FRAMEWORK SCHEDULE 4

TECHNOLOGY PRODUCTS ORDER FORM AND TECHNOLOGY PRODUCTS CALL-OFF TERMS

PART 1 – TECHNOLOGY PRODUCTS ORDER FORM

SECTION A

This Order Form is issued in accordance with the provisions of the Technology Products Framework Agreement RM 1054. The Supplier agrees to supply the Goods specified below on and subject to the Order Form and the Call Off Terms (together referred to as the Call Off Contract.

DATE	10/03/2015
ORDER NUMBER	RM6224 SO-8851
FROM	The COMMISSION FOR EQUALITY AND HUMAN RIGHTS whose address is Arndale House, Arndale Centre, Manchester, M4 3AQ
	Contact Name: L REDACTED
	Job Title: Head of IT and Corporate Security
	Telephone Number: REDACTED
	Email Address: L REDACTED
	Contract Reference number EHRC 077-1415 "CUSTOMER"
TO	PHOENIX SOFTWARE LTD "SUPPLIER"

SECTION B

1. TERM

1.1 Call Off Commencement Date:

10/03/2015

1.2 Call Off Expiry Date:

End date of Call Off Initial Period

09/03/2018

1.3 End date of Call Off Extension Period

NOT APPLICABLE. No Call Off Extension Period

2. CUSTOMER CORE GOODS REQUIREMENTS

2.1 Goods required (highlighting any items which are considered business critical)

VMware and Microsoft Software Licenses and associated support and maintenance as detailed in the Supplier's response to the Invitation to Tender and as set out in Appendix B – Statement of Requirements. The specifics of the licences, their costs and charges, are detailed in "Annex 1 – The Goods," starting on page 115 of this document.

2.2 Packing/Packaging

No specific requirements identified.

2.3 Warranty Period

Standard manufacturer warranty shall apply.

2.4 Location/Sites of Delivery

All deliveries to the Customer's primary delivery address which is:

REDACTED

Equality and Human Rights Commission

3rd Floor, Arndale House

Arndale Centre

Manchester

M4 3AQ

United Kingdom

Notification of any software requiring electronic delivery (such as that which is to be downloaded from an internet source) must be issued to the contact named in Section A of this Technology Products Order Form

2.5 Dates for Delivery of the Goods and/or the Services

The Customer shall receive entitlement to the software licenses by 13th March 2016.

2.6 Implementation Plan

NOT APPLICABLE

2.7 Standards and Quality

NOT APPLICABLE

2.8 Security Requirements (including details of Security Policy and outline Security Management Plan)

As set out in Schedule 8 Annex 2 Security Management Plan.

2.9 Third Party Software

NOT APPLICABLE

2.10 Customer Complaints Handling Escalation Path

First escalation: Customer contact named in Section A of this Technology Products Order Form.

Second escalation: Customer's Chief Resources Officer.

3. SUPPLIER'S INFORMATION

3.1 Commercially Sensitive Information

We fully appreciate that the Commission is required to be open and transparent and if requested for information relating to software licences purchased, needs to comply with its obligations under the Freedom of Information Act 2000 (FOI).

However, the Commission is exempt from its duty to provide information:

- where it has obtained the information from a third party and disclosure would give rise to an actionable breach of confidence (Section 41) or
- where the disclosure would or would be likely to prejudice the commercial interests of any person (Section 43(2)).
- The exemption under Section 44 (Prohibitions on Disclosure) will also be relevant in relation to information that has been reasonably designated as confidential by a Bidder as part of any procurement process by virtue of the EU Procurement Rules.

We therefore believe that these exemptions are relevent in relation to any request for the unit price of software licences or information such as the total price of particular licences and the number of licences purchased, from which the unit price can be derived.

3.2 Termination on Customer Cause for Failure to Pay

Refer to Clause 32.1

3.3 Supplier Complaints Handling Escalation Path

1. DEPARTMENTAL MANAGER/TEAM LEADER
2. SALES MANAGER
3. SALES DIRECTOR

CHAIRMAN, MANAGING DIRECTOR, MB DIRECTOR

4. CUSTOMER RESPONSIBILITIES

4.1 Customer Responsibilities

NONE

5. CALL OFF CONTRACT CHARGES AND PAYMENT

5.1 Call Off Contract Charges payable by the Customer (including any applicable Milestone Payments and/or discount(s), but excluding VAT) and payment terms/profile including method of payment (e.g. Government Procurement Card (GPC) or BACS)

The Supplier shall invoice the Customer for the full payment (exc REDACTED VAT), due upon confirmation by the Customer that the Customer has received full entitlement to the Goods. The invoice must be submitted to the address indicated on page 121 of this Contract.

SECTION C

6. CUSTOMER OTHER CONTRACTUAL REQUIREMENTS

6.1 Call Off Guarantor

NOT APPLICABLE

6.2 Limitations on Liability

As set out under Clause 25 to these Call Off Terms

6.3 Insurance

As set out under Clause 26 to these Call Off Terms

6.4 Termination without cause

As set out under Clause 31.6 to these Call Off Terms

7. ADDITIONAL AND/OR ALTERNATIVE CLAUSES

7.1 Supplemental requirements to the Call-Off Terms

NONE

7.2 Amendments to/refinements of the Call-Off Terms

NONE

7.3 Alternative and/or Additional Clauses (select from Annex 1 to the Call Off Terms)

NONE

8. FORMATION OF CALL OFF CONTRACT

8.1 BY SIGNING AND RETURNING THIS ORDER FORM (which may be done by electronic means) the Supplier agrees to enter a Call Off Contract with the Customer to provide the Goods.

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

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

FOR AND ON BEHALF OF THE SUPPLIER:

Name and Title	REDACTED
Signature	REDACTED
Date	05/03/2015

FOR AND ON BEHALF OF THE CUSTOMER:

Name and Title	REDACTED
Signature	REDACTED
Date	10.3.15.

