

FRAMEWORK SCHEDULE 4 – ANNEX 3

ALTERNATIVE AND ADDITIONAL CALL OFF CONTRACT PROVISIONS

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Non-Crown Bodies
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Unless a clear adjustment to an existing provision of the Call Off Contract (e.g. the alternative Clauses and Clause B.5 replacing the short form Variation Procedure) additional Clauses incorporated to the Call Off Contract via the Order Form will have the effect of being inserted sequentially immediately after Clause 37. New definitions for Call Off Schedule 1 will have the effect of being inserted alphabetically into the table therein and associated schedules will have the effect of being inserted sequentially immediately after Call Off Schedule 4.

ALTERNATIVE CLAUSES

SCOTS LAW

Law and Jurisdiction (Clause 37)

The original Clause 37 shall be replaced with:

This Call Off Contract shall be governed by and interpreted in accordance with the Laws of Scotland and the Parties agree to submit to the exclusive jurisdiction of the Scottish courts any dispute that arises in connection with this Call Off Contract including, without limitation, any dispute relating to any contractual or non-contractual obligation and the existence, validity or termination of this Call Off Contract.

NORTHERN IRELAND LAW

Law and Jurisdiction (Clause 37)

The original Clause 37 shall be replaced with:

This Call Off Contract shall be governed by and interpreted in accordance with the Laws of Northern Ireland and the Parties agree to submit to the exclusive jurisdiction of the Northern Irish courts any dispute that arises in connection with this Call Off Contract including, without limitation, any dispute relating to any contractual or non-contractual obligation and the existence, validity or termination of this Call Off Contract.

Schedule 1:

In the definition of "Insolvency Event", Section 123 of the Insolvency Act 1986" shall be replaced with "Article 103 of the Insolvency (NI) Order 1989".

NON-CROWN BODIES

Where the Customer is not a Crown Body replace Clause 26.2 with the following:

"26.2 Finance Act

26.2.1 The Supplier shall comply with section 182 of the Finance Act 1989."

NON-FOIA PUBLIC BODIES

Where the Customer is not a public body for the purposes of FOIA replace Clause 15.6 with the following:

"15.6 Freedom of Information

15.6 The Customer has notified the Supplier that the Customer is exempt from the provisions of FOIA."

A: TERMED DELIVERY – GOODS

Additional contractual provisions to apply to Customer requirements for Goods purchase, including where Financed Purchase Agreements are used, over a specified duration of Call-Off Contract. To be selected by the Customer using the Order Form.

A.1 IMPLEMENTATION PLAN

A.1.1 Formation of Implementation Plan

A.1.1.1 Where the Parties agreed in the Order Form (or elsewhere in this Call Off Contract) that an Implementation Plan (or parts thereof) shall be provided in draft by the Supplier prior to the commencement of the provision of the supply of the Goods, the Supplier's draft must contain information at the level of detail necessary to manage the implementation stage effectively and as the Customer may require. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to the Supplier.

A.1.1.2 The Supplier shall submit the draft Implementation Plan to the Customer for Approval (such decision of the Customer to Approve or not shall not be unreasonably delayed or withheld) within such period as specified by the Customer in the Order Form (or elsewhere in this Call Off Contract).

A.1.1.3 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.

A.1.1.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in this Call Off Contract and report to the Customer on such performance.

A.1.2 Control of Implementation Plan

A.1.2.1 Subject to Clause A.1.2.2, the Supplier shall keep the Implementation Plan under review in accordance with the Customer's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the supply of the Goods. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.

A.1.2.2 Changes to the Milestones (if any), Milestone Payments (if any) and Delay Payments (if any) shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).

A.1.2.3 Where so specified by the Customer in the Implementation Plan or elsewhere in this Call Off Contract, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone Date or period shall be a Material Default unless the Parties expressly agree otherwise.

A.1.3 Rectification of Delay in Implementation

A.1.3.1 If the Supplier becomes aware that there is, or there is reasonably likely to be a Delay under this Call Off Contract:

- a) it shall:
 - (i) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and
 - (ii) include in its notification an explanation of the actual or anticipated impact of the Delay; and
 - (iii) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Implementation Plan, Clause A.1.4 (Delay Payments) shall apply unless the Delay is deemed as resulting from Customer Cause.

A.1.4 Delay Payments

A.1.4.1 If Delay Payments have been included in the Implementation Plan (if any) then, if a Milestone has not been achieved by the relevant Milestone Date the Supplier shall pay to the Customer such Delay Payments (calculated as set out by the Customer in the Implementation Plan) and the following provisions shall apply:

- a) The Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to Achieve the corresponding Milestone;
- b) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
 - (i) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 21 (Customer Termination Rights) except Clause 21.2 (Termination Without Cause), where used; or
 - (ii) the delay exceeds the period of [one hundred (100)] days commencing on the relevant Milestone Date;
- c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified by the Customer in the Implementation Plan);
- d) no payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver complies with Clause 28 (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Customer's rights to claim Delay Payments; and
- e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause A1 and Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 17.

Associated definitions to be inserted into Call Off Schedule 1:

"Achieve"	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and " Achieved " and " Achievement " shall be construed accordingly;
"Delay"	means: <ul style="list-style-type: none">a) a delay in the Achievement of a Milestone by its Milestone Date; orb) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
"Delay Payments"	means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
"Milestone"	means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;
"Milestone Date"	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
"Milestone Payment"	means a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;
"Satisfaction Certificate"	means the certificate materially in the form of the document contained in Annex 1 to Call Off Schedule B2 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;

Associated Schedule included below

CALL OFF SCHEDULE A1: IMPLEMENTATION PLAN, CUSTOMER RESPONSIBILITIES AND KEY PERSONNEL

1. INTRODUCTION

1.1 This Call Off Schedule specifies:

1.1.1 In Part A, the Implementation Plan in accordance with which the Supplier shall provide the Goods; and

1.1.2 In Part B, the Customer Responsibilities in respect of facilitating the Supplier's achievement of the Implementation Plan.

PART A: IMPLEMENTATION PLAN

2. GENERAL

2.1 The Implementation Plan is set out below:

2.2 The Milestones to be Achieved are identified below:

Milestone	Deliverables	Duration	Milestone Date	Customer Responsibilities	Milestone Payments	Delay Payments
[?]	[?]	[?]	[?]	[?]	[?]	[?]

2.3 The Milestones will be Achieved in accordance with Call Off Schedule B2 (Testing) or the Test Plan annexed to the Implementation Plan. **[Guidance Note: Customer to complete and append where applicable]**

PART B: CUSTOMER RESPONSIBILITIES

3. GENERAL

3.1 The Customer Responsibilities associated with the Milestones identified in the Implementation Plan are set out in the column entitled Customer Responsibilities in the Implementation Plan.

PART C: KEY PERSONNEL

4. GENERAL

4.1 The Supplier has assigned the following Key Personnel to this Call-Off Contract in the Key Roles detailed below:

[]

A.2. INSURANCE

A.2.1 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Framework Schedule 14 (Insurance), the Supplier shall effect and maintain the following policies of insurance (or extensions to such existing policies of insurance), unless other specific minimum insurance policy levels have been stipulated by the Customer during a Further Competition Procedure and specified in the Order Form:

A.2.1.1 Employers Liability Insurance of at least (£5,000,000);

A.2.1.2 Public Liability Insurance of at least (£1,000,000);

A.2.1.3 Product Liability Insurance of at least (£1,000,000) – applicable to Lot 5 only; and

A.2.1.4 Professional Indemnity Insurance of at least (£1,000,000) – applicable to Lots 1 to 4 inclusive

A.2.2 In respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract, The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause A.2.1 above for six (6) years after the Call Off Expiry Date.

A.2.3 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause A.2.1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

A.2.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause A.2.1, the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.

A.2.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.

A.2.6 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

A.3 Termination in Relation to Financial Standing

A.3.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Customer there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- a) adversely impacts on the Supplier's ability to supply the Goods under this Call Off Contract; or
- b) could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Goods under this Call off Contract.

A.4 Termination on Insolvency

A.4.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

A.5 Termination on Change of Control

A.5.1 The Supplier shall notify the Customer immediately if the Supplier undergoes a Change of Control and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier within six (6) Months of:

- a) being notified in writing that a Change of Control has occurred or is planned or in contemplation; or
- b) where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

A.6 ASSIGNMENT AND NOVATION

Insert the following Clauses immediately after Clause 27.1 (which was retained as the default position)

27.2 The Customer may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Call Off Contract or any part thereof to:

27.2.1 any other Contracting Body; or

27.2.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

27.2.3 any private sector body which substantially performs the functions of the Customer,

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 27.2.

27.3 A change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 27.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.

27.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a body which is not a Contracting Body or if a body which is not a Contracting Body succeeds the Customer (both "Transferee" in the rest of this Clause) the right of termination of the Customer in Clause A.4 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in Clause A.4 (Termination on Insolvency) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee).

