Customer to conduct an audit as set out in Clause 21.
Rectification Plan	The rectification plan pursuant to the Rectification Plan Process.
Rectification Plan Process	The process set out in Clauses 5.8 to 5.14.
Regulations	The Public Contracts Regulations 2015.
Relevant Requirements	All applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
Request for Information	A request for information or an apparent request relating to this Call-Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs.
Schedule	Any Schedule attached to this Call-Off Contract.
Services	The Services to be supplied by the Supplier under this Call-Off Contract and in accordance with Framework Section 2, as set out in the relevant Statement of Work. This includes the provision of Deliverables.
Special Terms	Any terms specifically designated as varying these Call-Off Terms or the terms of any schedule, as set out in the applicable Statement of Work.
Standards	Any: <ul style="list-style-type: none"> standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;

	<ul style="list-style-type: none"> standards detailed in the specification in Framework Section 2 (Services and Key Performance Indicators);] standards detailed by the Customer in the Letter of Appointment and any Statement of Work or agreed between the Parties from time to time; relevant Government codes of practice and guidance applicable from time to time.
Statement of Work	One or more documents describing the relevant Project(s) as agreed and signed by the parties. Typically comprises both the Customer Project Specification and the Supplier's Proposal (whether agreed as part of a further competition or during the Term of this Call-Off Contract).
Sub-Contract	A contract entered into between the Supplier and a Sub-Contractor.
Sub-Contractor	Any person or Supplier appointed by the Supplier to provide elements of the Services on behalf of the Supplier to the Customer.
Supplier Affiliate	Any company, partnership or other entity which at any time directly or indirectly controls, is controlled by or is under common control with the Supplier, including as a subsidiary, parent or holding company.
Supplier Confidential Information	Any information that the Supplier gives to CCS or to Customer's that is designated as being confidential, or which ought to be reasonably be considered to be confidential (whether or not it is marked "confidential"). This may include information, however it is conveyed, that relates to the Supplier's business, affairs, developments, trade secrets, Know-How, personnel and suppliers including all IPRs.
Supplier Materials	Those Materials specifically created by any officers, employees, sub-contractors or freelancers of the Supplier for the purposes of a Project, whether or not these materials are incorporated into Deliverables during the Term. (Includes any Materials adapted, modified or derived from the Customer Materials).
Supplier Proprietary Materials	Software (including all programming code in object and source code form), methodology, know-how and processes and Materials in relation to which the Intellectual Property Rights are owned by (or licensed to) the Supplier and which: <ul style="list-style-type: none"> were in existence prior to the date on which it is intended to use them for a Project, or are created by or for the Supplier outside of a Project and which are intended to be reused across its business
Supplier Proposal	The Supplier's solution in response to the Customer's Project Specification, as set out in the Letter of Appointment.
Tender	The tender submitted by the Supplier in response to the Invitation to Tender and set out at Framework Schedule 10 (Call-Off Tender).

Term	The period from the Effective Date to the earlier of: <ul style="list-style-type: none"> • the Expiry Date or New Expiry Date; and • any date of termination
Territory	The United Kingdom, unless specified otherwise in the applicable Statement of Work. Publication and marketing on globally accessible mediums such as the internet shall not mean that the Territory is deemed to be worldwide.
Third Party Materials	Any Materials used in the Deliverables which are either commissioned by the Supplier from third parties or which have already been created by a third party and the Supplier proposes to use. Excludes software which is owned or licensed by a third party.
Transparency Principles	The principles set out at www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public detailing the requirement for the proactive release of contract information under the Government's transparency commitment.
Transparency Reports	The information relating to the Services and performance of this Call-Off Contract which the Supplier is required to provide to the CCS in accordance with its reporting requirements.
Variation	A change in this Call-Off Contract that is formally agreed by both Parties, as detailed in Clause 10.2.
Variation Form	The template form to process and record variations to this Call-Off Contract as set out at Schedule 5.
Worker	Any Supplier personnel to whom the Customer considers Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) applies See https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees
Working Day	Any day other than a Saturday, Sunday or public holiday in England and Wales.