TABLE OF CONTENT

PART 2 – CALL OFF TERMS

TERMS AND CONDITIONS

A. <u>PRELIMINARIES</u>

1. DEFINITIONS AND INTERPRETATION

1.1 In this Call Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions) and the Call Off Terms or the relevant Call Off Schedule in which that capitalised expression appear.

1.2 If a capitalised expression does not have an interpretation in Call Off Schedule 1 (Definitions) or relevant Call Off Schedule, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.3 In this Call Off Contract, unless the context otherwise requires:

1.3.1 the singular includes the plural and vice versa;

1.3.2 reference to a gender includes the other gender and the neuter;

1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;

1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

1.3.5 the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";

1.3.6 references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;

1.3.7 references to "representations" shall be construed as references to present facts, to "warranties" as references to present and future facts and to "undertakings" as references to obligations under this Call Off Contract;

1.3.8 references to "Clauses" and "Call Off Schedules" are, unless otherwise provided, references to the clauses and schedules of this Call Off Contract and references in any Call Off Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Call Off Schedule in which these references appear; and

1.3.9 the headings in this Call Off Contract are for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract.

1.4 Subject to Clauses 1.5, 1.6 and 1.7 in the event of and only to the extent of any conflict between the Order Form, the Call Off Terms and the provisions of the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

1.4.1 the Framework Agreement, except Framework Schedule 19 (Tender);

1.4.2 the Order Form;

1.4.3 the Call Off Terms;

1.4.4 Framework Schedule 19 (Tender).

1.5 Any permitted changes by the Customer to the Call Off Terms and the Order Form under Clause 4 of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to them becoming the Call Off Terms and the Order Form and the Parties entering this Call Off Contract shall prevail over the Framework Agreement.

1.6 If the Customer has specified security requirements in paragraph 2.8 of the Order Form and security-related clauses in paragraph 7 (Additional and/or Alternative Clauses) of the Order Form those provisions shall prevail over the Framework Agreement.

1.7 Where Framework Schedule 19 (Tender) contains provisions which are more favourable to the Customer in relation to the Call Off Contract such provisions of the Tender (as applicable) shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Tender and/or the Supplier Call Off Solution (as applicable) is more favourable to it in this context.

2. DUE DILIGENCE

2.1 The Supplier acknowledges that:

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

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

2.1.3 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.

3. REPRESENTATIONS AND WARRANTIES

3.1 Each Party represents and warranties that:

3.1.1 it has full capacity and authority to enter into and to perform this Call Off Contract;

3.1.2 this Call Off Contract is executed by its duly authorised representative;

3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Call Off Contract; and

3.1.4 its obligations under this Call Off Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Supplier represents and warrants that:

3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call Off Contract;

3.2.3 its execution, delivery and performance of its obligations under this Call Off Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;

3.2.4 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract;

3.2.5 as at the Call Off Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;

3.2.6 it has and shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Goods by the Customer;

3.2.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Contract; and

3.2.8 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.

3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.

3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

3.5 For the avoidance of doubt, the fact that any provision within this Call Off Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier which constitutes a material Default.

4. CALL OFF GUARANTEE – NOT APPLICABLE

4.1 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:

4.1.1 an executed Call Off Guarantee from a Call Off Guarantor; and

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

4.2 The Customer may in its sole discretion at any time agree to waive compliance with the requirement in Clause 4.1 by giving the Supplier notice in writing.

B. <u>DURATION OF CALL OFF CONTRACT</u>

5. CALL OFF CONTRACT PERIOD

5.1 This Call Off Contract shall take effect on the Call Off Commencement Date and shall expire on the Call Off Expiry Date.

C. <u>CALL OFF CONTRACT PERFORMANCE</u>

6. IMPLEMENTATION PLAN

6.1 **Formation of Implementation Plan**

6.1.1 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.

6.1.2 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).

6.1.3 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.

6.1.4 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.

6.2 **Control of Implementation Plan**

6.2.1 Subject to Clause 6.2.2, 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.

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

6.2.3 Where so specified by the Customer in the 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.

6.3 **Rectification of Delay in Implementation**

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

a) it shall:

(i) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; 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 6.4 (Delay Payments) shall apply unless the Delay is deemed as resulting from Customer Cause.

6.4 **Delay Payments**

6.4.1 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 31 (Customer Termination Rights) except Clause 31.6 (Termination Without Cause); 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 38 (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Customer's rights to claim Delay Payments; and

e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 6 and Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 25.

7. GOODS

7.1 **Provision of the Goods**

7.1.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Goods and the performance of its obligations under this Call Off Contract.

7.1.2 The Supplier shall ensure that the Goods:

a) comply in all respects with the description of the Goods in the Order Form (or elsewhere in this Call Off Contract); and

b) are supplied in accordance with the provisions of this Call Off Contract

7.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:

a) All applicable Law;

b) Good Industry Practice;

c) The Standards;

d) The Security Policy;

e) The ICT Policy (if so required by the Customer); and

f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 7.1.3a) to 7.1.3e).

7.1.4 The Supplier shall:

a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Goods and the Deliverables in accordance with this Call Off Contract;

b) subject to Clause 16.1.1(Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Goods;

c) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;

d) provide the Customer with such assistance as the Customer may reasonably require during the Call Off Contract Period in respect of the supply of the Goods;

e) deliver the Goods in a proportionate and efficient manner;

f) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and

g) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.

7.1.5 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

7.2 **Time of Delivery of the Goods**

7.2.1 The Supplier shall provide the Goods on the date(s) specified in the Order Form (or elsewhere in this Call Off Contract) and the Milestone Dates (if any). Such provision shall include compliance with the obligation on the Supplier set out in Clause 6 (Implementation Plan).