B: COMPLEX DELIVERY – SOLUTIONS

Additional contractual provisions to apply to Customer requirements which include service elements over a specified duration of Call-Off Contract. “A: TERMED DELIVERY – GOODS” provisions are included by default. To be selected by the Customer using the Order Form.

B.1 Detailed Variation Procedure included to replace the written agreement default version

Replace the existing Clause 10.1.1 with the following:

10.1.1 Subject to the provisions of this Clause 10 and, where this is used, of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "Variation".

10.1.2 A Party may request a Variation by completing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.

10.1.3 The Customer may require the Supplier to carry out an impact assessment of the Variation on the Goods (the “Impact Assessment”). The Impact Assessment shall be completed in good faith and shall include:

- a) details of the impact of the proposed Variation on the Goods and the Supplier's ability to meet its other obligations under this Call Off Contract;
- b) details of the cost of implementing the proposed Variation;
- c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Call Off Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
- e) such other information as the Customer may reasonably request in (or in response to) the Variation request.

10.1.4 Where the Customer has requested the Variation and the Supplier can show that the Impact Assessment required resources other than those ordinarily deployed in the provision of the Goods the Customer shall pay any reasonable costs incurred by the Supplier in producing the Impact Assessment.

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

10.1.6 Subject to 10.1.5, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Order and the proposed Variation.

10.1.7 In the event that:

- 10.1.7.1 the Supplier is unable to agree to or provide the Variation; and/or
- 10.1.7.2 the Parties are unable to agree a change to the Call Off Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof,
- 10.1.7.3 the Customer may:
 - 10.1.7.3.1 agree to continue to perform its obligations under this Call Off Contract without the Variation; or
 - 10.1.7.3.2 terminate this Call Off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Order in accordance with this Call Off Contract or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Call Off Contract.

Insert associated Termination provision as included below:

21.5 Termination in Relation to Variation

21.5.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier for failure of the Parties to agree or the Supplier to implement a Variation in accordance with the Variation Procedure as set out in Clause 10.1.7.3.2.

Associated definition to be inserted into Call Off Schedule 1:

"Variation Form" means the form set out in Call Off Schedule B1

Associated Schedule included below

CALL OFF SCHEDULE B2: VARIATION FORM

No of Order Form being varied:

.....

Variation Form No:

.....

BETWEEN:

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

and

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

The Call Off Contract is varied as follows and shall take effect on the date signed by both Parties:

[Guidance Note: Insert details of the Variation]

Words and expressions in this Variation shall have the meanings given to them in the Call Off Contract.

The 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 for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

B.2 TESTING

B.2.1 The Parties shall comply with the provisions specified in the Test Plan in relation to the procedures to determine whether a Milestone or Test has been Achieved.

Associated definitions to be inserted into Call Off Schedule 1:

"Test Issue"	means any variance or non-conformity of the Goods or Deliverables from their requirements as set out in the Call Off Contract;
"Test Plan"	means the plan for the Testing of Deliverables and other agreed criteria related to the achievement of Milestones identified in any Implementation Plan;

Associated Schedule included below

CALL OFF SCHEDULE B2: TESTING

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Test Strategy" a strategy for the conduct of Testing as described further in Paragraph 3;

2. INTRODUCTION

2.1 This schedule sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Test Plans. The primary purpose of Testing shall be to demonstrate to the Customer's satisfaction that the Goods have been supplied and implemented in accordance with the requirements of this Call Off Contract, and that they are ready for operational use.

3. TEST STRATEGY

3.1 The Supplier shall develop the final Test Strategy as soon as practicable but in any case no later than the date specified in the Implementation Plan (or such other period as the Parties may agree).

3.2 The final Test Strategy shall include:

3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;

3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;

3.2.3 the procedure to be followed should a Deliverable fail a Test or where a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;

3.2.4 the procedure to be followed to sign off each Test; and

3.2.5 the process for the production and maintenance of reports relating to Tests.

4. TEST PLANS

4.1 The Supplier shall develop Test Plans for the Approval of the Customer as soon as practicable but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.

4.2 Each Test Plan shall include as a minimum:

4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested;

4.2.2 a detailed procedure for the Tests to be carried out, including:

4.2.3 the timetable for the Tests including start and end dates;

4.2.4 the Testing mechanism and the detailed success criteria ;

4.2.5 dates and methods by which the Customer can inspect Test results;

4.2.6 the mechanism for ensuring the quality, completeness and relevance of the Tests;

4.2.7 the process with which the Customer will review Test Issues and progress on a timely basis; and

4.2.8 the re-Test procedure, the timetable and the resources which would be required for re-Testing.

4.3 The Customer shall not unreasonably withhold or delay its Approval of the Test Plans and the Supplier shall implement any reasonable requirements of the Customer in the Test Plans.

5. TESTING

5.1 When the Supplier has completed the provision of the Goods in respect of a Milestone it shall submit any Deliverables relating to that Milestone for Testing.

5.2 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Customer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.

5.3 If the Supplier successfully completes the requisite Tests, the Customer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Services are implemented in accordance with this Contract.

6. TEST ISSUES

6.1 Where a Test Issue is identified by the Supplier, the Parties shall agree how such Test Issue shall be dealt with and any failure to agree by the Parties shall be resolved in accordance with the Dispute Resolution Procedure.

7. TEST QUALITY AUDIT

7.1 Without prejudice to its rights pursuant to Clause 21 (Customer Termination Rights), the Customer or an agent or temporary worker appointed by the Customer may perform on-going quality audits in respect of any part of the Testing.

7.2 If the Customer has any concerns following an audit in accordance with paragraph 7.1 above the Customer will discuss such concerns with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Supplier detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.

7.3 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

8. OUTCOME OF TESTING

8.1 The Customer will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.

8.2 If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:

8.2.1 the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or

8.2.2 the Parties shall treat the failure as a Supplier's Default.

ANNEX 1: SATISFACTION CERTIFICATE

To: [insert name of Supplier]

From: [insert name of Customer]

[insert Date dd/mm/yyyy]

Dear Sirs,

SATISFACTION CERTIFICATE

Milestone:

[Guidance Note to Customer: Insert description of the relevant Milestones]

We refer to the agreement ("Call Off Contract") relating to the provision of the Goods and Services between the [insert Customer name] ("Customer") and [insert Supplier name] ("Supplier") dated [insert Call Off Commencement Date dd/mm/yyyy].

The definitions for terms capitalised in this certificate are set out in the Call Off Contract.

[We confirm that all of the Milestones have been successfully Achieved by the Supplier in accordance with the Test relevant to those Milestones.]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

B.3. SERVICE LEVELS AND SERVICE CREDITS

B.3.1 The Supplier shall at all times during the Call Off Contract Period provide the Goods and/or Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion specified in the Order Form or Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring) where this is used.

B.3.2 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to Service Credits if so specified in the Order Form.

B.3.3 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to meet any Service Level Performance Measure.

B.3.4 CRITICAL SERVICE LEVEL FAILURE

B.3.4.1 On the occurrence of a Critical Service Level Failure:

B.3.4.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

B.3.4.1.2 the Customer shall (subject to the Service Credit Cap set out in Clause 17.2 (Liability)) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Call Off Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period ("Compensation for Critical Service Level Failure"),

provided that the operation of this Clause shall be without prejudice to the right of the Customer to terminate this Call Off Contract and/or to claim damages from the Supplier for Material Default as a result of such Critical Service Level Failure.

B.3.4.2 The Supplier:

B.3.4.2.1 agrees that the application of Clause B.3.4.1 is commercially justifiable where a Critical Service Level Failure occurs; and

B.3.4.2.2 acknowledges that it has taken legal advice on the application of Clause B.3.4.1 and has had the opportunity to price for that risk when calculating the Call Off Contract Charges.

Associated definitions to be inserted into Call Off Schedule 1:

“Compensation for Critical Service Level Failure”	has the meaning given to it in Clause B.3.4.1.2 (Critical Service Level Failure);
"Critical Service Level Failure"	means any instance of critical service level failure as defined in this Call Off Contract
“Performance Monitoring System”	has the meaning given to it in paragraph 7.1.2 in Part B of Schedule B3 (Service Levels, Service Credits and Performance Monitoring);
“Performance Monitoring Reports”	has the meaning given to it in paragraph 9 of Part B of Schedule B3 (Service Levels, Service Credits and Performance Monitoring);
“Performance Review Meetings”	has the meaning given to it in paragraph 9.2 of Part B of Schedule B3 (Service Levels, Service Credits and Performance Monitoring);
"Service Credits"	means any service credits specified in the Order Form, or where this is used Annex 1 to Part A of Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring), being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels;
“Service Failure”	means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Goods and/or Services or event which could affect the provision of the Goods and/or Services in the future;
“Service Level Failure”	a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
“Service Level Performance Criteria” or “Service Level Performance Criterion”	means the Service Level Performance Criteria specified in the Order Form or, where this is used, in Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring);