SCHEDULE 2

Statement of Work-

[Note: For information on how to use this sample Statement of Work and the remaining Schedules, please see the section “How to use this Call-Off Contract” on [x][insert reference to Guidance].

This Statement of Work is issued under and in accordance with the Call-Off Contract entered into between the parties dated [insert date of signature of Call-Off Contract.]

Project:	<i>Set out a short description of the Project.</i>
Project start Date Notice period for cancellation [Project Notice Period]:	<i>Set out the start date for this Project and its duration and the likely end date if known– state whether for a fixed term or an initial term and then rolling subject to notice.</i> <i>Where the parties are agreeing a Project Notice Period for cancellation of Project, specify the notice period</i>
Services & Deliverables:	<i>Set out a description of the Services and Deliverables to be supplied by the Supplier for this Project.</i> <i>State any specific agreed activities that are to be delivered as part of the Project.</i> <i>State if you require any specific requirements and ways of working such as third party consents, licences, clearances that Supplier needs to obtain and products or purchases.</i> <i>State that Customer ’s use of the Deliverables will be “subject to any third party usage rights which are notified to the Customer in accordance with this Call-Off Contract“.</i>
Inclusion of Additional Schedules	The following Schedule are incorporated into this Scope of Work. This could include a copy of the agreed Proposal from the Supplier or the original project description.
Project Plan:	<i>Set out the timing of each phase of the project, any key dates and/ or delivery of the Services and/or the Deliverables (if known)</i>

Contract Charges:	<p>Set out the calculation of the Contract Charges [(including rules for the recovery of expenses)] payable to Supplier for this Project e.g. details of any fixed price, time and materials in which case Supplier's Rate Card should be attached, together with invoice dates or milestones that trigger payment.</p> <p>All rates should be less than the maximum rates set out in the Supplier rate card submitted as part of the original framework evaluation as set out in Framework Schedule 3.</p> <p>Set out any payment terms specific to the Project.</p> <p>Examples of different wording for Contract Charges:</p> <p><i>The Customer shall pay the Supplier the sum of £[...] for delivery of these Services, payable in monthly instalments. For the avoidance of doubt, the Contract Charges shall be inclusive of all third party costs</i></p> <p>OR</p> <p><i>The Contract Charges shall be calculated using the hourly charge out rates shown in [the Supplier's rate card, [provided that the total Contract Charges shall not exceed £ [...].] For the avoidance of doubt, the Contract Charges shall inclusive of all third party costs.</i></p>
Customer Materials:	<p>Set out details of the materials or information to be provided to the Supplier.</p>
International locations	<p>If Services are to be supplied outside the UK, specify additional territories here</p>
Customer Affiliates:	<p>If relevant, set out any Customer Affiliates which will be using Deliverables</p>
Special Terms:	<p>Set out any special terms that are intended to take precedence over the Call-Off Terms and/or the Schedules to the Call-Off Terms such as, security requirements, warranties, specific insurance requirements etc.</p>
Key Individuals :	<p>Set out details of the key personnel from the Supplier for this Project if relevant.</p>
Authorised Supplier Approver:	<p>Set out details of the person(s) who have the authority to agree day to day decisions on behalf of Supplier for this project.</p>

**Authorised
Customer
Approver:**

Set out details of the person(s) who have the authority to agree day to day decisions on behalf of Customer for this Project.

Signed by:.....

by (print name):.....

As Supplier Authorised Approver for and on behalf of

[Supplier]

Date.....

Signed by:.....

by (print name):.....

As Customer Authorised Approver for and on behalf of

[Customer]

Date.....