7.2.2 Subject to Clause 7.2.4, where the Goods are physically delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle and transferred at the Sites. At the Customer's option, Delivery of Goods shall include unloading and stacking of the Goods by the Supplier Personnel at such place as the Customer shall reasonably direct. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.

7.2.3 Unless expressly agreed to the contrary, the Customer shall not be obliged to accept delivery of the Goods by instalments. If, however, the Customer does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its Delivery shall, without prejudice to any other rights or remedies of the Customer howsoever arising, entitle the Customer to terminate the whole or any unfulfilled part of this Call Off Contract for material Default without further liability to the Customer

7.2.4 Where the Customer has specified any Installation Works in the Order Form (or elsewhere in this Call Off Contract), Delivery shall include installation of the Goods by the Supplier Personnel at the Sites or at such place as the Customer shall reasonably direct.

7.2.5 The Supplier shall undertake timed deliveries and out-of-hours deliveries as specified in the Order Form (or elsewhere in the Call-Off Contract) Timed delivery is delivery on a specified date and within a defined time range specified by the Customer on that date. The Customer shall be able to reject early deliveries and late deliveries at no cost to the Customer where a timed delivery or out-of-hours delivery has been specified.

7.2.6 The Supplier shall deliver to secure locations as directed by the Customer in the Order Form (or elsewhere in the Call-Off Contract) and in accordance with the Customer's security requirement set out at Schedule 8 (Security) where this is used.

7.3 **Location and Manner of Delivery of the Goods**

7.3.1 Except where otherwise provided in this Call Off Contract, the Supplier shall supply the Goods to the Customer through the Supplier Personnel at the Sites. The Supplier shall ensure that the Supplier Personnel comply with the Customer's security requirements as set out in Schedule 8 (Security) while on Site, including the requirement to undertake formal personnel security clearance procedures. Where Supplier Personnel are required to undertake personnel security clearance procedures to access the Sites the Customer shall notify the Supplier at least 10 Working Days in advance of the delivery date.

7.3.2 If requested by the Customer prior to Delivery, the Supplier shall provide the Customer with a sample or samples of Goods for evaluation and Approval, at the Supplier's cost and expense.

7.3.3 The Goods shall be marked, stored, handled and delivered in a proper manner and in accordance the Customer's instructions as set out in the Order Form (or elsewhere in this Call Off Contract), Good Industry Practice, any applicable Standards and any Law. In particular, the Goods shall be marked with the Order number and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

7.3.4 On dispatch of any consignment of the Goods the Supplier shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the number of packages, their weight and volume together with the all other relevant documentation and information required to be provided under any Laws.

7.3.5 The Customer may inspect and examine the manner in which the Supplier supplies the Goods at the Sites and, if the Sites are not the Customer Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.

7.4 **Risk and Ownership in Relation to the Goods**

7.4.1 Without prejudice to any other rights or remedies of the Customer howsoever arising:

7.4.1.1 risk in the Goods shall pass to the Customer at the time of Delivery; and

7.4.1.2 ownership of the Goods shall pass to the Customer on the earlier of Delivery of the Goods or payment by the Customer of the Call Off Contract Charges.

7.5 **Undelivered Goods**

7.5.1 In the event that any of the Goods are not Delivered in accordance with Clauses 7.1 to 7.3 or the Goods are Damaged or lost ("Undelivered Goods "), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Goods that were not so Delivered until such time as the Undelivered Goods are Delivered.

7.5.2 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 7.1 to 7.3 and meet the relevant Milestone Date (if any) to be a material Default.

7.6 **Warranty**

7.6.1 The Supplier hereby guarantees the Goods for the Warranty Period against faulty materials and workmanship.

7.6.2 If the Customer shall within such Warranty Period give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies of the Customer howsoever arising) promptly remedy such faults or defects (whether by repair or replacement as pursuant to the applicable published warranty terms of the manufacturer) free of charge.

7.6.3 Where Goods are repaired or replaced under Warranty, the repaired or replaced Goods shall have either the remainder of the original Warranty Period or where offered a full Warranty Period as if supplied as new under the Call-Off Contract

7.6.4 In undertaking any repairs to the Goods, the Supplier shall not replace any parts or components of the Ordered Goods with parts or components that are of lower quality or which are unsuitable for use in their designed purpose either by the Customer or a replacement service provider, prior to the expiry or termination of the Call-Off Contract (howsoever arising).

7.6.5 Where there is fault in any Ordered Goods which cannot be repaired, the Supplier shall ensure and procure that any data residing in any Ordered Goods is removed prior to such Ordered Goods at no additional cost to the customer being returned to any manufacturer or other third party for disposal.

7.6.6 The Customer has the sole option to remove and retain any hard drives or solid state drives prior to the return of Goods to the Supplier at no additional cost to the Customer. Not Applicable.

7.6.7 The Supplier confirms that where a Customer has an in-house warranty provider or technical staff who undertake warranty repair work, the Supplier shall work with the in-house warranty provider and/or technical staff to provide any required training to enable the transfer of warranty repair work without cost or loss of service to the customer. Where this reduces the cost to the Supplier of providing the Warranty, the Supplier shall pass such cost savings on to the Customer.

7.7 Obligation to Remedy of Default in the Supply of the Goods

7.7.1 Subject to Clauses 22.9.2 and 22.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 7.5.2 (Undelivered Goods) and 28 (Customer Remedies for Inadequate Performance)), the Supplier shall, where practicable:

a) remedy any breach of its obligations in this Clause 7 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and

b) meet all the costs of, and incidental to, the performance of such remedial work.

7.8 Continuing Obligation to Provide the Goods

7.8.1 The Supplier shall continue to perform all of its obligations under this Call Off Contract and shall not suspend the provision of the Goods, notwithstanding:

a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;

b) the existence of an unresolved Dispute; and/or

c) any failure by the Customer to pay any Call Off Contract Charges,

unless the Supplier is entitled to terminate this Call Off Contract under Clause 32.1 (Termination on Customer Cause) for failure by the Customer to pay undisputed Charges.