“Service Level Performance Measure”	shall be as set out against the relevant Service Level Performance Criterion in the Order Form or, where this is used, Annex 1 of Part A of Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring);
"Service Levels"	means any service levels applicable to the provision of the Goods and/or Services under this Call Off Contract specified in the Order Form or, where this is used, in Annex 1 to Part A of Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring);
“Service Period”	shall have the meaning given to in paragraph 5.1 of Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring);

Associated Schedule included below

CALL OFF SCHEDULE B3: SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING

1. SCOPE

- 1.1 This Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring) sets out the Service Levels which the Supplier is required to achieve when providing the Services, the mechanism by which Service Level Failures and Critical Service Level Failures will be managed and the method by which the Supplier's performance in the provision by it of the Services will be monitored.
- 1.2 This Call Off Schedule comprises:
 - 1.2.1 Part A: Service Levels and Service Credits;
 - 1.2.2 Annex 1 to Part A - Service Levels and Service Credits Table;
 - 1.2.3 Annex 2 to Part A – Critical Service Level Failure;
 - 1.2.4 Part B: Performance Monitoring; and
 - 1.2.5 Annex 1 to Part B: Additional Performance Monitoring Requirements

PART A: SERVICE LEVELS AND SERVICE CREDITS

2. GENERAL PROVISIONS

- 2.1 The Supplier shall provide a proactive Call Off Contract manager to ensure that all Service Levels in this Call Off Contract and Key Performance Indicators in the Framework Agreement are achieved to the highest standard throughout, respectively, the Call Off Contract Period and the Framework Period.
- 2.2 The Supplier shall provide a managed service through the provision of a dedicated Call Off Contract manager where required on matters relating to:
 - 2.2.1 Supply performance;
 - 2.2.2 Quality of Goods and/or Services;
 - 2.2.3 Customer support;
 - 2.2.4 Complaints handling; and
 - 2.2.5 Accurate and timely invoices.
- 2.3 The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Annex 1 to this Part A of this Call Off Schedule will result in Service Credits being issued to Customers.

3. PRINCIPAL POINTS

- 3.1 The objectives of the Service Levels and Service Credits are to:
 - 3.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
 - 3.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of service for which it has contracted to deliver; and
 - 3.1.3 incentivise the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.

4. SERVICE LEVELS

- 4.1 Annex 1 to this Part A of this Call Off Schedule sets out the Service Levels the performance of which the Parties have agreed to measure.
- 4.2 The Supplier shall monitor its performance of this Call Off Contract by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Call Off Schedule (the "Service Level Performance Criteria") and shall send the Customer a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Call Off Schedule.
- 4.3 The Supplier shall, at all times, provide the Services in such a manner that the Service Levels Performance Measures are achieved.
- 4.4 If the level of performance of the Supplier of any element of the provision by it of the Services during the Call Off Contract Period:
 - 4.4.1 is likely to or fails to meet any Service Level Performance Measure or
 - 4.4.2 is likely to cause or causes a Critical Service Level Failure to occur,

the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under Clause B.3 (Service Levels and Service Credits), may:

- a) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and
 - b) if the action taken under paragraph a) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Customer shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or
 - c) if a Service Level Failure has occurred, deduct from the Call Off Contract Charges the applicable Service Level Credits payable by the Supplier to the Customer in accordance with the calculation formula set out in Annex 1 of this Part A of this Call Off Schedule; or
 - d) if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause B.3.4 (Critical Service Level Failure) (including subject, for the avoidance of doubt, the proviso in Clause **Error! Reference source not found.** in relation to Material Breach).
- 4.5 Approval and implementation by the Customer of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Customer.

5. SERVICE CREDITS

- 5.1 Annex 1 to this Part A of this Call Off Schedule sets out the formula used to calculate a Service Credit payable to the Customer as a result of a Service Level Failure in a given service period which, for the purpose of this Call Off Schedule, shall be a recurrent period of [one Month] during the Call Off Contract Period (the "Service Period").
- 5.2 Annex 1 to this Part A of this Call Off Schedule includes details of each Service Credit available to each Service Level Performance Criterion if the applicable Service Level Performance Measure is not met by the Supplier.
- 5.3 The Customer shall use the Performance Monitoring reports supplied by the Supplier under Part B (Performance Monitoring) of this Call Off Schedule to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
- 5.4 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in Annex 1 of Part A of this Call Off Schedule.

6. NATURE OF SERVICE CREDITS

- 6.1 The Supplier confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Call Off Contract Charges. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

ANNEX 1 TO PART A: SERVICE LEVELS AND SERVICE CREDITS TABLE

Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Credit for each Service Period
Accurate and timely billing of Customer	Accuracy /timelines	at least 98% at all times	0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure
Access to Customer support	Availability	at least 98% at all times	0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure
Complaints handling	Availability/ timelines	At least 98% at all times	0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure
Provision of specific Services	Quality	at least 98% at all times	2% Service Credit gained for each percentage under the specified Service Level Performance Measure
Timely provision of the Services [** hours a day, ** days a week.]	Services availability	at least 98% at all times	2% Service Credit gained for each percentage under the specified Service Level Performance Measure

The Service Credits shall be calculated on the basis of the following formula:

[Example – to be populated according to the Customer's specific requirement:]

Formula: x% (Service Level Performance Measure) - x% (actual Service Level performance)	=	x% of the Call Off Contract Charges payable to the Customer as Service Credits to be deducted from the next Valid Invoice payable by the Customer
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Worked example: 98% (e.g. Service Level Performance Measure requirement for Service Level Performance Criterion of accurate and timely billing to Customer) - 75% (e.g. actual performance achieved against this Service Level Performance Criterion in a Service Period)	=	11.5% of the Call Off Contract Charges payable to the Customer as Service Credits to be deducted from the next Valid Invoice payable by the Customer]
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ANNEX 2 TO PART A: CRITICAL SERVICE LEVEL FAILURE

[Example – to be populated according to the Customer's specific requirement:]

[In relation to [] a Critical Service Level Failure shall include a delay in producing [] ordered by the Customer in excess of twenty four (24) hours more than once in any [three (3) Month] period or more than three (3) times in any rolling twelve (12) Month period.]

[In relation to [] a Critical Service Level Failure shall include a loss of [] during core hours (08:00 – 18:00 Mon – Fri excluding bank holidays) to the [] for more than twenty four (24) hours accumulated in any [three (3) Month] period, or forty eight (48) hours in any rolling twelve (12) Month period.]

PART B: PERFORMANCE MONITORING

7. PRINCIPAL POINTS

- 7.1 Part B to this Call Off Schedule provides the methodology for monitoring the provision of the Services:
- 7.1.1 to ensure that the Supplier is complying with the Service Levels; and
 - 7.1.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services ("**Performance Monitoring System**").
- 7.2 Within [twenty (20) Working Days] of the Call Off Commencement Date the Supplier shall provide the Customer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

8. REPORTING OF SERVICE FAILURES

- 8.1 The Customer shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Customer in accordance with the processes agreed in paragraph 7.2 above.

9. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 9.1 The Supplier shall provide the Customer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 7.2 above which shall contain, as a minimum, the following information in respect of the relevant Service Period for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
- 9.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 9.1.3 any Critical Service Level Failures and details in relation thereto;
 - 9.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 9.1.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
 - 9.1.6 such other details as the Customer may reasonably require from time to time.
- 9.2 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the performance monitoring reports. The Performance Review Meetings shall (unless otherwise agreed):
- 9.2.2 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;

- 9.2.3 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
 - 9.2.4 be attended by the Supplier Representative and the Customer Representative; and
 - 9.2.5 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier Representative and the Customer Representative at each meeting.
- 9.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 9.4 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

10. SATISFACTION SURVEYS

- 10.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 10.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with the Call Off Contract.

ANNEX 1 TO PART B: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS

[Example – to be populated according to the Customer’s specific requirement:]

In this Schedule, the following definitions shall apply:

“Project Manager”	shall have the meaning given to it in paragraph 5.1 of Part B of Schedule B3 (Service Levels, Service Credits and Performance Monitoring);
“Technical Board”	shall mean the board established in accordance with paragraph 6 of Part B of Schedule B3 (Service Levels, Service Credits and Performance Monitoring);

1. MANAGEMENT OF THE SERVICES

- 1.1 The Supplier and the Customer shall each appoint a Project Manager for the purposes of this Call Off Contract through whom the Services shall be managed at a day-to-day (“**Project Manager**”).
- 1.2 Both parties shall ensure that appropriate resource is made available on a regular basis including, for example, a Technical Board such that the aims, objectives and specific provisions of this Call Off Contract can be fully realised.