**SCHEDULE 3:
STAFF TRANSFER**

1. DEFINITIONS

In this Call-Off Schedule 3, the following definitions shall apply:

“Admission Agreement”	The agreement to be entered into by which the Supplier agrees to participate in the Schemes as amended from time to time;
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
“Employee Liabilities”	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none">(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;(b) unfair, wrongful or constructive dismissal compensation;(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;(d) compensation for less favourable treatment of part-time workers or fixed term employees;(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;(f) employment claims whether in tort, contract or statute or otherwise; <p>any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>

“Fair Deal Employees”	those Transferring Customer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
“Former Supplier”	an Supplier supplying services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013;
“Notified Sub-Contractor”	a Sub-Contractor identified in the Annex to this Call-Off Schedule 3 to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Replacement Sub-Contractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Schemes”	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
“Service Transfer Date”	the date of a Service Transfer;
“Staffing Information”	in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all

applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self-employed contractors or consultants, Supplier workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Supplier's Final Supplier Personnel List”

a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

“Supplier's Provisional Supplier Personnel List”

a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

“Transferring Customer Employees”

those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;

“Transferring Former Supplier Employees”

in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

“Transferring Supplier Employees”

those employees of the Supplier and/or the Supplier’s Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

Where a provision in this Call-Off Schedule 3 imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Customer, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

PART A

TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF SERVICES

3. RELEVANT TRANSFERS

3.1 The Customer and the Supplier agree that:

the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Customer Employees; and

as a result of the operation of the Employment Regulations, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-Contractor and each such Transferring Customer Employee.

3.2 The Customer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Customer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Customer ; and (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

4. CUSTOMER INDEMNITIES

4.1 Subject to Paragraph 4.2, the Customer shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

4.1.1 any act or omission by the Customer occurring before the Relevant Transfer Date;

4.1.2 the breach or non-observance by the Customer before the Relevant Transfer Date of:

a) any collective agreement applicable to the Transferring Customer Employees; and/or

b) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;

4.1.3 any claim by any trade union or other body or person representing the Transferring Customer Employees arising from or connected with any failure by the Customer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

4.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority

- relates to financial obligations arising before the Relevant Transfer Date; and
- b) in relation to any employee who is not a Transferring Customer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 4.1.5 a failure of the Customer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees arising before the Relevant Transfer Date;
- 4.1.6 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- 4.1.7 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 4.2 The indemnities in Paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 4.2.1 arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- 4.2.2 arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 4.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 4.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer; and
- 4.3.2 the Customer may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such

other reasonable steps as the Customer considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

- 4.4 If an offer referred to in Paragraph 4.3.2 is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 4.5 If by the end of the 15 Working Day period specified in Paragraph 4.3.2:
- 4.5.1 no such offer of employment has been made;
 - 4.5.2 such offer has been made but not accepted; or
 - 4.5.3 the situation has not otherwise been resolved,
 - 4.5.4 the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 4.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 4.3 to 4.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Customer shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 4.5 provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 4.7 The indemnity in Paragraph 4.6:
- 4.7.1 shall not apply to:
 - a) any claim for:
 - discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 - in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
 - any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
 - b) shall apply only where the notification referred to in Paragraph 4.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer within 6 months of the Call-Off Commencement Date.
- 4.8 If any such person as is referred to in Paragraph 4.3 is neither re-employed by the Customer nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 4.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

5. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 5.1 Subject to Paragraph 3.2 the Supplier shall indemnify the Customer against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 5.1.1 any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
 - 5.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
 - a) any collective agreement applicable to the Transferring Customer Employees; and/or
 - b) any custom or practice in respect of any Transferring Customer Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - 5.1.3 any claim by any trade union or other body or person representing any Transferring Customer Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 5.1.4 any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Customer Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Customer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - 5.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring Customer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing;
 - 5.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - b) in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- 5.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees in respect of the period from (and including) the Relevant Transfer Date; and
 - 5.1.8 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Customer's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 5.2 The indemnities in Paragraph 5.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under the Employment Regulations.
- 5.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Customer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Customer and the Supplier.

6. INFORMATION

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer in writing such information as is necessary to enable the Customer to carry out its duties under regulation 13 of the Employment Regulations. The Customer shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

7. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 7.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 7.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in:
 - 7.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 7.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

7.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

7.2.4 the New Fair Deal.

7.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 7.1 or 7.2 shall be agreed in accordance with the Variation Procedure.