7.9 Over Delivered Goods

7.9.1 The Customer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity specified in the Order Form (or elsewhere in this Call Off Contract) ("Over-Delivered Goods").

7.9.2 If the Customer elects not to accept such Over-Delivered Goods it may, without prejudice to any other rights and remedies of the Customer howsoever arising, give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such over-delivery (including but not limited to the costs of moving and storing the Over-Delivered Goods).

7.9.3 If the Supplier fails to comply with the Customer's notice under Clause 7.9.2, the Customer may dispose of such Over-Delivered Goods and charge the Supplier for the costs of such disposal. The risk in any Over-Delivered Goods shall remain with the Supplier.

7.10 Responsibility for Damage to or Loss of the Goods

7.10.1 Without prejudice to the Supplier's other obligations to provide the Goods in accordance with this Call Off Contract, the Supplier accepts responsibility for all damage to or loss of the Goods if:

7.10.1.1 the same is notified in writing to the Supplier within twenty eight (28) Working Days of receipt and inspection of the Goods by the Customer. The Supplier and Customer shall agree the date of inspection of the Delivered Goods in the Implementation Plan. In the event that no such date is specified in the Implementation Plan (or elsewhere in the Call Off Contract), then Clause 7.10.1 shall apply if damage to or loss of the Goods is notified in writing to the Supplier within three (28) Working Days of the Delivery of the Goods at the Customer's nominated site; and

7.10.1.2 the Goods have been handled by the Customer in accordance with the Supplier's instructions.

7.10.2 Where the Supplier accepts responsibility under Clause 7.10.1 it shall, at its sole option, replace or repair the Goods (or part thereof) within such time as is reasonable having regard to the circumstances and as agreed with the Customer. Return of the Damaged Goods shall be at the Supplier's cost. For the avoidance of doubt, the Customer shall not approve any Damaged or lost Goods as Delivered, and for the purposes of the Implementation Plan such Goods shall be deemed as Undelivered Goods.

7.11 Goods Replacement/Substitution

7.11.1 In the event that the Goods become genuinely unavailable after the Supplier has accepted and/or confirmed the Customer's Order and is contractually bound, the Supplier shall offer the Customer a replacement model or equivalent substitute goods at no additional cost to the Customer. The equivalent substitute oods shall be of an equivalent or higher specification and provide the same or additional functionality than the Goods it replaces. It shall be the Customer's sole decision whether to accept the replacement model or equivalent substitute goods. In the event that the Customer rejects the replacement model or equivalent substitute goods, the Supplier's failure to Deliver in accordance with the Call-Off Contract shall be deemed a material Default entitling the Customer to terminate the Call-Off Contract.

7.12 Product Lifecycle Information

7.12.1 The Supplier shall provide product lifecycle information, including product roadmaps, on request of the Customer. Where the Supplier becomes aware that Goods are to become End of Life, the Supplier shall use all reasonable endeavours to give the Customer three (3) Months' notice of this event; in any event, the Supplier shall notify the Customer when Goods are End of Life.

7.13 Access to Spares

7.13.1 The Supplier shall have access to a sufficient stock of spare devices that have been specified as business critical on the Order Form to allow the Customer to initiate business-critical swaps of faulty devices, or to address Dead On Arrival/Installation (DOA/DOI) business critical issues, with replacement by the same model and specification of device. Upon notification by the Customer of the requirement for a business-critical swap or DOA/DOI business critical issue, the Supplier shall swap the device with a spare device within twenty-four (24) hours of the Customer reporting the issue. For the avoidance of doubt, the Customer shall not Approve any DOA/DOI devices, and for the purposes of the Implementation Plan such Goods shall be deemed as Undelivered Goods.

7.13.2 The Supplier shall have access to a sufficient stock of spare components to undertake repairs to Goods in accordance with warranty requirements, and in any case to undertake required repairs within a reasonable time period.

7.14 Test Devices

7.14.1 The Supplier shall make a stock of Test Devices, for the purpose of testing compatibility with a Customer's IT Infrastructure, available to the Customer as required. Test Devices shall be shipped to the Customer's nominated Site on request and at the Supplier's expense. The Customer shall return Test Devices to the Supplier in the same condition as initially provided to them by the Supplier (unless agreed otherwise between the Parties). Risk and ownership for any Test Devices shall remain with the Supplier.

7.15 Endemic Failures

7.15.1 The Supplier shall collate information on the failure rate of Goods such that it can trace failure rate by batch, principal reasons for failure, and by Customer affected by Goods failure. This information will help the Supplier to identify situations of Endemic Failures. In the event of Endemic Failure of the Goods supplied, the Supplier shall inform the Customer and the Customer has the right to reject all Goods in the affected batch and require their replacement by the Supplier at no cost to the Customer and without prejudice to the Customer's right of remedies. Endemic Failure also triggers a material Default by the Supplier, entitling the Customer to terminate the Call-Off Contract.

7.16 [Coding Requirements (for NHS customer Only) – Not Applicable

7.16.1 Unless otherwise confirmed and/or agreed by the Customer in writing and subject to Clause 7.16.2, 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 Commencement Date, in relation to all categories of Goods to be provided as part of the Call Off Contract as at the Commencement Date; or

b) where further categories of Goods are to be supplied in accordance with Clause 16 (Change) prior to or on the date of implementation of any such Variation.

7.16.2 Where it is not practical for whatever reason for the Supplier to comply with its obligations under Clause 7.16.1 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.

7.16.3 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.]