2. TECHNICAL BOARD

- 2.1 The Technical Board shall be established by the Customer for the purposes of this Call Off Contract on which the Supplier and the Customer shall be represented.
- 2.2 The Technical Board members, frequency and location of board meetings and planned start date by which the board shall be established shall be set out in Annex [x].
- 2.3 In the event that either Party wishes to replace any of its appointed board members, that party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Customer board member has at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 2.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member’s attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Technical Board meeting in his/her place (wherever possible) is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.
- 2.5 The Technical Board shall be accountable to the Project Managers for oversight of the technology used in the Supplier Solution and ensuring that technological choices are made to maximise the long term value of the Services.
- 2.6 The Technical Board shall:
 - 2.6.1 assure compliance with the overall technical architecture of the Customer and with Government IT Strategy (as defined at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85968/uk-government-government-ict-strategy_0.pdf);

- 2.6.2 grant dispensations for variations from such compliance where appropriate;
- 2.6.3 assure the coherence and consistency of the systems architecture for the Services;
- 2.6.4 monitor developments in new technology and reporting on their potential benefit to the Services;
- 2.6.5 provide advice, guidance and information on technical issues; and
- 2.6.6 assure that the technical architecture of the Services is aligned to the Service requirements specified in the Order Form and has sufficient flexibility to cope with future requirements of the Customer.

B.4. PERFORMANCE MONITORING

B.4.1 Unless otherwise Approved or notified by the Customer, the Supplier shall comply with the monitoring requirements set out in the Order Form or elsewhere in this Call-Off Contract.

B.4.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Goods and/or Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.

B.5. SUPPLIER PERSONNEL

B.5.1 Supplier Personnel

B.5.1.1 The Supplier shall:

- a) provide to the Customer a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- b) retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
- c) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- d) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- e) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- f) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.

B.5.1.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Call Off Contract, it may:

- a) refuse admission to the relevant person(s) to the Customer Premises; and/or
- b) direct the Supplier to end the involvement in the provision of the Goods and/or Services of the relevant person(s).

B.5.1.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

B.6 Licence granted by the Customer

B.6.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call Off Contract Period to use the Customer Software, the Customer Background IPR and the Customer Data solely to the extent necessary for providing the Goods and/or Services in accordance with this Call Off Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

- a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15.4 (Confidentiality); and
- b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

B.6.2 Those items licensed according to the terms of this Clause B.6 are listed in the Order Form or, where this is used, Call Off Schedule 3.

B.7 Exit Management

B.7.1 In the event that this Call Off Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Goods to a Replacement Supplier. Such assistance shall include as set out in any Exit Plan.

B.7.2 In complying with its obligation under Clause B.7.1 the Supplier shall:

- (a) transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the contracts listed in the Exit Plan (if any) as are notified to the Supplier and/or by the Customer in return for payment of the costs (if any) set out in the Exit Plan in respect of such contracts; and
- (b) promptly provide all information concerning the provision of the Goods which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.

B.7.3 On the Call Off Expiry Date, the Supplier shall:

- (a) comply with its obligations in Clause 14.7.3 (Termination of licences) in relation to the use of any Customer Software, Customer Background IPR and/or Customer Data licensed to it by the Customer.
- (b) immediately deliver to the Customer any Customer Property issued to the Supplier. Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);
- (c) return to the Customer any sums prepaid in respect of the Goods not provided by the Call Off Expiry Date; and
- (d) use reasonable endeavours to procure that the benefit of manufacturer's warranty in respect of any Goods is assigned, or otherwise transferred to the Customer.

B.7.4 If the Supplier fails to comply with Clauses B.7.3 (a) and (b), the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its servants, consultants, agents or Sub-Contractors where any such items may be held.

B.7.5 Where the end of the Call Off Contract Period arises due to termination of this Call Off Contract by reason of Default under Clause 21.1 (Termination on Material Default), the Supplier shall provide all assistance under Clauses B.7.3 (a) to (d) free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

B.7.6 On the Call Off Expiry Date:

- (a) any licence granted to occupy Customer Premises shall automatically terminate without the need to serve notice; and
- (b) the Supplier shall remove any Supplier Equipment together with any other materials used by the Supplier to supply the Goods and shall leave the Customer Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Customer Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel.

B.7.7 The Parties shall comply with their obligations in Schedule B7 (Exit Management)

Associated Schedule included below

CALL OFF SCHEDULE B7: EXIT MANAGEMENT

1. DEFINITIONS

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

"Exclusive Assets" those Supplier Assets used by the Supplier or a Key Sub-Contractor which are used exclusively in the provision of the Services;

"Exit Information" has the meaning given to it in paragraph 4.1;

"Exit Manager" the person appointed by each Party pursuant to paragraph 3.3 for managing the Parties' respective obligations under this Call Off Schedule;

- “Exit Plan” has the meaning given to it in paragraph 5.1
- “Net Book Value” the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Customer of even date with this Call Off Contract;
- "Non-Exclusive Assets" those Supplier Assets (if any) which are used by the Supplier or a Key Sub-Contractor in connection with the Services but which are also used by the Supplier or Key Sub-Contractor for other purposes;
- “Registers” the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2;
- “Termination Assistance” the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Customer pursuant to the Termination Assistance Notice;
- “Termination Assistance Notice” has the meaning given in paragraph 6.1;
- “Termination Assistance Notice Period” in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2;
- “Transferable Assets” those of the Exclusive Assets which are capable of legal transfer to the Customer;
- “Transferable Contracts” the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Customer or any Replacement Supplier to perform the Services or replacement services, including in relation to licences all relevant Documentation;
- “Transferring Assets” has the meaning given to it in paragraph 9.2.1;
- "Transferring Contracts" has the meaning given to it in paragraph 9.2.3.

2. INTRODUCTION

2.1 This Call Off Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Customer leading up to and covering the Call Off Expiry Date and the transfer of service provision to the Customer and/or a Replacement Supplier.

2.2 The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Services from the Supplier to the Customer and/or a Replacement Supplier at the Call Off Expiry Date.

3. OBLIGATIONS DURING THE CALL OFF CONTRACT PERIOD TO FACILITATE EXIT

3.1 During the Call Off Contract Period, the Supplier shall:

3.1.1 create and maintain a Register of all:

a) Supplier Assets, detailing their:

i. make, model and asset number;

- ii. ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - iii. Net Book Value;
 - iv. condition and physical location; and
 - v. use (including technical specifications); and
- b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
- 3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Customer and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
- 3.1.3 agree the format of the Registers with the Customer as part of the process of agreeing the Exit Plan; and
- 3.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.
- 3.2 The Supplier shall:
- 3.2.1 procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Call Off Contract.
- 3.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Call Off Schedule and provide written notification of such appointment to the other Party within three (3) Months of the Call Off Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Call Off Schedule. The Supplier shall ensure that its Exit Manager has the requisite Customer to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Call Off Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Call Off Contract and all matters connected with this Call Off Schedule and each Party's compliance with it.
4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES
- 4.1 On reasonable notice at any point during the Call Off Contract Period, the Supplier shall provide to the Customer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- 4.1.1 details of the Service(s);
 - 4.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - 4.1.3 an inventory of Customer Data in the Supplier's possession or control;

4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;

4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services; and

4.1.6 such other material and information as the Customer shall reasonably require,
(together, the “Exit Information”).

4.2 The Supplier acknowledges that the Customer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Customer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Customer may not under this paragraph 4.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

4.3 The Supplier shall:

4.3.1 notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Customer regarding such proposed material changes; and

4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.

4.4 The Supplier may charge the Customer for its reasonable additional costs to the extent the Customer requests more than four (4) updates in any six (6) month period.

4.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

4.5.1 prepare an informed offer for those Services; and

4.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

5. EXIT PLAN

5.1 The Supplier shall, within three (3) Months after the Call Off Commencement Date, deliver to the Customer an Exit Plan (the “Exit Plan”) which:

5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Customer and/or its Replacement Supplier on the expiry or termination of this Call Off Contract;

5.1.2 complies with the requirements set out in paragraph 5.3;

5.1.3 is otherwise reasonably satisfactory to the Customer.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its

submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.3 Unless otherwise specified by the Customer or Approved, the Exit Plan shall set out, as a minimum:

5.3.1 how the Exit Information is obtained;

5.3.2 the management structure to be employed during both transfer and cessation of the Services;

5.3.3 the management structure to be employed during the Termination Assistance Period;

5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;

5.3.5 how the Services will transfer to the Replacement Supplier and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Customer's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);

5.3.6 details of contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon the Call Off Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all Transferable Assets and Transferable Contracts used by the Supplier in connection with the provision of the Goods and/or Services will be available for such transfer);

5.3.7 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Services following the Call Off Expiry Date charged at rates agreed between the Parties at that time;

5.3.8 proposals for providing the Customer or a Replacement Supplier copies of all documentation:

a) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and

b) relating to the use and operation of the Services;

5.3.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;

5.3.10 proposals for the identification and return of all Customer Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);

5.3.11 proposals for the disposal of any redundant Services and materials;

5.3.12 how each of the issues set out in this Call Off Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Customer with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and

5.3.13 proposals for the supply of any other information or assistance reasonably required by the Customer or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

6. TERMINATION ASSISTANCE

6.1 The Customer shall be entitled to require the provision of Termination Assistance at any time during the Call Off Contract Period by giving written notice to the Supplier (a "Termination Assistance Notice") at least four (4) Months prior to the Call Off Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

6.1.1 the date from which Termination Assistance is required;

6.1.2 the nature of the Termination Assistance required; and

6.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Services.