8. PENSIONS

The Supplier shall, and shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART A: PENSIONS

9. PARTICIPATION

- 9.1 The Supplier undertakes to enter into the Admission Agreement.
- 9.2 The Supplier and the Customer :
- 9.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
 - 9.2.2 agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;
 - 9.2.3 notwithstanding Paragraph 9.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and
 - 9.2.4 agree that the Customer may terminate this Call-Off Contract for material default in the event that the Supplier breaches the Admission Agreement.
- 9.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

10. FUTURE SERVICE BENEFITS

- 10.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 10.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 10.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

11. FUNDING

- 11.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 11.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

12. PROVISION OF INFORMATION

The Supplier and the Customer respectively undertake to each other:

- 12.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 12.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

13. INDEMNITY

The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

14. EMPLOYER OBLIGATION

The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

15. SUBSEQUENT TRANSFERS

The Supplier shall:

- 15.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- 15.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 15.3 for the period either:
 - 15.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Call-Off Contract, to terminate the Agreement or any part of the Services; or
 - 15.3.2 after the date which is two (2) years prior to the date of expiry of this Call-Off Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior Approval of the Customer (such Approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

PART B

TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

16. RELEVANT TRANSFERS

16.1 The Customer and the Supplier agree that:

16.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

16.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.

16.2 Subject to Paragraph 6, the Customer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Customer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

17. FORMER SUPPLIER INDEMNITIES

17.1 Subject to Paragraphs 17.2 and 21, the Customer shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

17.1.1 any act or omission by the Former Supplier arising before the Relevant Transfer Date;

17.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or

b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

17.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

- b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
 - 17.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - 17.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Call-Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 17.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 17.2 The indemnities in Paragraph 17.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 17.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 17.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 17.3 If any person who is not identified by the Customer as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 17.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, to the Former Supplier; and
 - 17.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

- 17.4 If an offer referred to in Paragraph 17.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 17.5 If by the end of the 15 Working Day period specified in Paragraph 17.3.2:
- 17.5.1 no such offer of employment has been made;
 - 17.5.2 such offer has been made but not accepted; or
 - 17.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 17.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 17.3 to 17.5 and in accordance with all applicable proper employment procedures set out in Law, the Customer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 17.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 17.7 The indemnity in Paragraph 17.6:
- 17.7.1 shall not apply to:
 - a) any claim for:
 - discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
 - b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
 - 17.7.2 shall apply only where the notification referred to in Paragraph 17.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer and, if applicable, the Former Supplier, within 6 months of the Call-Off Commencement Date.
- 17.8 If any such person as is described in Paragraph 17.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 17.5, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

18. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 18.1 Subject to Paragraph 18.2, the Supplier shall indemnify the Customer and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier

Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- 18.1.1 any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
- 18.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
 - a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- 18.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 18.1.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 18.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Supplier in writing;
- 18.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - c) a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the

Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and

- d) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.

18.2 The indemnities in Paragraph 18.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

18.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

19. INFORMATION

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and/or at the Customer's direction, the Former Supplier, in writing such information as is necessary to enable the Customer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 21, the Customer shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

20. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

20.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

20.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

20.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

20.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

20.1.4 the New Fair Deal.

20.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 20.1 shall be agreed in accordance with the Variation Procedure.

21. PROCUREMENT OBLIGATIONS

Notwithstanding any other provisions of this Part B, where in this Part B the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer 's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

22. PENSIONS

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Supplier Employees who transfer from the Former Supplier to the Supplier.