8. STANDARDS AND QUALITY

8.1 The Supplier shall at all times during the Call Off Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.

8.2 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:

8.2.1 be appropriately experienced, qualified and trained to supply the Goods in accordance with this Call Off Contract;

8.2.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Services; and

8.2.3 obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Goods to the reasonable satisfaction of the Customer.

8.3 The Supplier shall ensure that the Goods are Delivered in accordance with the Specifications, requirements in the Order Form, the manufacturer's specification (as applicable) and the the Call Off Contract.

8.4 The Supplier shall ensure the Goods are free from defects in design and workmanship and are fit for the purpose.

9. NOT USED

10. NOT USED

11. DISRUPTION

11.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call Off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.

11.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.

11.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods in accordance with its obligations under this Call Off Contract.

11.4 If the Supplier's proposals referred to in Clause 11.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.

12. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

12.1 Without prejudice to any other obligations of the Supplier in this Call Off Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 32.1.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall:

12.1.1 notify the Customer as soon as reasonably practicable ((and in any event within two (2) Working Days of the Supplier becoming aware)) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:

a) the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Call Off Contract; and

b) any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and

c) use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

D. <u>CALL OFF CONTRACT GOVERNANCE</u>

13. NOT USED

14. REPRESENTATIVES

14.1 Each Party shall have a representative for the duration of this Call Off Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Call Off Contract.

14.2 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 50 (Key Personnel).

14.3 The Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Call Off Commencement Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.

15. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

15.1 The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Goods provided under it, any Sub-Contracts and the amounts paid by the Customer.

15.2 The Supplier shall:

15.2.1 keep the records and accounts referred to in Clause 15.1 in accordance with Good Industry Practice and Law; and

15.2.2 afford any Auditor access to the records and accounts referred to in Clause 15.1 at the Supplier's premises and/or provide copies of such records and accounts (including copies of the Supplier's published accounts), as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 15.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call Off Contract Agreement including for the following purposes:

a) to verify the accuracy of the Call Off Contract Charges and any other amounts payable by the Customer under this Call Off Contract;

b) to verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Goods;

c) to verify the Open Book Data;

d) to verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;

e) to identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;

f) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Framework Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to supply the Goods;

g) to obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

h) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Call Off Contract;

i) to carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;

j) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;

k) Not Used;

l) to verify the accuracy and completeness of any information delivered or required by this Call Off Contract;

m) to review the Supplier's compliance with the Standards;

n) to review the integrity, confidentiality and security of the Customer Data.

15.3 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.

15.4 The Supplier shall on demand provide the Auditor(s) with all co-operation and assistance in:

15.4.1 all information requested by the Customer within the scope of the audit;

15.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Goods; and

15.4.3 access to the Supplier Personnel.

15.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 15, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

16. CHANGE

16.1 Variation Procedure

16.1.1 Subject to the provisions of this Clause 16 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".

16.1.2 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.

16.1.3 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.

16.1.4 [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.] – Not Applicable

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

16.1.6 Subject to 17.1.5, 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.

16.1.7 In the event that:

a) the Supplier is unable to agree to or provide the Variation; and/or

b) the Parties are unable to agree a change to the Call Off Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof,

c) the Customer may:

16.1.7.3.1 agree to continue to perform its obligations under this Call Off Contract without the Variation; or

16.1.7.3.2 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.

16.1.8 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.

16.2 **Legislative change**

16.2.1 The Supplier shall neither be relieved of its obligations under this Call Off Contract nor be entitled to an increase in the Call Off Contract Charges as the result of a:

a) General Change in Law;

b) Specific Change in Law where the effect of that Specific Change in Law on the supply of the Goods is reasonably foreseeable at the Call Off Commencement Date.

16.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 16.2.1b)), the Supplier shall:

a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:

(i) whether any Variation is required to the provision of the Goods, the Call Off Contract Charges or this Call Off Contract; and

(ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone; and

b) provide to the Customer with evidence:

(i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;

(ii) as to how the Specific Change in Law has affected the cost of providing the Goods; and

(iii) demonstrating that any expenditure that has been avoided, , has been taken into account in amending the Call off Contract Charges.

16.2.3 Any change in the Call Off Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 16.2.1b)) shall be implemented in accordance with the Variation Procedure.

E. <u>PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS</u>

17. CALL OFF CONTRACT CHARGES AND PAYMENT

17.1 **Call Off Contract Charges**

17.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Goods, the Customer shall pay the undisputed Call Off Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in the Order Form, and where used, with Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).

17.1.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 15 (Records, Audit Access and Open Book Data), 23.6 (Freedom of Information), 23.7 (Protection of Personal Data).

17.1.3 If the Customer fails to pay any undisputed Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

17.1.4 If at any time during this Call Off Contract Period the Supplier reduces its Framework Prices for any Goods which are provided under the Framework Agreement (whether or not such Goods are offered in a catalogue, if any, which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Call Off Contract Charges for such Goods under this Call Off Contract by the same amount.

17.2 VAT

17.2.1 The Call Off Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a Valid Invoice.

17.2.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 17.2.2 shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

17.3 Retention and Set off

17.3.1 The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Call Off Contract or under any other agreement between the Supplier and the Customer.

17.3.2 If the Customer wishes to exercise its right pursuant to Clause 17.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Call Off Contract Charges.

17.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

17.4 Euro

17.4.1 Any requirement of Law to account for the Goods in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.

17.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 17.4.1 by the Supplier.

17.5 Income Tax and National Insurance Contributions

17.5.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call Off Contract, the Supplier shall:

a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Goods by the Supplier or any Supplier Personnel.

18. PROMOTING TAX COMPLIANCE

18.1 If, at any point during the Call Off Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

18.1.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and

18.1.2 promptly provide to the Customer:

a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.

19. CONTINUOUS IMPROVEMENT AND BENCHMARKING

19.1 Continuous Improvement

19.1.1 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 19.1 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.

19.1.2 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.

19.1.3 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.

19.2 **Benchmarking**

19.2.1 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.