6.2 The Customer shall have an option to extend the period of Termination Assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) Months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

7. TERMINATION ASSISTANCE PERIOD

7.1 Throughout the Termination Assistance Period, or such shorter period as the Customer may require, the Supplier shall:

7.1.1 continue to provide the Services (as applicable) and, if required by the Customer pursuant to paragraph 1, provide the Termination Assistance;

7.1.2 in addition to providing the Services and the Termination Assistance, provide to the Customer any reasonable assistance requested by the Customer to allow the Services to continue without interruption following the termination or expiry of this Call Off Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Customer and/or its Replacement Supplier;

7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 without additional costs to the Customer;

7.1.4 provide the Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and

7.1.5 at the Customer's request and on reasonable notice, deliver up-to-date Registers to the Customer.

7.2 Without prejudice to the Supplier's obligations under paragraph 7.1.3 , if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 without additional costs to the Customer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Change Control Procedure.

7.3 If the Supplier demonstrates to the Customer's reasonable satisfaction that transition of the Services and provision of the Termination Assistance during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Level Performance Measure(s), the Parties shall vary the relevant Service Level Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

8. TERMINATION OBLIGATIONS

8.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.

8.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule), the Supplier shall:

8.2.1 cease to use the Customer Data;

8.2.2 provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the Customer);

8.2.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Customer Data and promptly certify to the Customer that it has completed such deletion;

8.2.4 return to the Customer such of the following as is in the Supplier's possession or control:

a) all copies of the Customer Software and any other software licensed by the Customer to the Supplier under this Call Off Contract;

b) all materials created by the Supplier under this Call Off Contract in which the IPRs are owned by the Customer;

c) any parts of the IT environment and any other equipment which belongs to the Customer;

d) any items that have been on-charged to the Customer, such as consumables; and

e) all Customer Property issued to the Supplier under Clause H (Customer Property), where used. Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);

f) any sums prepaid by the Customer in respect of Services not Delivered by the Call Off Expiry Date;

8.2.5 vacate any Customer Premises;

8.2.6 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely

responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;

8.2.7 provide access during normal working hours to the Customer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:

- a) such information relating to the Services as remains in the possession or control of the Supplier; and
- b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph b)

8.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

8.4 Except where this Call Off Contract provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

9. ASSETS, SUB-CONTRACTS AND SOFTWARE

9.1 Following notice of termination of this Call Off Contract and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:

- 9.1.1 terminate, enter into or vary any Sub-Contract;
- 9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
- 9.1.3 terminate, enter into or vary any licence for software in connection with the Services.

9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5, the Customer shall provide written notice to the Supplier setting out:

- 9.2.1 which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Supplier ("Transferring Assets");
- 9.2.2 which, if any, of:
 - a) the Exclusive Assets that are not Transferable Assets; and
 - b) the Non-Exclusive Assets, the Customer and/or the Replacement Supplier requires the continued use of; and

9.2.3 which, if any, of the Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Supplier (the “Transferring Contracts”),

in order for the Customer and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Customer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Customer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Customer and/or its Replacement Supplier requires to provide the Services or replacement services.

9.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Customer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Call Off Contract Charges at the Call Off expiry Date, in which case the Customer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Call Off Contract Charges.

9.4 Risk in the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) on payment for the same.

9.5 Where the Supplier is notified in accordance with paragraph 9.2.2 that the Customer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

9.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Customer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

9.5.2 procure a suitable alternative to such assets and the Customer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

9.7 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Customer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.

9.8 The Customer shall:

a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

b) once a Transferring Contract is novated or assigned to the Customer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

9.9 The Supplier shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has been effected.

9.10 The Supplier shall indemnify the Customer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Customer (and/or Replacement Supplier) pursuant to paragraph 9.7 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

10. CHARGES

10.1 Except as otherwise expressly specified in this Call Off Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Customer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Call Off Schedule including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

11. APPORTIONMENTS

11.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

11.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

11.1.2 the Customer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

11.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

11.2 Each Party shall pay (and/or the Customer shall procure that the Replacement Supplier shall pay) any monies due under paragraph 11.1 as soon as reasonably practicable.

B.8 RELEVANT CONVICTIONS

Insert the following sub-clause as a new Clause 13.4:

13.4 RELEVANT CONVICTIONS

13.4.1 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) checks or otherwise), is employed or engaged in any part of the provision of the Goods and/or Services without Approval.

13.4.2 For each member of the Supplier Personnel who, in providing the Goods, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):

- (a) carry out a check with the records held by the Department for Education (DfE);
- (b) conduct thorough questioning regarding any Relevant Convictions; and

(c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Goods any person who has a Relevant Conviction or an inappropriate record.

Associated definition to be inserted into Call Off Schedule 1:

"Relevant Conviction"	means a Conviction that is relevant to the nature of the Goods to be provided or as specified by the Customer in the Order Form or elsewhere in the Call Off Contract;
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B.9 INSTALLATION WORKS

Insert the following as a new Clause 38:

38. INSTALLATION WORKS

38.1 Where the Customer has specified Installation Works in the Order Form and the Supplier reasonably believes it has completed the Installation Works it shall notify the Customer in writing. Following receipt of such notice, the Customer shall inspect the Installation Works and shall, by giving written notice to the Contractor:

38.1.1 accept the Installation Works, or

38.1.2 reject the Installation Works and provide reasons to the Supplier if, in the Customer's reasonable opinion, the Installation Works do not meet the requirements set out in the Order Form.

38.2 If the Customer rejects the Installation Works in accordance with Clause 38.1.2, the Supplier shall immediately rectify or remedy any defects and if, in the Customer's reasonable opinion, the Installation Works do not, within five (5) Working Days of such rectification or remedy, meet the requirements set out in the Order Form, the Customer may terminate this Call Off Contract for Material Breach.

38.3 The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Customer in accordance with Clause 38.1.1. Notwithstanding the acceptance of any Installation Works in accordance with Clause 38.1.1, the Supplier shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the Order Form. No rights of estoppel or waiver shall arise as a result of the acceptance by the Customer of the Installation Works.

38.4 Throughout the Call Off Contract Period, the Supplier shall have at all times all licences, approvals and consents necessary to enable the Supplier and the Staff to carry out the Installation Works.

B.10 KEY PERSONNEL

Insert the following as a new Clause 39:

39. KEY PERSONNEL

- 39.1 The Parties have agreed to the appointment of the Key Personnel.
- 39.2 The Supplier shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.
- 39.3 Unless otherwise agreed by the Customer in writing, the Supplier shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.
- 39.4 The Customer shall not unreasonably delay or withhold its decision to Approve the removal or appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-Contractor.
- 39.5 The Supplier acknowledges and agrees that the persons designated as Key Personnel from time to time are essential to the proper provision of the Goods to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 39.6 The Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.
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B.11 SUPPLIER EQUIPMENT

Insert the following as a new Clause 40:

40. SUPPLIER EQUIPMENT

- 40.1 Unless otherwise stated in the Order Form (or elsewhere in this Call Off Contract), the Supplier shall provide all the Supplier Equipment necessary for the supply of the Services.
- 40.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Sites without obtaining Approval.
- 40.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Call Off Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.
- 40.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Supplier's property located on Customer Premises which is due to the negligent act or omission of the Customer.
- 40.5 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Goods in accordance with this Call Off Contract, including the Service Level Performance Measures.
- 40.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.

40.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:

40.7.1 remove from the Sites any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Call Off Contract; and

40.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.

40.8 Where a failure of Supplier Equipment or any component part of Supplier Equipment causes [two (2)] or more Service Failures in any [twelve (12) Month period], the Supplier shall notify the Customer in writing and shall, at the Customer's request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced).

Associated definition to be inserted into Call Off Schedule 1:

"Supplier Equipment"

means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Call Off Contract;

B.12 SECURITY MEASURES

Insert the following as a new Clause 41:

41. SECURITY MEASURES

41.1 The Supplier shall not, either before or after the completion or termination of this Call Off Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a Secret Matter being:

41.1.1 without the prior consent in writing of the Customer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;

41.1.2 disclosed to or acquired by a person as respects whom the Customer has given to the Supplier a notice in writing which has not been cancelled stating that the Customer requires that Secret Matters shall not be disclosed to that person;

41.1.3 without the prior consent in writing of the Customer, disclosed to or acquired by any person who is not a Servant of the Supplier; or

41.1.4 disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Call Off Contract that such person shall have the information.

41.2 Without prejudice to the provisions of Clause 41.1, the Supplier shall, both before and after the completion or termination of this Call Off Contract, take all reasonable steps to ensure:

41.2.1 no such person as is mentioned in Clauses 41.1, 41.1.1 or 41.1.2, thereof shall have access to any item or Document under the control of the Supplier containing information about a Secret Matter except with the prior consent in writing of the Customer;

41.2.2 that no visitor to any premises in which there is any item to be supplied under this Call Off Contract or where Goods are being supplied shall see or discuss with the Supplier or any person employed by him any Secret Matter unless the visitor is authorised in writing by the Customer so to do;

41.2.3 that no photograph of any item to be supplied under this Call Off Contract or any portions of the Goods shall be taken except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;

41.2.4 that all information about any Secret Matter and every Document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, no copies of or extracts from any such Document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such Document, model or item shall be placed thereon; and

41.2.5 that if the Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such Document, model or item as is mentioned in Clause 41.2.4, that Document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.

41.3 The decision of the Customer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 41 shall be final and conclusive.

41.4 If and when directed by the Customer, the Supplier shall furnish full particulars of all people who are at any time concerned with any Secret Matter.

41.5 If and when directed by the Customer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Call Off Contract.

41.6 If, at any time either before or after the expiry or termination of this Call Off Contract, it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Call Off Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Customer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to

the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.

41.7 The Supplier shall place every person employed by it, other than a Sub contractor, who in its opinion has or will have such knowledge of any Secret Matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that Secret Matter as are imposed on the Supplier by Clauses 41.1 and 41.2 and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any Secret Matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause 41 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.

41.8 The Supplier shall, if directed by the Customer, include in the Sub-Contract provisions in such terms as the Customer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Clause 41, but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:

41.8.1 give such notices, directions, requirements and decisions to its Sub Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this Clause 41 into operation in such cases and to such extent as the Customer may direct;

41.8.2 if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Clause 41, notify such breach forthwith to the Customer; and

41.8.3 if and when so required by the Customer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause 41.11.

41.9 The Supplier shall give the Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer that the obligations imposed by or under the foregoing provisions of this Clause 41 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Customer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Call Off Contract or in which there is or will be any item to be supplied under this Call Off Contract, and also to inspect any Document or item in any such premises or which is being made or used for the purposes of this Call Off Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

41.10 Nothing in this Clause 41 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

41.11 If the Customer shall consider that any of the following events has occurred:

41.11.1 that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause 41; or

41.11.2 that the Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Customer, or with any department or person acting on behalf of the Crown; or

41.11.3 that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in Clause 41.11.2, information about a Secret Matter has been or is likely to be acquired by a person who, in the opinion of the Customer, ought not to have such information;

and shall also decide that the interests of the State require the termination of this Call Off Contract, the Customer may by notice in writing terminate this Call Off Contract forthwith.

41.12 A decision of the Customer to terminate this Call Off Contract in accordance with the provisions of Clause 41.11 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Customer's decision is based.

41.13 Supplier's notice

41.13.1 The Supplier may within five (5) Working Days of the termination of this Call Off Contract in accordance with the provisions of Clause 41.11, give the Customer notice in writing requesting the Customer to state whether the event upon which the Customer's decision to terminate was based is an event mentioned in Clauses 41.11, 41.11.1 or 41.11.2 and to give particulars of that event; and

41.13.2 the Customer shall within ten (10) Working Days of the receipt of such a request give notice in writing to the Supplier containing such a statement and particulars as are required by the request.

41.14 Matters pursuant to termination

41.14.1 The termination of this Call Off Contract pursuant to Clause 41.11 shall be without prejudice to any rights of either Party which shall have accrued before the date of such termination;

41.14.2 The Supplier shall be entitled to be paid for any work or thing done under this Call Off Contract and accepted but not paid for by the Customer at the date of such termination either at the price which would have been payable under this Call Off Contract if the Call Off Contract had not been terminated, or at a reasonable price;

41.14.3 The Customer may take over any work or thing done or made under this Call Off Contract (whether completed or not) and not accepted at the date of such termination which the Customer may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of this Clause 41 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Customer, deliver any work or thing taken over under this Clause 41.14.3, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this Clause 41.14.3 ; and

41.14.4 Save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination of this Call Off Contract.

41.15 If, after notice of termination of this Call Off Contract pursuant to the provisions of Clause 41.11:

41.15.1 the Customer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in Clause 41.13.1; or

41.15.2 the Customer shall state in the statement and particulars detailed in Clause 41.13.2 that the event upon which the Customer's decision to terminate this Call Off Contract was based is an event mentioned in Clause 41.11.3,

the respective rights and obligations of the Supplier and the Customer shall be terminated in accordance with the following provisions:

41.15.3 the Customer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Supplier upon the termination of this Call Off Contract under the provisions of Clause 41.11 and properly provided by or supplied to the Supplier for the performance of this Call Off Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Customer, elect to retain;

41.15.4 the Supplier shall prepare and deliver to the Customer within an agreed period or in default of agreement within such period as the Customer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Customer and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;

41.15.5 the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Call Off Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract;

41.15.6 if hardship to the Supplier should arise from the operation of this Clause 41.15 it shall be open to the Supplier to refer the circumstances to the Customer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this Clause 41.15.6 shall be final and conclusive; and

41.15.7 subject to the operation of Clauses 41.15.3, 41.15.4, 41.15.5 and 41.15.6 termination of this Call Off Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

41.16 The Parties shall comply with their obligations in Schedule B12 (Security).

Associated definitions to be inserted into Call Off Schedule 1:

"Document"	includes specifications, plans, drawings, photographs and books;
"Secret Matter"	means any matter connected with or arising out of the performance of this Call Off Contract which has been, or may

hereafter be, by a notice in writing given by the Customer to the Supplier be designated 'top secret', 'secret', or 'confidential';

"Servant"

where the Supplier is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.

Associated Schedule included below

CALL OFF SCHEDULE B12: SECURITY

1. DEFINITIONS

1.1 In this Call Off Schedule B12, the following definitions shall apply:

"Breach of Security" the occurrence of:

any unauthorised access to or use of the Goods, the Sites and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Call Off Contract; and/or

the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Call Off Contract,

in either case as more particularly set out in the Security requirements in Annex 1 (Security) to this Call Off Schedule B12 and the Security Policy;

"ISMS" the information security management system developed by the Supplier in accordance with paragraph 2 (ISMS) as updated from time to time in accordance with this Schedule B12;

"Security Policy Framework" the HMG Security Policy Framework (available from the Cabinet Office); and

"Security Tests" has the meaning given in paragraph 5.1 (Testing of the ISMS).

2. ISMS

2.1 By the date specified in the Implementation Plan the Supplier shall develop and submit to the Customer for the Customer's Approval an information security management system for the purposes of this Call Off Contract, which:

2.1.1 if required by the Implementation Plan, shall have been tested in accordance with Call Off Schedule B2 (Testing); and

2.1.2 shall comply with the requirements of paragraphs 2.3 to 2.5 of this Call Off Schedule B12 (Security).

2.2 The Supplier acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.

2.3 The ISMS shall:

2.1.3 unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Goods and all processes associated with the delivery of the Goods, including the Customer Premises, the Sites, and any ICT, information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract;

2.1.4 meet the relevant standards in ISO/IEC 27001; and

2.1.5 at all times provide a level of security which:

- a) is in accordance with Good Industry Practice, Law and this Call Off Contract;
- b) complies with the Security Policy;
- c) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4);
- d) meets any specific security threats to the ISMS;
- e) complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 6 (Compliance of the ISMS With ISO/IEC 27001);
- f) complies with the security requirements as set out in Annex 1 (Security) to this Call Off Schedule B12; and
- g) complies with the Customer's ICT policies.

2.4 Subject to Clause 15 (Security And Protection of Information) the references to standards, guidance and policies set out in paragraph 2.3 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

2.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 2.3, the Supplier shall immediately notify the Customer Representative of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.

2.6 If the ISMS submitted to the Customer pursuant to paragraph 2.1 is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule B12. If the ISMS is not Approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Customer. If the Customer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph 2 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 2.3 to 2.5 shall be deemed to be reasonable.

2.7 Approval by the Customer of the ISMS pursuant to paragraph 2.6 or of any change or amendment to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

3. SECURITY MANAGEMENT PLAN

3.1 Within twenty (20) Working Days after the Call Off Commencement Date, the Supplier shall prepare and submit to the Customer for Approval in accordance with paragraph 3.3 a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 3.2.

3.2 The Security Management Plan shall:

3.1.1 be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);

3.1.2 comply with the Security Policy;

3.1.3 unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Goods and all processes associated with the delivery of the Goods and/or Services, including the Customer Premises, the Sites, and any ICT, information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract;

3.1.4 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Goods and all processes associated with the delivery of the Goods and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Goods comply with the provisions of this Call Off Schedule B12 (including the requirements set out in paragraph 2.3);

3.1.5 set out the plans for transiting all security arrangements and responsibilities from those in place at the Call Off Commencement Date to those incorporated in the Supplier's ISMS at the date set out in the Implementation Plan for the Supplier to meet the full obligations of the security requirements set out in Schedule Annex 1 (Security) to this Schedule B12.

3.1.6 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and

3.1.7 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Goods and shall reference only Documents which are in the possession of the Customer or whose location is otherwise specified in this Call Off Schedule B12.

3.3 If the Security Management Plan submitted to the Customer pursuant to paragraph 3.1 is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule B12. If the Security Management Plan is not approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the Customer of the Security Management Plan. If the Customer does not Approve the Security Management Plan following its resubmission,

the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this Paragraph 3.3 may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 3.2 shall be deemed to be reasonable.

3.4 Approval by the Customer of the Security Management Plan pursuant to paragraph 3.3 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Call Off Schedule B12.

4. AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN

4.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier from time to time and at least annually to reflect:

- 4.1.1 emerging changes in Good Industry Practice;
- 4.1.2 any change or proposed change to the the Goods and/or associated processes;
- 4.1.3 any new perceived or changed security threats; and
- 4.1.4 any reasonable request by the Customer.

4.2 The Supplier shall provide the Customer with the results of the reviews carried out as required by paragraph 4.1 as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Customer. The results of the review shall include, without limitation:

- 4.2.1 suggested improvements to the effectiveness of the ISMS;
- 4.2.2 updates to the risk assessments;
- 4.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
- 4.2.4 suggested improvements in measuring the effectiveness of controls.

4.3 Subject to paragraph 4.4, any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 4.1, a Customer request, change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Customer.

4.4 The Customer may, where it is reasonable to do so, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Call Off Contract.

5. TESTING OF THE ISMS

5.1 The Supplier shall conduct tests of the ISMS ("Security Tests") from time to time and at least annually and additionally after any change or amendment to the ISMS or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Goods and the date, timing, content and conduct of such Security Tests shall

be agreed in advance with the Customer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Goods so as to meet the Service Level Performance Measures, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.

5.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such Security Tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.

5.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Call Off Contract, the Customer and/or its authorised representatives shall be entitled, at any time by giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Customer may notify the Supplier of the results of such tests after completion of each such test.

5.4 Where any Security Test carried out pursuant to paragraphs 5.2 or 5.3 reveals any actual or potential breach of security, the Supplier shall promptly notify the Customer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Customer's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Security) to this Call Off Schedule B12) or the requirements of this Schedule B12, the change to the ISMS or Security Management Plan shall be at no cost to the Customer.

5.5 If any repeat Security Test carried out pursuant to paragraph 5.4 reveals an actual or potential breach of security exploiting the same root cause failure, such circumstance shall constitute a material Default of the Call Off contract.

6. COMPLIANCE OF THE ISMS WITH ISO/IEC 27001

6.1 The Customer shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.

6.2 If, on the basis of evidence provided by such security audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Supplier, then the Customer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Supplier does not become compliant within the required time then the Customer shall have the right to obtain an independent audit against these standards in whole or in part.

6.3 If, as a result of any such independent audit as described in paragraph 6.2 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Supplier shall,

at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

7. BREACH OF SECURITY

7.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted breach of security.

7.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 7.1, the Supplier shall:

7.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Customer) necessary to:

- a) remedy such breach of security or any potential or attempted breach of security or protect the integrity of the ISMS against any such breach of security or any potential or attempted breach of security; and
- b) prevent a further breach of security or any potential or attempted breach of security in the future exploiting the same root cause failure; and

7.2.2 as soon as reasonably practicable provide to the Customer full details (using such reporting mechanism as defined by the ISMS) of the breach of security or the potential or attempted breach of security, including a root cause analysis where required by the Customer.

7.3 In the event that such action is taken in response to a breach of security or potential or attempted breach of security that demonstrates non-compliance of the ISMS with the Security Policy or security requirements (as set out in Annex 1 (Security) to this Call Off Schedule B12) or the requirements of this Call Off Schedule B12, then any required change to the ISMS shall be at no cost to the Customer.

ANNEX 1: Security Policy

[]

ANNEX 2: Security Management Plan

[]

C: OPTIONAL TERMS

Additional contractual provisions to address specific Customer requirements. To be selected by the Customer using the Order Form.

C. DUE DILIGENCE

C.1 The Supplier acknowledges that:

C.1.1 the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Call Off Contract;

C.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

C.1.3 the Supplier shall not be excused from the performance of any of its obligations under this Call Off Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

Associated definition to be inserted into Call Off Schedule 1:

"Due Diligence Information"	means any information supplied to the Supplier by or on behalf of the Customer prior to the Call Off Commencement Date;
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D. CALL OFF GUARANTEE

D.1 Where the Customer has stipulated during a Further Competition Procedure that the award of this Call Off Contract shall be conditional upon receipt of a Call Off Guarantee, then, on or prior to the Call Off Commencement Date, the Supplier shall deliver to the Customer:

D.1.1 an executed Call Off Guarantee from a Call Off Guarantor; and

D.1.2 a certified copy extract of the board minutes and/or resolution of the Call Off Guarantor approving the execution of the Call Off Guarantee.

D.2 The Customer may in its sole discretion at any time agree to waive compliance with the requirement in Clause D.1 by giving the Supplier notice in writing.

Associated definitions to be inserted into Call Off Schedule 1:

"Call Off Guarantee"	means a deed of guarantee in favour of the Customer in the form set out in Call- Off Schedule D (Guarantee) granted pursuant to Clause D (Call Off Guarantee);
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"Call Off Guarantor"	means the person acceptable to the Customer to give a Call Off Guarantee;
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D.3 Termination in Relation to Guarantee

D.3.1 Where the Supplier has procured a Call Off Guarantee pursuant to this Clause D (Call Off Guarantee), the Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where:

- a) the Call Off Guarantor withdraws the Call Off Guarantee for any reason whatsoever;
- b) the Call Off Guarantor is in breach or anticipatory breach of the Call Off Guarantee;
- c) an Insolvency Event occurs in respect of the Call Off Guarantor;
- d) the Call Off Guarantee becomes invalid or unenforceable for any reason whatsoever

and in each case the Call Off Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Customer.

Associated Schedule included below

CALL OFF SCHEDULE D: GUARANTEE

[Guidance Note: this is a draft form of guarantee which can be used to procure a Call Off Guarantee, and so it will need to be amended to reflect the Beneficiary's requirements. See Clause D of the Call Off Terms.]

[Insert the name of the Guarantor]

- and -

[Insert the name of the Beneficiary]

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

BETWEEN:

(1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("Guarantor"); in favour of

(2) [Insert name of Contracting Body who is Party to the Guaranteed Agreement] whose principal office is at [] ("Beneficiary")

[Guidance note: This paragraph numbered (2) above will set out the details of the relevant Contracting Body]

WHEREAS:

(A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.

(B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;

1.2 the words and phrases below shall have the following meanings:

[Guidance Note: Insert and/or settle Definitions, including from the following list, as appropriate]

["Beneficiary" means [insert name of the Contracting Body with whom the Supplier enters into a Call Off Agreement] and "Beneficiaries" shall be construed accordingly;]

["Call Off Agreement" shall have the meaning given to it in the Call Off Agreement;]

["Goods" shall have the meaning given in the Call Off Agreement;]

["Guaranteed Agreement" means the Call Off Agreement made between the Beneficiary and the Supplier on [insert date];]

["Services" has the meaning given in the Call Off Agreement;]

"Guaranteed Obligations" means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;

1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;

1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;

1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

1.6 the words “other” and “otherwise” are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;

1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;

1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;

1.9 unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;

1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and

1.11 references to liability are to include any liability whether actual, contingent, present or future.

2. GUARANTEE AND INDEMNITY

2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.

2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.

2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. OBLIGATION TO ENTER INTO A NEW CONTRACT

3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4. DEMANDS AND NOTICES

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

4.1.1 [Address of the Guarantor in England and Wales]

4.1.2 [Facsimile Number]

4.1.3 For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5. BENEFICIARY'S PROTECTIONS

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;

5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;

5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6. GUARANTOR INTENT

6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7. RIGHTS OF SUBROGATION

7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

7.1.1 of subrogation and indemnity;

7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and

7.1.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8. DEFERRAL OF RIGHTS

8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

8.1.1 exercise any rights it may have to be indemnified by the Supplier;

8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;

8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;

8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

8.1.5 claim any set off or counterclaim against the Supplier;

8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor there from shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9. REPRESENTATIONS AND WARRANTIES

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:

a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;

b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or

c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;

9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10. PAYMENTS AND SET-OFF

10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11. GUARANTOR'S ACKNOWLEDGEMENT

11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12. ASSIGNMENT

12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13. SEVERANCE

13.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14. THIRD PARTY RIGHTS

14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15. GOVERNING LAW

15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle

any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

15.5 ***[Guidance Note: Include the following provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]*** [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary]

E Coding Requirements (for NHS Customers Only)

E.1 Unless otherwise confirmed and/or agreed by the Customer in writing and subject to Clause E.2, the Supplier shall ensure comprehensive product information relating to each category of the Goods shall be placed by the Supplier into a GS1 certified data pool within the following timescales:

- a) prior to or on the Call Off Commencement Date, in relation to all categories of Goods to be provided as part of the Call Off Contract as at the Call Off Commencement Date; or
- b) where further categories of Goods are to be supplied in accordance with Clause 10 (Change) prior to or on the date of implementation of any such Variation.

E.2 Where it is not practical for whatever reason for the Supplier to comply with its obligations under Clause E.1 within the timescales stated and the Customer requires compliance with such coding requirements, the Supplier shall provide an Implementation Plan and timetable that sets out how the Supplier shall achieve such compliance by an alternative timescale. This Implementation

Plan and timetable must be submitted by the Supplier for Approval to the Customer prior to the first delivery of the relevant Goods under the Call Off Contract (such Approval shall not to be unreasonably withheld or delayed). Any failure by the Parties to agree such a timetable and plan shall be referred to and resolved in accordance with the Dispute Resolution Procedure. Once a timetable and plan have been agreed by the Authority, the Supplier shall comply with such timetable and plan as a condition of this Call Off Contract.

E.3 Once product information relating to Goods is placed by the Supplier into a GS1 certified data pool, the Supplier shall, during the Call Off Contract Period, keep such information updated with any changes to the product data relating to the Goods.

Associated definition to be inserted into Call Off Schedule 1:

“GS1” means the GS1 system of standards. the design and implementation of global standards and solutions to improve the efficiency and visibility of supply and demand chains globally and across sectors. Further information available at: <http://www.gs1.org/barcodes>;

F. CONTINUOUS IMPROVEMENT AND BENCHMARKING

F.1 Continuous Improvement

F.1.1 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Goods in accordance with this Clause F.1 with a view to reducing the Customer’s costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Goods and their supply to the Customer. As part of this obligation the Supplier shall identify and report to the Customer once every twelve (12) Months:

- a) the emergence of new and evolving relevant technologies which could improve the supply of the Goods and those technological advances potentially available to the Supplier and the Customer which the Parties may wish to adopt;
- b) new or potential improvements to the provision of the Goods including the quality, responsiveness, procedures, likely performance mechanisms and Customer support services; and/or
- c) changes in business processes and ways of working that would enable the Goods to be provided at lower costs and/or at greater benefits to the Customer.

F.1.2 The Supplier shall ensure that the information that it provides to the Customer shall be sufficient for the Customer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Customer requests.

F.1.3 If the Customer wishes to incorporate any improvement identified by the Supplier, the Customer shall request a Variation in accordance with the Variation Procedure and the Supplier shall implement such Variation at no additional cost to the Customer.

F.2 Benchmarking

F.2.1 The Customer shall be entitled to regularly benchmark the Call Off Contract Charges and level of performance by the Supplier of the supply of the Goods, against other suppliers providing goods and/or services substantially the same as the Goods during the Call Off Contract Period.

F.2.2 The Customer, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause F.2.1 above.

F.2.3 The Customer shall be entitled to disclose the results of any benchmarking of the Call Off Contract Charges and provision of the Goods to the Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).

F.2.4 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking and such information requirements shall be at the discretion of the Customer.

F.2.5 Where, as a consequence of any benchmarking carried out by the Customer, the Customer decides improvements to the Goods should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Customer.

F.2.6 The benefit of any work carried out by the Supplier at any time during the Call Off Contract Period to update, improve or provide the Goods, facilitate their delivery to any other Contracting Body and/or any alterations or variations to the Charges or the provision of the Goods, which are identified in the Continuous Improvement Plan produced by the Supplier and/or as a consequence of any benchmarking carried out by the Authority, shall be implemented by the Supplier in accordance with the Variation Procedure and at no additional cost to the Customer.

Where used apply the following at paragraph 6 (ADJUSTMENT OF CALL OFF CONTRACT CHARGES) of Call Off Schedule 2

[where all or part of the Call Off Contract Charges are reduced as a result of a review of Call Off Contract Charges in accordance with Clause F (Benchmarking)];

Associated definition to be inserted into Call Off Schedule 1:

"Continuous Improvement Plan"	means a plan for improving the provision of the Goods and/or reducing the Charges produced by the Supplier;
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G. CUSTOMER PREMISES

G.1 Licence to occupy Customer Premises

G.1.1 Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Call Off Contract. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or

abandonment of this Call Off Contract and in accordance with Call Off Schedule B7 (Exit Management).

G.1.2 The Supplier shall limit access to the Customer Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Call Off Contract and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Customer Premises as the Customer may reasonably request.

G.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause C.1.1 (Due Diligence) and set out in the Order Form (or elsewhere in this Call Off Contract), should the Supplier require modifications to the Customer Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this Clause G.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.

G.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Customer Premises and conduct of personnel at the Customer Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

G.1.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Call Off Contract, the Customer retains the right at any time to use any Customer Premises in any manner it sees fit.

Security of Customer Premises

G.1.6 The Customer shall be responsible for maintaining the security of the Customer Premises in accordance with the Security Policy. The Supplier shall comply with the Security Policy and any other reasonable security requirements of the Customer while on the Customer Premises.

G.1.7 The Customer shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

H. CUSTOMER PROPERTY

H.1 Where the Customer issues Customer Property free of charge to the Supplier such Customer Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Customer Property.

H.2 The Supplier shall not in any circumstances have a lien or any other interest on the Customer Property and at all times the Supplier shall possess the Customer Property as fiduciary agent and bailee of the Customer.

H.3 The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Customer Property and the exclusion of any such lien or other interest are brought to the notice of

all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Customer Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.

H.4 The Customer Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.

H.5 The Supplier shall maintain the Customer Property in good order and condition (excluding fair wear and tear) and shall use the Customer Property solely in connection with this Call Off Contract and for no other purpose without Approval.

H.6 The Supplier shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.

H.7 The Supplier shall be liable for all loss of, or damage to the Customer Property, (excluding fair wear and tear), unless such loss or damage was solely due to a Customer Cause. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Customer Property.

I. MOD ADDITIONAL CLAUSES

The following clauses shall be inserted into Clause C (Due Diligence), where used:

C.1.4 The Supplier confirms that it has had the opportunity to review the MoD Terms and Conditions and has raised all due diligence questions in relation to those documents with the Customer prior to the Commencement Date.

C.1.5 Where required by the Customer, the Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Supplier.

The following new Clause 42 shall apply:

42. ACCESS TO MOD SITES

42.1 In this Clause 42:

42.1.1 The Customer shall issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Customer and shall be surrendered on demand or on completion of the supply of the Goods and/or Services.

42.1.2 The Supplier's representatives when employed within the boundaries of a Site, shall 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 such rules, regulations and requirements shall be provided, on request, by the Officer in charge.

42.1.3 The Supplier shall 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, 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 who shall, wherever possible give his decision before the commencement of this Call Off Contract where so asked 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.

42.1.4 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) shall 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 shall make such arrangements through the Technical Branch named for this purpose in this Call Off Contract. When such 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 shall make its own transport arrangements. The Customer shall reimburse the Supplier's reasonable costs for such 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 and, where so provided, shall be free of charge.

42.1.5 Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall 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, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.

42.1.6 Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.

42.1.7 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall 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.

42.1.8 The Supplier shall, wherever possible, 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 shall, upon 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 shall be recovered from the Supplier.

Associated definitions to be inserted into Call Off Schedule 1:

“MoD Terms and Conditions” means the contractual terms and conditions listed in Schedule I which form part of the Call Off Terms;

Associated Schedule included below

CALL OFF SCHEDULE I: MOD DEFCONS AND DEFFORMS

THE FOLLOWING MOD DEFCONS AND DEFFORMS FORM THE MOD TERMS AND CONDITIONS AND PART OF THIS CALL OFF CONTRACT:

DEFCONS

DEFCON No	Version	Description
<i>Applicable to all Lots:</i>		
DEFCON 5J	Edition 03/15	Unique Identifiers
DEFCON 113	Edition 02/06	Diversion Orders
DEFCON 113	Edition 10/04	Diversion Orders
DEFCON 129J	Edition 02/16	The Use Of The Electronic Business Delivery Form
DEFCON 522J	Edition 05/03	Payment Under P2P
DEFCON 522JA	Edition 04/09	Payment Under P2P
DEFCON 76	Edition 12/06	Contractor's Personnel At Government Establishments
<i>Applicable to Lot 4 only:</i>		
DEFCON 531	Edition 11/14	Disclosure Of Information
DEFCON 532A	Edition 06/10	Protection Of Personal Data (Where Personal Data is not being

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		processed on behalf of the Authority)
DEFCON 532B	Edition 06/10	Protection Of Personal Data (Where Personal Data is being processed on behalf of the Authority)
DEFCON 659A	Edition 11/14	Security Measures
DEFCON 660	Edition 12/15	Official –Sensitive Security Requirements

DEFFORM No	Version	Description
<i>Applicable to all Lots:</i>		
DEFFORM 30	Edition 04/15	The Electronic Transaction Agreement
DEFFORM 111	Edition 02/16	Addresses and Other Information
DEFFORM 129J	Edition 07/08	The Use of The electronic Business Delivery Form
<i>Applicable to Lot 4 only:</i>		
DEFFORM 532	Edition 6/10	Personal Data Particulars
DEFFORM 702	Edition 08/07	Employee's Acknowledgement to Employer of Obligations Relating to Confidentiality

The above documents can be accessed at <https://www.gov.uk/acquisition-operating-framework>