ANNEX TO PART B: PENSIONS

23. PARTICIPATION

- 23.1 The Supplier undertakes to enter into the Admission Agreement.
- 23.2 The Supplier and the Customer :
- 23.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
 - 23.2.2 agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;
 - 23.2.3 notwithstanding Paragraph 23.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and
 - 23.2.4 agree that the Customer may terminate this Call-Off Contract for material default in the event that the Supplier breaches the Admission Agreement.
- 23.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

24. FUTURE SERVICE BENEFITS

- 24.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 24.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 24.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 24.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

25. FUNDING

- 25.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

25.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

26. PROVISION OF INFORMATION

The Supplier and the Customer respectively undertake to each other:

26.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

26.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

27. INDEMNITY

The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

28. EMPLOYER OBLIGATION

The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

29. SUBSEQUENT TRANSFERS

The Supplier shall:

29.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;

29.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and

29.3 for the period either

29.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Call-Off Contract, to terminate the Agreement or any part of the Services; or

29.3.2 after the date which is two (2) years prior to the date of expiry of this Call-Off Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior Approval of the Customer (such Approval not to be unreasonably

withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

30. PROCEDURE IN THE EVENT OF TRANSFER

- 30.1 The Customer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.
- 30.2 If any employee of the Customer and/or a Former Supplier claims, or it is determined in relation to any employee of the Customer and/or a Former Supplier, that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 30.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Supplier; and
- 30.2.2 the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Customer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 30.3 If an offer referred to in Paragraph 30.2.2 is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 30.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 30.2.2:
- 30.4.1 no such offer of employment has been made;
- 30.4.2 such offer has been made but not accepted; or
- 30.4.3 the situation has not otherwise been resolved,
- the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

31. INDEMNITIES

- 31.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 30.2 to 30.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 31.4, the Customer shall:
- 31.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in Paragraph 30.2 made pursuant to the provisions of Paragraph 30.4 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- 31.1.2 subject to paragraph 32, procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former

Supplier made pursuant to the provisions of Paragraph 30.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

31.2 If any such person as is described in Paragraph 30.2 is neither re employed by the Customer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 30.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.

31.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to Paragraph 30.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.

31.4 The indemnities in Paragraph 31.1:

31.4.1 shall not apply to:

a) any claim for:

- discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and

31.4.2 shall apply only where the notification referred to in Paragraph 30.2.1 is made by the Supplier and/or any Sub-Contractor to the Customer and, if applicable, Former Supplier within 6 months of the Call-Off Commencement Date.

32. PROCUREMENT OBLIGATIONS

Where in this Part C the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D

EMPLOYMENT EXIT PROVISIONS

33. PRE-SERVICE TRANSFER OBLIGATIONS

- 33.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 33.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
 - 33.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Call-Off Contract;
 - 33.1.3 the date which is twelve (12) months before the end of the Term; and
 - 33.1.4 receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six (6) month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Customer.
- 33.2 At least thirty (30) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-Contractor:
- 33.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 33.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 33.3 The Customer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 33.1 and 33.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 33.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 33.1 and 33.2 shall be true and accurate in all material respects at the time of providing the information.
- 33.5 From the date of the earliest event referred to in Paragraph 33.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the Approval of the Customer (not to be unreasonably withheld or delayed):
- 33.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 33.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

- 33.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 33.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 33.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 33.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Customer or, at the direction of the Customer, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 33.6 During the Term, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which the Services are organised, which shall include:

- 33.6.1 the numbers of employees engaged in providing the Services;
- 33.6.2 the percentage of time spent by each employee engaged in providing the Services; and
- 33.6.3 a description of the nature of the work undertaken by each employee by location.

- 33.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- 33.7.1 the most recent month's copy pay slip data;
- 33.7.2 details of cumulative pay for tax and pension purposes;
- 33.7.3 details of cumulative tax paid;
- 33.7.4 tax code;
- 33.7.5 details of any voluntary deductions from pay; and
- 33.7.6 bank/building society account details for payroll purposes.

34. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 34.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of

the Services) may change (whether as a result of termination or Partial Termination of this Call-Off Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.