19.2.2 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 19.2.1 above.

19.2.3 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).

19.2.4 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.

19.2.5 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.

19.2.6 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.

F. <u>SUPPLY CHAIN MATTERS</u>

20. NOT USED

21. SUPPLY CHAIN RIGHTS AND PROTECTION

21.1 **Appointment of Key Sub-Contractors**

21.1.1 The Key Sub-Contractors shall be as listed in Framework Schedule 7 (Key Sub-Contractors).

21.2 **Retention of Legal Obligations**

21.2.1 Notwithstanding the Supplier's right to sub-contract pursuant to Clause 22 of the Framework Agreement (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

21.2.2 An obligation herein on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that the Supplier Personnel also do, or refrain from doing, such act or thing.

G. <u>INTELLECTUAL PROPERTY AND INFORMATION</u>

22. INTELLECTUAL PROPERTY RIGHTS

22.1 **Allocation of title to IPR**

22.1.1 Save as expressly granted elsewhere under this Call Off Contract:

a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:

(i) in the Supplier Software;

(ii) the Supplier Background IPR;

(iii) in the Third Party Software;

(iv) the Third Party IPR;

(v) in the Specially Written Software; and

(vi) the Project Specific IPR.

b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:

(i) in the Customer Software;

(ii) the Customer Background IPR; and

(iii) in the Customer Data.

22.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 22.1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

22.1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

22.2 Licences granted by the Supplier: Specially Written Software and Project Specific IPR

22.2.1 The Supplier hereby grants to the Customer, or shall procure the direct grant to the Customer of, a perpetual, royalty-free, irrevocable, non-exclusive licence to use:

a) the Documentation, Source Code and the Object Code of the Specially Written Software (including any Supplier Background IPR or Third Party IPR that are embedded in or which are an integral part of the Specially Written Software) which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate such Specially Written Software;

b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "Software Supporting Materials"); and

c) the Project Specific IPR including but not limited to the right to copy, adapt, publish and distribute such Project Specific IPR.

22.2.2 The Supplier shall:

a) inform the Customer of all Specially Written Software that constitutes a modification or enhancement to Supplier Software or Third Party Software; and

b) deliver to the Customer the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Customer.

22.2.3 The Supplier acknowledges and agrees that the ownership of the media referred to in Clause 22.2.2b) shall vest in the Customer upon their receipt by the Customer.

22.2.4 Those items licensed according to the terms of Clause 23.2.1 are listed in the Order Form or, where this is used, Call Off Schedule 9.

22.3 Licences granted by the Supplier: Supplier Software and Supplier Background IPR

22.3.1 The Supplier hereby grants to the Customer a perpetual, royalty-free and non-exclusive licence to use:

a) the Supplier Software for any purpose relating to the Goods(or substantially equivalent services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display); and

b) the Supplier Background IPR for any purpose relating to the Goods(or substantially equivalent services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function.

22.3.2 At any time during the Call Off Contract Period or following the Call Off Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Software or the Supplier Background IPR under Clause 22.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Customer Cause which constitutes a material breach of the terms of Clauses 22.3.1a) or 22.3.1b) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.

22.3.3 In the event the licence of the Supplier Software or the Supplier Background IPR is terminated pursuant to Clause 22.3.2, the Customer shall:

a) immediately cease all use of the Supplier Software or the Supplier Background IPR (as the case may be);

b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR, provided that if the Supplier has not made an election within six months of the termination of the licence, the Customer may destroy the documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR (as the case may be); and

c) ensure, so far as reasonably practicable, that any Supplier Software and/or Supplier Background IPR that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Customer) from any computer, word processor, voicemail system or any other device containing such Supplier Software and/or Supplier Background IPR.

22.3.4 Those items licensed according to the terms of Clause 23.3.1 are listed in the Order Form or, where this is used, Call Off Schedule 9

22.4 Customer's right to sub-license

22.4.1 The Customer shall be freely entitled to sub-license the rights granted to it pursuant to Clause 22.2.1.

22.4.2 The Customer may sub-license:

a) the rights granted under Clause 22.3.1 to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:

(i) the sub-licence is on terms no broader than those granted to the Customer; and

(ii) the sub-licence only authorises the third party to use the rights licensed in Clause 22.3.1 for purposes relating to the Goods or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and

b) the rights granted under Clause 22.3.1 to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Customer.

22.5 Customer's right to assign/novate licences

22.5.1 The Customer:

a) shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 22.2.1; and

b) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 22.3.1 to:

(i) a Central Government Body; or

(ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.

c) Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 22.2.1 and/or Clause 22.3.1. If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 22.2.1 and Clause 22.3.1.

d) If a licence granted in Clause 22.2.1 and/or Clause 22.3.1 is novated under Clause 22.5.1 or there is a change of the Customer's status pursuant to Clause c) (both such bodies being referred to as the "Transferee"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

22.6 Third Party IPR and Third Party Software

22.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR and any Third Party Software which is not commercial off-the-shelf software grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 22.3.1 and Clause 22.5.1b). If the Supplier cannot obtain for the Customer a licence materially in accordance with the licence terms set out in Clause 22.3.1 and Clause 22.5.1b) in respect of any such Third Party IPR and/or Third Party Software, the Supplier shall:

a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and

b) only use such Third Party IPR and/or Third Party Software if the Customer Approves the terms of the licence from the relevant third party.

22.6.2 The Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Customer on terms no less favourable that such software is usually made available.

22.6.3 Those items licensed according to the terms of Clause 23.6.1 are listed in the Order Form or, where this is used, Call Off Schedule 9.

22.6.4 Those items licensed according to the terms of Clause 23.6.2 are listed in the Order Form or, where this is used, Call Off Schedule 9.