- 34.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 34.3 Subject to Paragraph 34.4, where a Relevant Transfer occurs the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 34.3.1 any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
 - 34.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - 34.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - 34.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority

relates to financial obligations arising on and before the Service Transfer Date; and

- b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 34.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 34.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Call-Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 34.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 34.4 The indemnities in Paragraph 34.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 34.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
 - 34.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 34.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 34.5.1 the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

- 34.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 34.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 34.7 If after the fifteen (15) Working Day period specified in Paragraph 34.5.2 has elapsed:
- 34.7.1 no such offer of employment has been made;
- 34.7.2 such offer has been made but not accepted; or
- 34.7.3 the situation has not otherwise been resolved
- the Customer shall advise the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 34.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 34.5 to 34.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 34.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 34.9 The indemnity in Paragraph 34.8:
- 34.9.1 shall not apply to:
- a) any claim for:
- discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or
- b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- 34.9.2 shall apply only where the notification referred to in Paragraph 34.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.
- 34.10 If any such person as is described in Paragraph 34.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 34.5 to 34.7, such person shall be treated as a Transferring Supplier Employee and the Replacement

Supplier and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.

34.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

34.11.1 the Supplier and/or any Sub-Contractor; and

34.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.

34.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-Contractor shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

34.13 Subject to Paragraph 34.14, where a Relevant Transfer occurs the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

34.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor;

34.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:

a) any collective agreement applicable to the Transferring Supplier Employees; and/or

b) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;

34.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

34.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working

conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

34.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

34.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

34.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and

14.13.8 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

34.14 The indemnities in Paragraph 34.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

SCHEDULE 4:

DISPUTE RESOLUTION PROCEDURE

1. Nothing in this dispute resolution procedure will prevent the Parties from seeking an interim court order restraining the other Party from doing any act or compelling the other Party to do any act.
2. The obligations of the Parties under this Call-Off Contract will not be suspended, cease or be delayed during a dispute.
3. If any dispute arises between the Parties in connection with this Call-Off Contract, they must try to settle it within 20 Working Days of either Party notifying the other of the dispute.
4. If the Parties have not settled the Dispute in accordance with paragraph 3 above, they must notify CCS of the details of the Dispute and escalate the dispute to the Customer Representative, the Supplier Representative and CCS who will have a further 10 Working Days from the date of escalation to settle the dispute.
5. If the dispute cannot be resolved by the Parties within 30 Working Days of the notice given under paragraph 3 above, they must refer it to mediation, unless the Customer considers that the dispute is not suitable for resolution by mediation.
6. If a dispute is referred to mediation, the Parties must:
 - appoint a neutral adviser or mediator (the “**Mediator**”). Ideally, Parties will agree on this appointment. If they are unable to agree upon a Mediator within 10 Working Days of the proposal to appoint a mediator, or the chosen Mediator is unable or unwilling to act, either Party may apply to the Centre for Effective Dispute Resolution to appoint a Mediator
 - meet with the Mediator within 10 Working Days of the appointment, to agree how negotiations will take place and relevant information will be exchanged
7. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
8. If the Parties reach a resolution, a written agreement may be produced for both Parties to sign. Once signed, this agreement will be binding on both Parties.
9. If the Parties fail to reach a resolution, either Party may invite the Mediator to provide a non-binding but informative opinion in writing. This opinion will be provided without prejudice and cannot be used in evidence in any proceedings relating to this Call-Off Contract without the prior written consent of both Parties.
10. If the Parties fail to reach a resolution within 90 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the dispute may be referred to arbitration, unless the Customer considers that it is not suitable for resolution by arbitration.
11. If a dispute is referred to arbitration, the Parties must comply with the following provisions:
 - the arbitration will be governed by the provisions of the Arbitration Act 1996

- the London Court of International Arbitration (LCIA) procedural rules will apply, and are deemed to be incorporated into this Call-Off Contract. It however there is any conflict between the LCIA procedural rules and this Call-Off Contract, this Call-Off Contract will prevail
- the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules)
- the tribunal shall consist of a sole arbitrator to be agreed by the Parties
- if the Parties fail to agree on the appointment of the arbitrator within 10 Working Days or, if the person appointed is unable or unwilling to act, LCIA will appoint an arbitrator, and
- the arbitration proceedings shall take place in a location to be agreed between the Parties.

SCHEDULE 5: VARIATION FORM

No of Call-Off Letter of Appointment being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Customer] ("**the Customer** ")

and

[insert name of Supplier] ("**the Supplier**")

1. This Call-Off Contract is varied as follows and shall take effect on the date signed by both Parties:

[Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in this Call-Off Contract.
3. This Call-Off Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Customer

Signature

Date

Name (in Capitals)

Address

.....
.....
.....
.....

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

12/08/2013

.....
.....
.....
.....

SCHEDULE 6: ADDITIONAL CLAUSES

1. MOD ADDITIONAL CLAUSES

[Guidance Note: The Ministry of Defence to select and refine during the Further Competition Procedure]

- 1.1 The definition of Call-Off-Contract in Call-Off Schedule 1 (Definitions) to the Call-Off Terms shall be replaced with the following:

"Call-Off Contract"

This written agreement between the Customer and the Supplier consisting of the terms set out in the Letter of Appointment, the Call-Off Terms, the Schedules and any Statement of Work and the MoD Terms and Conditions.

- 1.2 The following definitions shall be inserted into in Call-Off Schedule 1 (Definitions) to the Call-Off Terms:

1.3 **"MoD Terms and Conditions"**

The contractual terms and conditions listed in Schedule [...] which form part of the Call-Off Terms **[Guidance Note: read with the Guidance Note below]**

"Site"

Any of Her Majesty's Ships or Vessels and Service Stations.

"Officer in charge"

Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.

- 1.4 The following Clauses shall be inserted as a new Clause 4 to this Call-Off Contract:

"4. Due Diligence"

4.1 The Supplier confirms that it has had the opportunity to review the MoD Terms and Conditions and has raised all questions in relation to those documents with the Customer prior to the Effective Date.

4.2 Where required by the Customer, the Supplier will take all actions necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Supplier."

- 1.5 The following new Clause [36] shall apply:

[Guidance Note: the intention is for the Clause to follow after the last Clause in the T&Cs]

36. [ACCESS TO MOD SITES

- 36.1 The Customer will issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative will not be admitted unless in possession of such a pass. Passes are the property of the Customer and will be surrendered on demand or on completion of the Services.
- 36.2 The Supplier's representatives when employed within the boundaries of a Site, must comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of these rules, regulations and requirements will be provided, on request, by the Officer in charge.
- 36.3 The Supplier will be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Customer wherever possible, at the discretion of the Officer in charge. These facilities will be charged at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's personnel for messing purposes shall be at the discretion of the Officer in charge. The Officer in charge will, wherever possible give his decision before the commencement of this Call-Off Contract if asked to do so by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Customer and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Customer with other evidence relating to the costs of this Call-Off Contract.
- 36.4 Where the Supplier's representatives are required by this Call-Off Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) will be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Supplier must make such arrangements through the Technical Branch named for this purpose in this Call-Off Contract. When this transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier will make its own transport arrangements. The Customer will reimburse the Supplier's reasonable costs for transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Call-Off Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge. If so provided it will be free of charge.
- 36.5 Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas will be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, will be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.

- 36.6 Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc. Act 1974, must be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 36.7 No assistance from public funds, and no messing facilities, accommodation or transport overseas will be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 36.8 The Supplier must arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Customer will, on request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Customer will be recovered from the Supplier.
- 36.9 The following new Call-Off Schedule [7] shall apply:

CALL-OFF SCHEDULE [7]: MOD DEFCONS AND DEFFORMS

The following MOD DEFCONS and DEFFORMs form part of this Call-Off Contract:
DEFCONS

DEFCON No	Version	Description

DEFFORMs (Ministry of Defence Forms)

DEFFORM No	Version	Description

[Guidance Note: the above documents can be found at <http://www.aof.mod.uk/>]

[Guidance Note for the Ministry of Defence: Upon placing of an Order the Ministry of Defence shall select and refine the DEFCONS or DEFFORMs from the tables above, in

accordance with the DEFCONs and DEFFORMs which are appropriate to the specific Call-Off Contract, and set them out in Call-Off Schedule [7].]

[insert text of applicable DEFCONs and DEFFORMs]