22.7 Licence granted by the Customer

22.7.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call Off Contract Period to use the Customer Software, the Customer Background IPR and the Customer Data solely to the extent necessary for providing the Goodsin 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 23.4.1(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.

22.7.2 Those items licensed according to the terms of this Clause 23.7 are listed in the Order Form or, where this is used, Call Off Schedule 9

22.8 Termination of licenses

22.8.1 Subject to Clauses 22.3.2 and/or 22.3.3, all licences granted pursuant to this Clause 22 (other than those granted pursuant to Clause 22.6.2 and 22.7.1) shall survive the Call Off Expiry Date.

22.8.2 The Supplier shall, if requested by the Customer, grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPR, Third Party IPR and/or Third Party Software on terms equivalent to those set out in Clause 22.3.1 subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

22.8.3 The licence granted pursuant to Clause 22.7.1 and any sub-licence granted by the Supplier in accordance with Clause 22.7.1 shall terminate automatically on the Call Off Expiry Date and the Supplier shall:

a) immediately cease all use of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be);

b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data, provided that if the Customer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be); and

c) ensure, so far as reasonably practicable, that any Customer Software, Customer Background IPR and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Customer Software, Customer Background IPR and/or Customer Data.

22.9 **IPR Indemnity**

22.9.1 The Supplier shall during and after the Call Off Contract Period, on written demand indemnify the Customer against all Losses incurred by, awarded against or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

22.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or

b) replace or modify the relevant item with non-infringing substitutes provided that:

(i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

(ii) the replaced or modified item does not have an adverse effect on any other Goods;

(iii) there is no additional cost to the Customer; and

(iv) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Goods.

22.9.3 If the Supplier elects to procure a licence in accordance with Clause 22.9.2a) or to modify or replace an item pursuant to Clause 22.9.2b), but this has not avoided or resolved the IPR Claim, then:

a) the Customer may terminate this Call Off Contract by written notice with immediate effect; and

b) without prejudice to the indemnity set out in Clause 22.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

22.9.4 The provisions of Clauses 22.9.1 to 22.9.3 (inclusive) shall not apply to the extent that any IPR Claim is caused by any use by or on behalf of the Customer of the Software, or the use of the Customer Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Call Off Contract or in a manner not reasonably to be inferred from the description of the Goods in this Call Off Contract.

22.9.5 The Customer agrees that:

a) it will notify the Supplier in writing of any IPR Claim;

b) it will allow the Supplier to conduct all negotiations and proceedings and will provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and

c) it will not, without first consulting with the Supplier, agree to make any payment or make an admission relating to the IPR Claim.

22.9.6 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute. The Supplier shall not settle or compromise any IPR Claim without the Customer's Approval (not to be unreasonably withheld or delayed).

23. SECURITY AND PROTECTION OF INFORMATION

23.1 **Security Requirements**

23.1.1 The Supplier shall comply with the Security Policy and where specified by the Customer, with the requirements of Call Off Schedule 8 (Security Management) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

23.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.

23.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Goods it may propose a Variation to the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call Off Contract Charges shall then be subject to the Variation Procedure.

23.1.4 Until and/or unless a change to the Call Off Contract Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Goods in accordance with its existing obligations.

23.2 **Malicious Software**

23.2.1 The Supplier shall, as an enduring obligation throughout the Call Off Contract Period use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).

23.2.2 Notwithstanding Clause 23.2.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of the Goods to its desired operating efficiency.

23.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 23.2.2 shall be borne by the Parties as follows:

a) by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Customer has waived the obligation set out in Clause 23.2.1) or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and

b) by the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived its obligation set out in Clause 23.2.1) or the Customer Data (whilst the Customer Data was under the control of the Customer).

23.3 **Protection of Customer Data**

23.3.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

23.3.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call Off Contract or as otherwise Approved by the Customer.

23.3.3 To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified in this Call Off Contract and in any event as specified by the Customer from time to time in writing.

23.3.4 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.

23.3.5 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site [in accordance with any BCDR Plan]. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).

23.3.6 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).

23.3.7 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

23.3.8 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:

a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or

b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so)

23.4 **Confidentiality**

23.4.1 For the purposes of this Clause , the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.

23.4.2 Except to the extent set out in this Clause 23 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:

a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and

b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call Off Contract or without obtaining the owner's prior written consent;

c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and

d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

23.4.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 23.6.1 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;

b) the need for such disclosure arises out of or in connection with:

(i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;

(ii) the purpose of the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Goods provided under this Call Off Contract; or

(iii) the conduct of a Central Government Body review in respect of this Call Off Contract; or

c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

23.4.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

23.4.5 Subject to Clauses 23.4.2 and 23.4.7, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:

a) Supplier Personnel who are directly involved in the provision of the Goods and need to know the Confidential Information to enable performance of the Supplier's obligations under this Call Off Contract; and

b) its professional advisers for the purposes of obtaining advice in relation to this Call Off Contract.

23.4.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 23.4.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.

23.4.7 The Customer may disclose the Confidential Information of the Supplier:

a) on a confidential basis to any Central Government Body for any proper purpose of the Customer or of the relevant Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies or Other Contracting Bodies;

b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 23.4.7a) (including any benchmarking organisation) for any purpose relating to or connected with this Call Off Contract;

e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or

f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause 23.

23.4.8 Nothing in this Clause 23 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

23.4.9 In the event that the Supplier fails to comply with Clauses 23.4.2 to 23.4.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

23.5 Transparency

23.5.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Contract is not Confidential Information. The Customer shall determine whether any of the content of this Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

23.5.2 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives his consent for the Customer to publish this Call Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the

FOIA redacted), including any changes to this Call Off Contract agreed from time to time.

23.5.3 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Call Off Contract.

23.6 **Freedom of Information**

23.6.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;

b) transfer to the Customer all Requests for Information relating to this Call Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

23.6.2 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Call Off Contract) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

23.7 **Protection of Personal Data**

23.7.1 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Call Off Contract, the Parties acknowledge that the Customer is the Data Controller and that the Supplier is the Data Processor.

23.7.2 The Supplier shall:

a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call Off Contract;

b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in Clauses 23.1 (Security Requirements) and 23.3 (Protection of Customer Data);

c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call Off Contract)

d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:

(i) are aware of and comply with the Supplier's duties under this Clause 23.7.2 and Clauses 23.1 (Security Requirements), 23.3(Protection of Customer Data) and 23.4 (Confidentiality);

(ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and

(iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);

e) notify the Customer within five (5) Working Days if it receives:

(i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;

(ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or

(iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint, communication or request made (as referred to at Clause e)), including by promptly providing:

(i) the Customer with full details and copies of the complaint, communication or request;

(ii) where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and

(iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and

g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 23.7.2 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

23.7.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "Restricted Countries"). If, after the Call Off Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any outside the European Economic Area, the following provisions shall apply:

a) the Supplier shall propose a Variation to the Customer which, if it is agreed by the Customer, shall be dealt with in accordance with the Variation Procedure and Clauses 23.7.3b) to d);

b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:

(i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;

(ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and

(iii) any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;

c) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;

d) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and

e) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:

(i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and

(ii) procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:

A. a direct data processing agreement with the Customer on such terms as may be required by the Customer; or

B. a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-contractor relating to the relevant Personal Data transfer, and

(iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

23.7.4 The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the DPA and shall not perform its obligations under this Call Off Contract in such a way as to cause the Customer to breach any of the Customer's obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

24. PUBLICITY AND BRANDING

24.1 The Supplier shall not:

24.1.1 make any press announcements or publicise this Call Off Contract in any way; or

24.1.2 use the Customer's name or brand in any promotion or marketing or announcement of orders,

24.1.3 without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed).

24.2 Each Party acknowledges to the other that nothing in this Call Off Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Goods) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

H. <u>LIABILITY AND INSURANCE</u>

25. LIABILITY

25.1 Neither Party excludes or limits it liability for:

25.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);

25.1.2 bribery or Fraud by it or its employees;

25.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

25.1.4 any liability to the extent it cannot be excluded or limited by Law.

25.2 Subject to Clauses 25.1 the Supplier's total aggregate liability in respect of all Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:

a) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, the higher of one million pounds (£1,000,000) or a sum equal to one hundred and twenty-five per cent (125%) of the Estimated Year 1 Call Off Contract Charges;

b) in relation to any Defaults occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, the higher of one million pounds (£1,000,000) in each such Call Off Contract Year or a sum equal to one hundred and twenty-five per cent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and

c) in relation to any Defaults occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, the higher of one million pounds (£1,000,000) in each such Call Off Contract Year or a sum equal to one hundred and twenty-five percent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period,

d) unless a different aggregate limit or percentage under this Clause 25.2 is stipulated by the Customer during a Further Competition Procedure and set out in the Order Form.

25.3 Subject to Clauses 25.1 and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:

25.3.1 in relation to any Customer Causes occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, a sum equal to the Estimated Year 1 Call Off Contract Charges;

25.3.2 in relation to any Customer Causes occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and

25.3.3 in relation to any Customer Causes occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.

25.4 Subject to Clause 25.1 neither Party shall be liable to the other Party for any:

25.4.1 indirect, special or consequential Loss;

25.4.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

25.5 Subject to Clause 25.2, and notwithstanding Clause 25.3, the Supplier acknowledges that the Customer may, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of, and relate to a Default by the Supplier:

25.5.1 any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;

25.5.2 any wasted expenditure or charges;

25.5.3 the additional cost of procuring Replacement Goods for the remainder of the Call Off Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Goods and/or replacement Deliverables above those which would have been payable under this Call Off Contract;

25.5.4 any compensation or interest paid to a third party by the Customer; and

25.5.5 any fine, penalty or costs incurred by the Customer pursuant to Law.

25.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call Off Contract.

25.7 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 25.2.

26. INSURANCE

26.1 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 at paragraph 6.3 of the Order Form:

26.1.1 Employers Liability Insurance of at least (£5,000,000);

26.1.2 Public Liability Insurance of at least (£1,000,000);

26.1.3 Product Liability Insurance of at least (£1,000,000); and

26.1.4 Professional Indemnity Insurance of at least (£1,000,000).

26.2 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 26.1 above for six (6) years after the Call Off Expiry Date.

26.3 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause 26.1 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.

26.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause 26.1, 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.

26.5 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.

26.6 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.

27. NOT USED

I. <u>REMEDIES AND RELIEF</u>

28. CUSTOMER REMEDIES FOR DEFAULT

28.1 **Remedies**

28.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising and subject to the exclusive financial remedy provisions in Clause 6.4.1b) (Delay Payments), if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Goods have been Delivered) do any of the following:

a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Goods and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Customer's instructions;

b) carry out, at the Supplier's expense, any work necessary to make the provision of the Goods comply with this Call Off Contract;

c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single Material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):

(i) instruct the Supplier to comply with the Rectification Plan Process;

(ii) suspend this Call Off Contract (whereupon the relevant provisions of Clause 34 shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Goods;

(iii) without terminating or suspending the whole of this Call off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Goods only (whereupon the relevant provisions of Clause 34 shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Goods;

28.1.2 Where the Customer exercises any of its step-in rights under Clauses (ii) or (iii), the Customer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Goods.

28.2 **Rectification Plan Process**

28.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process in accordance with this Call Off Contract:

a) The Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.

b) The draft Rectification Plan shall set out:

(i) full details of the Default that has occurred, including a root cause analysis;

(ii) the actual or anticipated effect of the Default; and

(iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

28.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of Annex 3 (Dispute Resolution Procedure) to the Call Off Terms.

28.2.3 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft