

FRAMEWORK SCHEDULE 4 – ANNEX 3

ALTERNATIVE AND ADDITIONAL CLAUSES

ALTERNATIVE CLAUSES

Scots Law
Northern Ireland Law
Non-Crown Bodies
Non-FOIA Public Bodies

ADDITIONAL CLAUSES AND SCHEDULES

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*optional for Projects	A2	Key Personnel
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B: OPTIONS – FOR SERVICES ONLY

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Unless there is a clear adjustment to an existing provision of the Call Off Contract, additional Clauses incorporated into the Call Off Contract via the Order Form will have the effect of being inserted sequentially immediately after Clause 46. New definitions for Call Off Schedule 1 will have the effect of being inserted alphabetically into the table therein and associated schedules will have the effect of being inserted sequentially immediately after Call Off Schedule 6.

ALTERNATIVE CLAUSES

The Customer may, in the Order Form, request the following Alternative Clauses:

SCOTS LAW

Governing Law and Jurisdiction (Clause 46)

- (a) References to "England and Wales" in the original Clause 46 of this Call Off Contract (Governing Law and Jurisdiction) shall be replaced with "Scotland".
- (b) Where legislation is expressly mentioned in this Call Off Contract, the adoption of Clause (a) shall have the effect of substituting the equivalent Scots legislation.

NORTHERN IRELAND LAW

Governing Law and Jurisdiction (Clause 46)

- (a) References to "England and Wales" in the original Clause 46 of this Call Off Contract (Governing Law and Jurisdiction) shall be replaced with "Northern Ireland".
- (b) Where legislation is expressly mentioned in this Call Off Contract the adoption of Clause (a) shall have the effect of substituting the equivalent Northern Ireland legislation.

Insolvency Event

In Call Off Schedule 1 (Definitions), reference to "section 123 of the Insolvency Act 1986" in limb f) of the definition of Insolvency Event shall be replaced with "Article 103 of the Insolvency (NI) Order 1989".

NON-CROWN BODIES

Where the Customer is not a Crown Body replace Clause 35.3 with the following:

"35.3 Finance Act

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

NON-FOIA PUBLIC BODIES

Where the Customer is not a public body for the purposes of FOIA replace Clause 23.5 with the following:

"23.5 Freedom of Information

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

ADDITIONAL CLAUSES AND SCHEDULES

The Customer may, in the Order Form, request that the following Additional Clauses should apply:

A1. TESTING

- A1.1 This Clause A1 shall apply if so specified by the Customer in section C of the Order Form.

A1.2 The Parties shall comply with any provisions set out Call Off Schedule A1 (Testing).

"Test" and "Testing"	means any tests required to be carried out pursuant to this Call Off Contract as set out in the Test Strategy Plan (where used) and "Tested" shall be construed accordingly;
"Test Issue"	means any variance or non-conformity of the Services or Deliverables from their requirements as set out in the Order Form;
"Testing Strategy Plan"	means a plan: a) for the Testing of Deliverables; and b) setting out other agreed criteria related to the achievement of Milestones, as described further in paragraph 6 of this Call Off Schedule;

CALL OFF SCHEDULE A1: TESTING

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Component"	means any constituent parts of the Services, bespoke or COTS, hardware or software;
"COTS"	means commercially available off the shelf software, being software that is commonly used and is provided in a standard form and on standard licence terms which are not typically negotiated by the licensor;
"Material Test Issue"	means a Test Issue of Severity Level 1 or Severity Level 2;
"Severity Level"	means the level of severity of a Test Issue, the criteria for which are described in Annex 1;
"Test Certificate"	means a certificate materially in the form of the document contained in Annex 2 issued by the Customer when a Deliverable has satisfied its relevant Test Success Criteria;
"Test Issue Threshold"	means, in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Testing Strategy Plan ;
"Test Issue Management Log"	means a log for the recording of Test Issues as described further in paragraph 10.1 of this Call Off Schedule;
"Test Reports"	means the reports to be produced by the Supplier setting out the results of Tests;
"Test Specification"	means the specification that sets out how Tests will demonstrate that the Test Success Criteria have been

satisfied, as described in more detail in paragraph 7 of this Call Off Schedule;

"Test Strategy"

means a strategy for the conduct of Testing as described further in paragraph 5 of this Call Off Schedule;

"Test Success Criteria"

means, in relation to a Test, the test success criteria for that Test as referred to in paragraph 7 of this Call Off Schedule;

"Test Witness"

means any person appointed by the Customer pursuant to paragraph 11 of this Call Off Schedule; and

"Testing Procedures"

means the applicable testing procedures and Test Success Criteria set out in this Schedule.

2. INTRODUCTION

2.1 This Call Off Schedule (Testing) sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Testing Strategy Plans.

3. RISK

3.1 The issue of a Test Certificate, a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:

3.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Customer's requirements for that Deliverable or Milestone; or

3.1.2 affect the Customer's right subsequently to reject:

- (a) all or any element of the Deliverables to which a Test Certificate relates; or
- (b) any Milestone to which the Satisfaction Certificate relates.

3.2 Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that:

3.2.1 the Services are implemented in accordance with this Call Off Contract; and

3.2.2 each Service Level is met.

4. TESTING OVERVIEW

4.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Testing Strategy Plans.

4.2 The Supplier shall not submit any Deliverable for Testing:

4.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;

4.2.2 until the Customer has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and

4.2.3 until the Parties have agreed the Testing Strategy Plan and the Test Specification relating to the relevant Deliverable(s).

- 4.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 4.4 Prior to the issue of a Test Certificate, the Customer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 4.5 Any Disputes between the Supplier and the Customer regarding this Testing shall be referred to the Dispute Resolution Procedure.

5. TEST STRATEGY

- 5.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Call Off Commencement Date but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree) after the Call Off Commencement Date.
- 5.2 The final Test Strategy shall include:
 - 5.2.1 an overview of how Testing will be conducted in accordance with the Implementation Plan;
 - 5.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
 - 5.2.3 the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
 - 5.2.4 the procedure to be followed to sign off each Test;
 - 5.2.5 the process for the production and maintenance of Test Reports, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues
 - 5.2.6 the names and contact details of the Customer's and the Supplier's Test representatives;
 - 5.2.7 a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Customer and/or third party involvement in the conduct of the Tests;
 - 5.2.8 the technical environments required to support the Tests; and
 - 5.2.9 the procedure for managing the configuration of the Test environments.

6. TESTING STRATEGY PLANS

- 6.1 The Supplier shall develop Testing Strategy Plans and submit these for Approval as soon as practicable but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.
- 6.2 Each Testing Strategy Plan shall include as a minimum:
 - 6.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied;
 - 6.2.2 a detailed procedure for the Tests to be carried out, including:
 - (a) the relevant Test Issue Thresholds;
 - (b) the timetable for the Tests including start and end dates;

- (c) the Testing mechanism;
- (d) dates and methods by which the Customer can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
- (e) the mechanism for ensuring the quality, completeness and relevance of the Tests;
- (f) the format and an example of Test progress reports and the process with which the Customer accesses daily Test schedules;
- (g) the process which the Customer will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
- (h) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
- (i) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

6.3 The Customer shall not unreasonably withhold or delay its Approval of the Testing Strategy Plans provided that the Supplier shall implement any reasonable requirements of the Customer in the Testing Strategy Plans.

7. TEST SUCCESS CRITERIA

7.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Testing Strategy Plan pursuant to paragraph 6 of this Call Off Schedule.

8. TEST SPECIFICATION

8.1 Following approval of a Testing Strategy Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

8.2 Each Test Specification shall include as a minimum:

- 8.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Customer and the extent to which it is equivalent to live operational data;
- 8.2.2 a plan to make the resources available for Testing;
- 8.2.3 Test scripts;
- 8.2.4 Test pre-requisites and the mechanism for measuring them; and
- 8.2.5 expected Test results, including:
 - (a) a mechanism to be used to capture and record Test results; and
 - (b) a method to process the Test results to establish their content.

9. TESTING

9.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.

9.2 The Supplier shall manage the progress of Testing in accordance with the relevant Testing Strategy Plan and shall carry out the Tests in accordance with the relevant

Test Specification. Tests may be witnessed by the Test Witnesses in accordance with paragraph 11 of this Call Off Schedule.

9.3 The Supplier shall notify the Customer at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Customer shall ensure that the Test Witnesses attend the Tests, except where the Customer has specified in writing that such attendance is not necessary.

9.4 The Customer may raise and close Test Issues during the Test witnessing process.

9.5 The Supplier shall provide to the Customer in relation to each Test:

9.5.1 a draft Test Report not less than 2 Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and

9.5.2 the final Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

9.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:

9.6.1 an overview of the Testing conducted;

9.6.2 identification of the relevant Test Success Criteria that have been satisfied;

9.6.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;

9.6.4 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;

9.6.5 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with paragraph 10.1 of this Call Off Schedule; and

9.6.6 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

9.7 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.

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

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

10. TEST ISSUES

10.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue

Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.

- 10.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Customer upon request.
- 10.3 The Customer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

11. TEST WITNESSING

- 11.1 The Customer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Customer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 11.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 11.3 The Test Witnesses:
- 11.3.1 shall actively review the Test documentation;
 - 11.3.2 will attend and engage in the performance of the Tests on behalf of the Customer so as to enable the Customer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
 - 11.3.3 shall not be involved in the execution of any Test;
 - 11.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Testing Strategy Plan and Test Specification;
 - 11.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Customer to assess whether the Tests have been Achieved;
 - 11.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
 - 11.3.7 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

12. TEST QUALITY AUDIT

- 12.1 Without prejudice to its rights pursuant to Clause 14 of this Call Off Contract (Records, Audit Access and Open Book Data), the Customer or an agent or contractor appointed by the Customer may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.
- 12.2 The focus of the Testing Quality Audits shall be on:
- 12.2.1 adherence to an agreed methodology;
 - 12.2.2 adherence to the agreed Testing process;

- 12.2.3 adherence to the Quality Plan;
 - 12.2.4 review of status and key development issues; and
 - 12.2.5 identification of key risk areas.
- 12.3 The Supplier shall allow sufficient time in the Testing Strategy Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 12.4 The Customer will give the Supplier at least 5 Working Days' written notice of the Customer's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Customer will materially and adversely impact the Implementation Plan.
- 12.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Call Off Schedule, the Customer witnessing Tests and demonstrations of the Deliverables to the Customer. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Customer on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Customer to enable it to carry out the Testing Quality Audit.
- 12.6 If the Testing Quality Audit gives the Customer concern in respect of the Testing Procedures or any Test, the Customer shall:
- 12.6.1 discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
 - 12.6.2 subsequently prepare a written report for the Supplier detailing its concerns,
- and the Supplier shall, within a reasonable timeframe, respond in writing to the Customer's report.
- 12.7 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Satisfaction Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

13. OUTCOME OF TESTING

- 13.1 The Customer will issue a Test Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 13.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Customer shall notify the Supplier and:
- 13.2.1 the Customer may issue a Test Certificate conditional upon the remediation of the Test Issues;
 - 13.2.2 where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Customer may extend the Testing Strategy Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or

13.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Customer's other rights and remedies, such failure shall constitute a material Default.

13.3 The Customer shall be entitled, without prejudice to any other rights and remedies that it has under this Call Off Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

14. ISSUE OF SATISFACTION CERTIFICATE

14.1 The Customer shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:

14.1.1 the issuing by the Customer of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and

14.1.2 performance by the Supplier to the reasonable satisfaction of the Customer of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).

14.2 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Call Off Schedule 2 (Call Off Contract Charging, Payment and Invoicing).

14.3 If a Milestone is not Achieved, the Customer shall promptly issue a report to the Supplier setting out:

14.3.1 the applicable Test Issues; and

14.3.2 any other reasons for the relevant Milestone not being Achieved.

14.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Customer shall issue a Satisfaction Certificate.

14.5 If there is one or more Material Test Issue(s), the Customer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Customer's other rights and remedies, such failure shall constitute a material Default.

14.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Customer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:

14.6.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Customer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Customer within 10 Working Days of receipt of the Customer's report pursuant to paragraph 13.3 of this Call Off Schedule); and

14.6.2 where the Customer issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES – SEVERITY LEVELS

1. SEVERITY 1 ERROR

1.1 This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss.

2. SEVERITY 2 ERROR

2.1 This is an error for which, as reasonably determined by the Customer, there is no practicable workaround available, and which:

- 2.1.1 causes a Component to become unusable;
- 2.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
- 2.1.3 has an adverse impact on any other Component(s) or any other area of the Services;

3. SEVERITY 3 ERROR

3.1 This is an error which:

- 3.1.1 causes a Component to become unusable;
- 3.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
- 3.1.3 has an impact on any other Component(s) or any other area of the Services;

but for which, as reasonably determined by the Customer, there is a practicable workaround available;

4. SEVERITY 4 ERROR

4.1 This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and

5. SEVERITY 5 ERROR

5.1 This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.

ANNEX 2: TEST CERTIFICATE

To: [insert name of Supplier]
From: [insert name of Customer]
[insert Date dd/mm/yyyy]

Dear Sirs,

TEST CERTIFICATE

Deliverables:

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

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

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

[We confirm that all of Deliverables listed above have been tested successfully in accordance with the Testing Strategy Plan relevant to those Deliverables.]

[OR]

[This Test Certificate is issued pursuant to paragraph 13.1 of Call Off Schedule A1 (Testing) of this Call Off Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[*Guidance Note: delete as appropriate]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

ANNEX 3: SATISFACTION CERTIFICATE

To: [insert name of Supplier]
From: [insert name of Customer]
[insert Date dd/mm/yyyy]

Dear Sirs,

SATISFACTION CERTIFICATE

Milestone:

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

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

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

[We confirm that all the Deliverables relating to Milestone [number] have been tested successfully in accordance with the Testing Strategy Plan relevant to this Milestone [or that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]*

[OR]

[This Satisfaction Certificate is granted pursuant to paragraph 13.1 of Call Off Schedule A1 (Testing) of this Call Off Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing)]*

[*Guidance Note: delete as appropriate]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

A2. KEY PERSONNEL

- A2.1 This Clause A2 shall apply if so specified in section C of the Order Form. The Parties have agreed to the appointment of the Key Personnel. Section C of the Order Form lists the key roles ("Key Roles") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Call Off Commencement Date.
- A2.2 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Call Off Contract Period.
- A2.3 The Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- A2.4 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Call Off Schedule A4 (Exit Management)) unless:
- A2.4.1 requested to do so by the Customer;
 - A2.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - A2.4.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
 - A2.4.4 the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).
- A2.5 The Supplier shall:
- A2.5.1 notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - A2.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - A2.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;
 - A2.5.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and
 - A2.5.5 ensure that any replacement for a Key Role:

- (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
- (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

A2.5.6 shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.

A2.6 The Customer may require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

A3. STAFF TRANSFER

A3.1 The Parties agree that:

A3.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Call Off Schedule A3 (Staff Transfer) shall apply as follows:

- (c) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Call Off Schedule A3 (Staff Transfer) shall apply;
- (d) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Call Off Schedule A3 (Staff Transfer) shall apply;
- (e) where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Call Off Schedule A3 (Staff Transfer) shall apply; and
- (f) Part C of Call Off Schedule A3 (Staff Transfer) shall not apply.

A3.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Call Off Schedule A3 (Staff Transfer) shall apply and Parts A and B of Call Off Schedule A3 (Staff Transfer) shall not apply; and

A3.1.3 Part D of Call Off Schedule A3 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

A3.2 The Supplier shall both during and after the Call Off Contract Period indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

CALL OFF SCHEDULE A3: STAFF TRANSFER

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Admission Agreement”	The agreement to be entered into by which the supplier agrees to participate in the Schemes as amended from time to time;
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
“Fair Deal Employees”	those Transferring Customer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
“Former Supplier”	a supplier supplying services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013;
“Notified Sub-contractor”	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Replacement Sub-contractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Schemes”	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);

“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
“Service Transfer Date”	the date of a Service Transfer;
“Staffing Information”	in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format: (a) their ages, dates of commencement of employment or engagement and gender; (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting Party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; (e) their wages, salaries and profit sharing arrangements as applicable; (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Supplier's Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;
“Supplier's Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
“Transferring Customer Employees”	those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

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

PART A

TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

1.1 The Customer and the Supplier agree that:

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

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

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

2. CUSTOMER INDEMNITIES

2.1 Subject to Paragraph 2.2, the Customer shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

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

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

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

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

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

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

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

2.1.5 a failure of the Customer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees arising before the Relevant Transfer Date;

2.1.6 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and

2.1.7 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

2.2.1 arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

2.2.2 arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer; and

2.3.2 the Customer may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Customer considers appropriate to

deal with the matter provided always that such steps are in compliance with Law.

2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:

2.5.1 no such offer of employment has been made;

2.5.2 such offer has been made but not accepted; or

2.5.3 the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Customer shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

2.7.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Customer within 6 months of the Call Off Commencement Date.

2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Customer nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2 the Supplier shall indemnify the Customer against any Employee Liabilities in respect of any Transferring Customer Employee (or, where

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

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

- 3.1.8 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Customer's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Customer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Customer and the Supplier.

4. INFORMATION

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

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in:
- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - 5.2.4 the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

6. PENSIONS

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

ANNEX TO PART A

PENSIONS

1. PARTICIPATION

1.1 The Supplier undertakes to enter into the Admission Agreement.

1.2 The Supplier and the Customer:

- 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
- 1.2.2 agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;
- 1.2.3 notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and
- 1.2.4 agree that the Customer may terminate this Call Off Contract for material default in the event that the Supplier breaches the Admission Agreement.

1.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

2. FUTURE SERVICE BENEFITS

2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.

2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.

2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

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

3.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to

account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Supplier and the Customer respectively undertake to each other:

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

5. INDEMNITY

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

6. EMPLOYER OBLIGATION

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

7. SUBSEQUENT TRANSFERS

The Supplier shall:

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

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

PART B

TRANSFERRING FORMER SUPPLIER EMPLOYEES AT THE COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

1.1 The Customer and the Supplier agree that:

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

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

2. FORMER SUPPLIER INDEMNITIES

2.1 Subject to Paragraph 2.2 the Customer shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- 2.1.1 any act or omission by the Former Supplier arising before the Relevant Transfer Date;
- 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

- (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Call Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Customer as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, to the Former Supplier; and
 - 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take

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

2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Customer, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:

2.5.1 no such offer of employment has been made;

2.5.2 such offer has been made but not accepted; or

2.5.3 the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Customer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

2.7.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Customer and, if applicable, the Former Supplier, within 6 months of the Call Off Commencement Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Customer and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former

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

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

- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. INFORMATION

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

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - 5.1.4 the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

6. PROCUREMENT OBLIGATIONS

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

7. PENSIONS

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

ANNEX TO PART B

PENSIONS

1. PARTICIPATION

1.1 The Supplier undertakes to enter into the Admission Agreement.

1.2 The Supplier and the Customer:

- 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
- 1.2.2 agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;
- 1.2.3 notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and
- 1.2.4 agree that the Customer may terminate this Call Off Contract for material default in the event that the Supplier breaches the Admission Agreement.

1.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

2. FUTURE SERVICE BENEFITS

2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.

2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

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

4. PROVISION OF INFORMATION

The Supplier and the Customer respectively undertake to each other:

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

5. INDEMNITY

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

6. EMPLOYER OBLIGATION

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

7. SUBSEQUENT TRANSFERS

The Supplier shall:

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

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

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

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Customer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.
- 1.2 If any employee of the Customer and/or a Former Supplier claims, or it is determined in relation to any employee of the Customer and/or a Former Supplier, that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 1.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Supplier; and
 - 1.2.2 the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Customer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2.2:
- 1.4.1 no such offer of employment has been made;
 - 1.4.2 such offer has been made but not accepted; or
 - 1.4.3 the situation has not otherwise been resolved,
- the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Customer shall:
- 2.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

2.1.2 procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Customer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

- (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- (c) shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Customer and, if applicable, Former Supplier within 6 months of the Call Off Commencement Date.

3. PROCUREMENT OBLIGATIONS

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

PART D

EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Supplier agrees that within 20 Working Days of the earliest of:

- 1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Call Off Contract;
- 1.1.3 the date which is 12 months before the end of the Term; and
- 1.1.4 receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Customer.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-contractor:

- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Customer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

1.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):

- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- 1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

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

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

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

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

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

- 1.7.1 the most recent month's copy pay slip data;
- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Call Off Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
 - 2.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
 - 2.3.5 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
 - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Call Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 2.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification

by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:

2.7.1 no such offer of employment has been made;

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved

the Customer shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date .

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

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

2.11.1 the Supplier and/or any Sub-contractor; and

2.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.

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

2.13 Subject to Paragraph 2.14, the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;

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

- (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
- (b) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

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

2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations)

before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

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

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

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

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

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

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS

[REDACTED]

A4. EXIT MANAGEMENT

- A4.1 This Clause A4 shall apply if so specified in section C of the Order Form.
- A4.2 The Parties shall comply with the exit management provisions set out in Call Off Schedule A4 (Exit Management).

CALL OFF SCHEDULE A4: EXIT MANAGEMENT

1. DEFINITIONS

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

"Exclusive Assets"	means those Supplier Assets used by the Supplier or a Key Sub-Contractor which are used exclusively in the provision of the Services;
"Exit Information"	has the meaning given to it in paragraph 4.1 of this Call Off Schedule;
"Exit Manager"	means the person appointed by each Party pursuant to paragraph 3.4 of this Call Off Schedule for managing the Parties' respective obligations under this Call Off Schedule;
"Net Book Value"	means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Customer of even date with this Call Off Contract;
"Non-Exclusive Assets"	means those Supplier Assets (if any) which are used by the Supplier or a Key Sub-Contractor in connection with the Services but which are also used by the Supplier or Key Sub-Contractor for other purposes;
"Registers"	means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Call Off Schedule;
"Termination Assistance"	means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Customer pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in paragraph 6.1 of this Call Off Schedule;

"Termination Assistance Period"	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of this Call Off Schedule;
"Transferable Assets"	means those of the Exclusive Assets which are capable of legal transfer to the Customer;
"Transferable Contracts"	means the Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Customer or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation;
"Transferring Assets"	has the meaning given to it in paragraph 9.2.1 of this Call Off Schedule;
"Transferring Contracts"	has the meaning given to it in paragraph 9.2.3 of this Call Off Schedule.

2. INTRODUCTION

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

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

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

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

3.1.1 create and maintain a Register of all:

- (a) Supplier Assets, detailing their:
 - (i) make, model and asset number;
 - (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (iii) Net Book Value;
 - (iv) condition and physical location; and
 - (v) use (including technical specifications); and
- (b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier

provides the Services, which shall contain sufficient detail to permit the Customer and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

- 3.1.3 agree the format of the Registers with the Customer as part of the process of agreeing the Exit Plan; and
- 3.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.

3.2 The Supplier shall:

- 3.2.1 procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Call Off Contract; and
 - 3.2.2 (unless otherwise agreed by the Customer in writing) procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Customer to the Customer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Customer.
- 3.3 Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2.2 of this Call Off Schedule which the Supplier proposes to enter into after the Call Off Commencement Date is assignable and/or capable of novation to the Customer (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Customer of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Customer so directs, may include the Supplier seeking an alternative Sub-Contractor or provider of Services to which the relevant agreement relates.
- 3.4 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Call Off Schedule and provide written notification of such appointment to the other Party within three (3) months of the Call Off Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Call Off Schedule. The Supplier shall ensure that its Exit Manager has the requisite Authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Call Off Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Call Off Contract and all matters connected with this Call Off Schedule and each Party's compliance with it.

4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 4.1 On reasonable notice at any point during the Call Off Contract Period, the Supplier shall provide to the Customer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

- 4.1.1 details of the Service(s);

- 4.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
- 4.1.3 an inventory of Customer Data in the Supplier's possession or control;
- 4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- 4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
- 4.1.6 all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Call Off Contract; and
- 4.1.7 such other material and information as the Customer shall reasonably require,

(together, the "Exit Information").

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

4.3 The Supplier shall:

- 4.3.1 notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Customer regarding such proposed material changes; and
- 4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.

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

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

- 4.5.1 prepare an informed offer for those Services; and
- 4.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

5. EXIT PLAN

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

- 5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Customer and/or its Replacement Supplier on the expiry or termination of this Call Off Contract;
- 5.1.2 complies with the requirements set out in paragraph 5.3 of this Call Off Schedule;
- 5.1.3 is otherwise reasonably satisfactory to the Customer.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

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

- 5.3.1 how the Exit Information is obtained;
- 5.3.2 the management structure to be employed during both transfer and cessation of the Services;
- 5.3.3 the management structure to be employed during the Termination Assistance Period;
- 5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
- 5.3.5 how the Services will transfer to the Replacement Supplier and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Customer's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
- 5.3.6 details of contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon the Call Off Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
- 5.3.7 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Services following the Call Off Expiry Date charged at rates agreed between the Parties at that time;
- 5.3.8 proposals for providing the Customer or a Replacement Supplier copies of all documentation:
 - (a) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Services;
- 5.3.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
- 5.3.10 proposals for the identification and return of all Customer Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
- 5.3.11 proposals for the disposal of any redundant Services and materials;
- 5.3.12 procedures to deal with requests made by the Customer and/or a Replacement Supplier for Staffing Information pursuant to Call Off Schedule A3 (Staff Transfer);
- 5.3.13 how each of the issues set out in this Call Off Schedule will be addressed to facilitate the transition of the Services from the Supplier to

the Replacement Supplier and/or the Customer with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and

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

6. TERMINATION ASSISTANCE

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

- 6.1.1 the date from which Termination Assistance is required;
- 6.1.2 the nature of the Termination Assistance required; and
- 6.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Services.

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

7. TERMINATION ASSISTANCE PERIOD

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

- 7.1.1 continue to provide the Services (as applicable) and, if required by the Customer pursuant to paragraph 6.1 of this Call Off Schedule, provide the Termination Assistance;
- 7.1.2 in addition to providing the Services and the Termination Assistance, provide to the Customer any reasonable assistance requested by the Customer to allow the Services to continue without interruption following the termination or expiry of this Call Off Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Customer and/or its Replacement Supplier;
- 7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Call Off Schedule without additional costs to the Customer;
- 7.1.4 provide the Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and

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

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

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

8. TERMINATION OBLIGATIONS

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

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

8.2.1 cease to use the Customer Data;

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

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

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

- (a) all copies of the Customer Software and any other software licensed by the Customer to the Supplier under this Call Off Contract;
- (b) all materials created by the Supplier under this Call Off Contract in which the IPRs are owned by the Customer;
- (c) any parts of the ICT Environment and any other equipment which belongs to the Customer;
- (d) any items that have been on-charged to the Customer, such as consumables; and
- (e) all Customer Property issued to the Supplier under Clause 21 of this Call Off Contract (Customer Property). Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);
- (f) any sums prepaid by the Customer in respect of Services not Delivered by the Call Off Expiry Date;

8.2.5 vacate any Customer Premises;

- 8.2.6 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;
- 8.2.7 provide access during normal working hours to the Customer and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:
- (a) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.
- 8.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 8.4 Except where this Call Off Contract provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

9. ASSETS, SUB-CONTRACTS AND SOFTWARE

- 9.1 Following notice of termination of this Call Off Contract and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:
- 9.1.1 terminate, enter into or vary any Sub-Contract;
 - 9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
 - 9.1.3 terminate, enter into or vary any licence for software in connection with the provision of Services.
- 9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5 of this Call Off Schedule, the Customer shall provide written notice to the Supplier setting out:
- 9.2.1 which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Supplier ("**Transferring Assets**");
 - 9.2.2 which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,

the Customer and/or the Replacement Supplier requires the continued use of; and

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

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

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

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

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

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

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

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

- 9.7 The Customer shall:

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

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

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

9.9 The Supplier shall indemnify the Customer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Customer (and/or Replacement Supplier) pursuant to paragraph 9.6 of this Call Off Schedule in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

10. SUPPLIER PERSONNEL

- 10.1 The Customer and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Call Off Schedule A3 (Staff Transfer) shall apply.
- 10.2 The Supplier shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Customer and/or the Replacement Supplier.
- 10.3 During the Termination Assistance Period, the Supplier shall give the Customer and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Customer and/or the Replacement Supplier.
- 10.4 The Supplier shall immediately notify the Customer or, at the direction of the Customer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 10.5 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Customer and/or the Replacement Supplier, unless approval has been obtained from the Customer which shall not be unreasonably withheld.

11. CHARGES

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

12. APPORTIONMENTS

- 12.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- 12.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
- 12.1.2 the Customer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the

case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

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

12.2 Each Party shall pay (and/or the Customer shall procure that the Replacement Supplier shall pay) any monies due under paragraph 12.1 of this Call Off Schedule as soon as reasonably practicable.

B1. BUSINESS CONTINUITY AND DISASTER RECOVERY

B1.1 Where specified in section C of the Order Form the Parties shall comply with the provisions of Call Off Schedule B1 (Business Continuity and Disaster Recovery).

CALL OFF SCHEDULE B1: BUSINESS CONTINUITY AND DISASTER RECOVERY]

[Guidance Note: This option is used only where the Customer:

- is following a Further Competition Procedure and has specified its BCDR requirements from the outset of the Further Competition Procedure; and**
- has asked Suppliers to submit a BCDR Plan as part of the Further Competition Procedure.]**

1. CUSTOMER BCDR REQUIREMENTS

The Customer's requirements in respect of BCDR are as specified during the Further Competition Procedure.

2. SUPPLIER BCDR PLAN

[Incorporated at section C of the Order Form]

[Guidance Note: the Customer to insert the Supplier's BCDR Plan as submitted during the Further Competition Procedure.]

OR

[Guidance Note: This option is to be used by Customers using the Further Competition Procedure under which the Customer is happy for the Supplier to provide the BCDR Plan after the Call Off Contract has been signed rather than during the Further Competition Procedure.]

1. DEFINITIONS

1.1 In this Call Off Schedule B1, the following definitions shall apply:

"Business Continuity Plan"	has the meaning given to it in paragraph 2.2.1(b) of this Call Off Schedule;
"Disaster Recovery Plan"	has the meaning given to it in 2.2.1(c) of this Call Off Schedule;
"Disaster Recovery System"	means the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a disaster;
"Review Report"	has the meaning given to it in paragraph 6.2 of this Call Off Schedule;
"Supplier's Proposals"	has the meaning given to it in paragraph 6.2.3 of this Call Off Schedule;

2. BCDR PLAN

2.1 Within the period specified in section C of the Order Form the Supplier shall prepare and deliver to the Customer for the Customer's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and
- 2.1.2 the recovery of the Services in the event of a Disaster.

2.2 The BCDR Plan shall:

2.2.1 be divided into three parts:

- (a) Part A which shall set out general principles applicable to the BCDR Plan;
- (b) Part B which shall relate to business continuity (the "**Business Continuity Plan**"); and
- (c) Part C which shall relate to disaster recovery (the "**Disaster Recovery Plan**"); and

2.2.2 unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.

2.3 Following receipt of the draft BCDR Plan from the Supplier, the Customer shall:

- 2.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and
- 2.3.2 notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Customer.

2.4 If the Customer rejects the draft BCDR Plan:

- 2.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and
- 2.4.2 the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Customer's comments) and shall re-submit a revised draft BCDR Plan to the Customer for the Customer's Approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraphs 2.3 and 2.4 of this Call Off Schedule shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the BCDR Plan shall:

- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Services and any services provided to the Customer by a Related Supplier;
- 3.1.3 contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;

- 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Customer and any of its other Related Supplier in each case as notified to the Supplier by the Customer from time to time;
 - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Customer;
 - 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (b) identification of any single points of failure within the provision of Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the provision of Services and with the services provided by a Related Supplier; and
 - (d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - 3.1.7 provide for documentation of processes, including business processes, and procedures;
 - 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Customer;
 - 3.1.9 identify the procedures for reverting to "normal service";
 - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
 - 3.1.11 identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
 - 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Services are provided in accordance with this Call Off Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
 - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the provision of Services.

- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Call Off Contract.

4. BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Customer expressly states otherwise in writing:

- 4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Services; and
- 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

- 4.2 The Business Continuity Plan shall:

- 4.2.1 address the various possible levels of failures of or disruptions to the provision of Services;
- 4.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such goods, services and steps, the “**Business Continuity Services**”);
- 4.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and
- 4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Customer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

- 5.3 The Disaster Recovery Plan shall include the following:

- 5.3.1 the technical design and build specification of the Disaster Recovery System;
- 5.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (a) data centre and disaster recovery site audits;
 - (b) backup methodology and details of the Supplier's approach to data back-up and data verification;

- (c) identification of all potential disaster scenarios;
 - (d) risk analysis;
 - (e) documentation of processes and procedures;
 - (f) hardware configuration details;
 - (g) network planning including details of all relevant data networks and communication links;
 - (h) invocation rules;
 - (i) Service recovery procedures; and
 - (j) steps to be taken upon resumption of the provision of Services to address any prevailing effect of the failure or disruption of the provision of Services;
- 5.3.3 any applicable Service Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;
 - 5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - 5.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
 - 5.3.6 testing and management arrangements.

6. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
- 6.1.1 on a regular basis and as a minimum once every six (6) months;
 - 6.1.2 within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
 - 6.1.3 where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Call Off Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Customer for the Customer's approval. The costs of both Parties of any such additional reviews shall be met by the Customer except that the Supplier shall not be entitled to charge the Customer for any costs that it may incur above any estimate without the Customer's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 of this Call off Schedule shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Customer shall reasonably

require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report (a “**Review Report**”) setting out:

- 6.2.1 the findings of the review;
- 6.2.2 any changes in the risk profile associated with the provision of Services; and
- 6.2.3 the Supplier's proposals (the “**Supplier's Proposals**”) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any goods, services or systems provided by a third party.

6.3 Following receipt of the Review Report and the Supplier's Proposals, the Customer shall:

- 6.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
- 6.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Customer.

6.4 If the Customer rejects the Review Report and/or the Supplier's Proposals:

- 6.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and
- 6.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Customer's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Customer for the Customer's approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraphs 6.3 and 6.4 of this Call Off Schedule shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

6.5 The Supplier shall as soon as is reasonably practicable after receiving the Customer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7. TESTING OF THE BCDR PLAN

7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 7.2 of this Call Off Schedule, the Customer may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.

- 7.2 If the Customer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.
- 7.4 The Supplier shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
- 7.5.1 the outcome of the test;
 - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Customer, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.
- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Call Off Contract.
- 7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Customer.

8. INVOCATION OF THE BCDR PLAN

- 8.1 In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Customer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Customer.

B2. CONTINUOUS IMPROVEMENT AND BENCHMARKING

- B2.1 This Clause B2 shall apply if so specified in section C of the Order Form.
- B2.2 Notwithstanding the Supplier's obligations under Clause B2.8 (Continuous Improvement), the Customer shall be entitled to regularly benchmark the Call Off Contract Charges and level of performance by the Supplier of the supply of the Services, against other suppliers providing services substantially the same as the Services during the Call Off Contract Period.
- B2.3 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 B2.1 above.
- B2.4 The Customer shall be entitled to disclose the results of any benchmarking of the Call Off Contract Charges and provision of the Services to the Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).
- B2.5 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.
- B2.6 Where, as a consequence of any benchmarking carried out by the Customer, the Customer decides improvements to the Services should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Customer.
- B2.7 The benefit of any work carried out by the Supplier at any time during the Call Off Contract Period to update, improve or provide the Services, facilitate their delivery to any other Contracting Body and/or any alterations or variations to the Charges or the provision of the Services, which are identified in the Continuous Improvement Plan produced by the Supplier and/or as a consequence of any benchmarking carried out by the Authority pursuant to Framework Schedule B2 (Continuous Improvement and Benchmarking), shall be implemented by the Supplier in accordance with the Variation Procedure and at no additional cost to the Customer.
- B2.8 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Services in accordance with this Clause B2.8 with a view to reducing the Customer's costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Customer. As part of this obligation the Supplier shall identify and report to the Customer once every twelve (12) months:
- B2.8.1 the emergence of new and evolving relevant technologies which could improve the ICT Environment, Sites and/or the provision of the Services, and those technological advances potentially available to the Supplier and the Customer which the Parties may wish to adopt;
- B2.8.2 new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;

- B2.8.3 changes in business processes and ways of working that would enable the Services to be provided at lower costs and/or at greater benefits to the Customer; and/or
- B2.8.4 changes to the ICT Environment, Sites, business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Services.
- B2.9 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.
- B2.10 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.

B3. SUPPLIER EQUIPMENT

- B3.1 This Clause B3 shall apply if so specified in section C of the Order Form and the Supplier shall provide all the Supplier Equipment necessary for the provision of the Services.
- B3.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.
- B3.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Call Off Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.
- B3.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Supplier's property located on Customer Premises which is due to the negligent act or omission of the Customer.
- B3.5 Subject to any express provision of the BCDR Plan (where used) to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Call Off Contract, including the Service Level Performance Measures.
- B3.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.
- B3.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
 - B3.7.1 remove from the Customer Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Call Off Contract; and
 - B3.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.

- B3.8 For the purposes of this Clause B3.8, 'X' shall be the number of Service Failures, and 'Y' shall be the period in months, as respectively specified for 'X' and 'Y' in the Order Form. If this Clause is specified to apply, and there are no values specified for 'X' and/or 'Y', in default, 'X' shall be two (2) and 'Y' shall be twelve (12). Where a failure of Supplier Equipment or any component part of Supplier Equipment causes X or more Service Failures in any Y Month Period, the Supplier shall notify the Customer in writing and shall, at the Customer's request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced).

B4. MAINTENANCE OF THE ICT ENVIRONMENT

- B4.1 This Clause B4 shall apply if so specified in section C of the Order Form and the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("Maintenance Schedule").
- B4.2 The Supplier shall provide to the Customer a draft Maintenance Schedule for Approval within such period of time and in accordance with any other instructions of the Customer as specified in the Order Form (or elsewhere in this Call Off Contract).
- B4.3 Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "Permitted Maintenance") in accordance with the Maintenance Schedule.
- B4.4 The Supplier shall give as much notice as is reasonably practicable to the Customer prior to carrying out any Emergency Maintenance.
- B4.5 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Services.

B5. SUPPLIER REQUEST FOR INCREASE OF THE CALL OFF CONTRACT CHARGES

- B5.1 This Clause B5 shall apply if so specified in section C of the Order Form.
- B5.2 The Supplier may request an increase in all or part of the Call Off Contract Charges in accordance with the remaining provisions of this Clause B5.1 subject always to:
- B5.2.1 paragraph 3.2 of Call Off Schedule 2;
 - B5.2.2 the Supplier's request being submitted in writing at least three (3) Months before the effective date for the proposed increase in the relevant Call Off Contract Charges ("Review Adjustment Date") which shall be subject to Clause B5.3 of this Call Off Contract; and
 - B5.2.3 the Approval of the Customer which shall be granted in the Customer's sole discretion.
- B5.3 The earliest Review Adjustment Date will be the first (1st) Working Day following the third (3rd) anniversary of the Call Off Commencement Date. Thereafter any subsequent increase to any of the Call Off Contract Charges in

accordance with this Clause B5 of this Call Off Contract shall not occur before the anniversary of the previous Review Adjustment Date during the Call Off Contract Period.

B5.4 To make a request for an increase of some or all of the Call Off Contract Charges in accordance with this Clause B5, the Supplier shall provide the Customer with:

B5.4.1 a list of the Call Off Contract Charges it wishes to review;

B5.4.2 for each of the Call Off Contract Charges under review, written evidence of the justification for the requested increase including:

- (a) a breakdown of the profit and cost components that comprise the relevant Call Off Contract Charge;
- (b) details of the movement in the different identified cost components of the relevant Call Off Contract Charge;
- (c) reasons for the movement in the different identified cost components of the relevant Call Off Contract Charge;
- (d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and
- (e) evidence that the Supplier's profit component of the relevant Call Off Contract Charge is no greater than that applying to Call Off Contract Charges using the same pricing mechanism as at the Call Off Commencement Date.

B6. INDEXATION

B6.1 This Clause B6 shall apply if so specified in section C of the Order Form.

B6.2 Where the Call Off Contract Charges or any component amounts or sums thereof are expressed in this Call Off Contract as "subject to increase by way of Indexation" the following provisions shall apply:

B6.2.1 the relevant adjustment shall:

- (a) be applied on the effective date of the increase in the relevant Call Off Contract Charges by way of Indexation ("Indexation Adjustment Date") which shall be subject to Clause B6.2.2 of this Call Off Contract;
- (b) be determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the twelve (12) Months ended on the 31st of January immediately preceding the relevant Indexation Adjustment Date;
- (c) where the published CPI figure at the relevant Indexation Adjustment Date is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the Customer and the Supplier shall agree otherwise;
- (d) if the CPI is no longer published, the Customer and the Supplier shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified in this Call Off Schedule.

B6.2.2 The earliest Indexation Adjustment Date will be the (1st) Working Day following the third (3rd) anniversary of the Call Off Commencement

Date. Thereafter any subsequent increase by way of Indexation shall not occur before the anniversary of the previous Indexation Adjustment Date during the Call Off Contract Period;

B6.2.3 Except as set out in this Clause B6 of this Call Off Contract, neither the Call Off Contract Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-Contractors of the performance of their obligations under this Call Off Contract

B7. ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS

This Call Off Schedule B7 shall apply if so specified in section C of the Order Form.

In this Call Off Schedule B7, the following definitions shall apply:

"Project Manager"	means the manager described in paragraph 1.1 of this Call Off Schedule B7;
"Technical Board"	means the board described in paragraph 1.1 of this Call Off Schedule B7;

1. MANAGEMENT OF THE SERVICES

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

2. TECHNICAL BOARD

- 2.1 The Technical Board shall be established by the Customer for the purposes of this Call Off Contract on which the Supplier and the Customer shall be represented.
- 2.2 The Technical Board members, frequency and location of board meetings and planned start date by which the board shall be established shall be set out in section C of the Order Form.
- 2.3 In the event that either Party wishes to replace any of its appointed board members, that party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Customer board member has at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 2.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Technical Board meeting in his/her place (wherever possible) is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.

- 2.5 The Technical Board shall be accountable to the Project Managers for oversight of the technology used by the Supplier and ensuring that technological choices are made to maximise the long term value of the Services.
- 2.6 The Technical Board shall:
- 2.6.1 assure compliance with the overall technical architecture of the Customer and with Government IT Strategy (as defined at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85968/uk-government-government-ict-strategy_0.pdf);
 - 2.6.2 grant dispensations for variations from such compliance where appropriate;
 - 2.6.3 assure the coherence and consistency of the systems architecture for the provision of the Services;
 - 2.6.4 monitor developments in new technology and reporting on their potential benefit to the provision of the Services;
 - 2.6.5 provide advice, guidance and information on technical issues; and
 - 2.6.6 assure that the technical architecture for the provision of the Services is aligned to the requirements specified in the Order Form and has sufficient flexibility to cope with future requirements of the Customer.]

C. CALL OFF GUARANTEE

- C.1. Where the Customer has stipulated during a Further Competition Procedure and/or in section C of the Order Form 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 or on any other date specified by the Customer, the Supplier shall deliver to the Customer:
- C.1.1. an executed Call Off Guarantee from a Call Off Guarantor; and
 - C.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.
- C.2. The Customer may in its sole discretion at any time agree to waive compliance with the requirement in Clause C.1 by giving the Supplier notice in writing.

D. RELEVANT CONVICTIONS

- D.1. This Clause D shall apply if so specified in section C of the Order Form.
- D.2. The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Services without the Approval.
- D.3. Notwithstanding Clause D.3.1, for each member of Supplier Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):

- D.3.1. carry out a check with the records held by the Department for Education (DfE);
 - D.3.2. conduct thorough questioning regarding any Relevant Convictions; and
 - D.3.3. ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),
- and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.

E. SECURITY REQUIREMENTS

- E.1. This Clause E shall apply if so specified in section C of the Order Form.
- E.2. The Supplier shall comply with the Security Policy and the requirements of Call Off Schedule E (Security) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- E.3. The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- E.4. If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may propose a Variation to the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call Off Contract Charges shall then be subject to the Variation Procedure.
- E.5. Until and/or unless a change to the Call Off Contract Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Services in accordance with its existing obligations.

CALL OFF SCHEDULE E: SECURITY

1. DEFINITIONS

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

"Baseline Security Requirements"	means those requirements outlined in Annex 1 of this Call Off Schedule E
"Breach of Security"	means the occurrence of: a) any unauthorised access to or use of the Services, the Sites, the ICT Environment and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Call Off Contract; and/or b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by

the Customer and/or the Supplier in connection
with this Call Off Contract,

in either case as more particularly set out in:

- (1) the Baseline Security Requirements in Annex 1 to this Call Off Schedule E; and
- (2) the Security Policy in Annex 2 to this Call Off Schedule E.

"ISMS"	the information security management system developed by the Supplier in accordance with paragraph 2 (ISMS) as updated from time to time in accordance with this Call Off Schedule E;
"Security Policy Framework"	the HMG Security Policy Framework https://www.gov.uk/government/publications/security-policy-framework ; and
"Security Tests"	has the meaning given in paragraph 6.1 of this Call Off Schedule E (Testing of the ISMS).

2. INTRODUCTION

- 2.1 The Parties acknowledge that the purpose of the ISMS and the Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Call Off Contract will be met.
- 2.2 The Customer shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.
- 2.3 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.
- 2.4 The Supplier shall use as a minimum, Good Industry Practice, in the day to day operation of any system holding, transferring or processing Customer Data and any system that could directly or indirectly have an impact on that information, and shall ensure that the Customer Data remains under the effective control of the Supplier at all times.
- 2.5 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and system and on request shall supply this document as soon as practicable to the Customer.
- 2.6 The Customer and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Customer's security provisions represents an unacceptable risk to the Customer requiring immediate communication and co-operation between the Parties.

3. ISMS

- 3.1 By the date specified in the Implementation Plan the Supplier shall develop and submit to the Customer for the Customer's Approval an information security management system for the purposes of this Call Off Contract, which:
 - 3.1.1 if required by the Implementation Plan, shall have been tested in accordance with Call Off Schedule A1 (Testing); and

3.1.2 shall comply with the requirements of paragraphs 3.3 to 3.5 of this Call Off Schedule E (Security).

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

3.3 The ISMS shall:

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

3.3.2 meet the relevant standards in ISO/IEC 27001 and ISO/IEC 27002 in accordance with Paragraph 7; and

3.3.3 at all times provide a level of security which:

- (a) is in accordance with Good Industry Practice, Law and this Call Off Contract;
- (b) complies with the Baseline Security Requirements;
- (c) complies with the Security Policy;
- (d) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4);
- (e) meets any specific security threats to the ISMS, the Services and/or Customer Data;
- (f) addresses issues of incompatibility with the Supplier's own organisational security policies;
- (g) complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 7; and
- (h) complies with the Customer's ICT policies.

3.3.4 document the security incident management processes and incident response plans;

3.3.5 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Customer approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and

3.3.6 be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the Chief Security Officer, Chief Information Officer, Chief Technical Officer or Chief Financial Officer (or equivalent as agreed in writing by the Customer in advance of issue of the relevant Security Management Plan).

3.4 Subject to Clause E.1 of this Call Off Contract (Security And Protection of Information) the references to standards, guidance and policies set out in paragraph 3.3 of this Call

Off Schedule E shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

- 3.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 3.3 of this Call Off Schedule E, the Supplier shall immediately notify the Customer Representative of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
- 3.6 If the ISMS submitted to the Customer pursuant to paragraph 3.1 of this Call Off Schedule E is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule E. If the ISMS is not Approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Customer. If the Customer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph 2 of this Call Off Schedule E may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 3.3 to 3.5 of this Call Off Schedule E shall be deemed to be reasonable.
- 3.7 Approval by the Customer of the ISMS pursuant to paragraph 3.6 of this Call Off Schedule E or of any change or amendment to the ISMS shall not relieve the Supplier of its obligations under this Call Off Schedule E.

4. SECURITY MANAGEMENT PLAN

- 4.1 Within twenty (20) Working Days after the Call Off Commencement Date, the Supplier shall prepare and submit to the Customer for Approval in accordance with paragraph 4 of this Call Off Schedule a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 4.2 of this Call Off Schedule E.
- 4.2 The Security Management Plan shall:
- 4.2.1 be based on the initial Security Management Plan set out in Annex 3 (Security Management Plan);
 - 4.2.2 comply with the Baseline Security Requirements and Security Policy;
 - 4.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Call Off Schedule E is complied with by the Supplier;
 - 4.2.4 detail the process for managing any security risks from Sub-contractors and third parties authorised by the Customer with access to the Services, processes associated with the delivery of the Services, the Customer Premises, the Sites, the Supplier System, the Customer System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Customer Confidential Information and Customer Data) and any system that could directly or indirectly have an impact on that information, data and/or Services;
 - 4.2.5 unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the

delivery of the Services, including the Customer Premises, the Sites, the Supplier System, the Customer System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract;

- 4.2.6 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Call Off Schedule E (including the requirements set out in paragraph 4.2 of this Call Off Schedule E);
- 4.2.7 demonstrate that the Supplier's approach to delivery of the Services has minimised the Customer and Supplier effort required to comply with this Call Off Schedule E through consideration of available, appropriate and practicable pan-government accredited services (for example, 'platform as a service' offering from the G-Cloud catalogue);
- 4.2.8 set out the plans for transitioning all security arrangements and responsibilities from those in place at the Call Off Commencement Date to those incorporated in the ISMS at the date set out in the Implementation Plan for the Supplier to meet the full obligations of the security requirements set out in Annex 1 (Security) to this Call Off Schedule E;
- 4.2.9 set out the scope of the Customer System that is under the control of the Supplier;
- 4.2.10 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
- 4.2.11 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall reference only documents which are in the possession of the Customer or whose location is otherwise specified in this Call Off Schedule E.

4.3 If the Security Management Plan submitted to the Customer pursuant to paragraph 4.1 of this Call Off Schedule E is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule. If the Security Management Plan is not approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the Customer of the Security Management Plan. If the Customer does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 of this Call Off Schedule E shall be deemed to be reasonable.

- 4.4 Approval by the Customer of the Security Management Plan pursuant to paragraph 4.3 of this Call Off Schedule E or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Call Off Schedule E.

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

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

- 5.1.1 emerging changes in Good Industry Practice;
- 5.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;
- 5.1.3 any new perceived or changed security threats; and
- 5.1.4 any reasonable request by the Customer.

- 5.2 The Supplier shall provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Customer. The results of the review shall include, without limitation:

- 5.2.1 suggested improvements to the effectiveness of the ISMS;
- 5.2.2 updates to the risk assessments;
- 5.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
- 5.2.4 suggested improvements in measuring the effectiveness of controls.

- 5.3 Subject to paragraph 5.4 of this Call Off Schedule, any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 5.1 of this Call Off Schedule, a Customer request, change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Customer.

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

6. TESTING OF THE ISMS

- 6.1 The Supplier shall conduct tests of the ISMS ("**Security Tests**") from time to time and at least annually and additionally after any change or amendment to the ISMS or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Service Level Performance Measures, the Supplier shall, subject to Clause 28, be granted relief against any resultant under-performance for the period of the Security Tests.

- 6.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such Security Tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 6.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Call Off Contract, the Customer and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Customer may notify the Supplier of the results of such tests after completion of each such test. If any such Customer test adversely affects the Supplier's ability to deliver the Services so as to meet the Service Level Performance Measures, the Supplier shall, subject to Clause 28, be granted relief against any resultant under-performance for the period of the Customer test.
- 6.4 Where any Security Test carried out pursuant to paragraphs 6.2 or 6.3 of this Call Off Schedule reveals any actual or potential Breach of Security, the Supplier shall promptly notify the Customer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Customer's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Security) to this Call Off Schedule) or the requirements of this Call Off Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Customer.
- 6.5 If any repeat Security Test carried out pursuant to paragraph 6.4 of this Call Off Schedule reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Call Off Contract.

7. COMPLIANCE OF THE ISMS WITH ISO/IEC 27001 AND ISO/IEC 27002

- 7.1 The Customer shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and ISO/IEC 27002.
- 7.2 If, on the basis of evidence provided by such security audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 or ISO/IEC 27002 is not being achieved by the Supplier, then the Customer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001 and ISO/IEC 27002. If the Supplier does not become compliant within the required time then the Customer shall have the right to obtain an independent audit against these standards in whole or in part.
- 7.3 If, as a result of any such independent audit as described in paragraph 7.2 of this Call Off Schedule the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 or ISO/IEC 27002 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

8. BREACH OF SECURITY

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

8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 8.1 of this Call Off Schedule, the Supplier shall:

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

- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
- (b) remedy such Breach of Security or any potential or attempted Breach of Security or protect the integrity of the ISMS against any such Breach of Security or any potential or attempted Breach of Security;
- (c) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the Services so as to meet the Service Level Performance Measures, the Supplier shall be granted relief against any resultant under-performance for such period as the Customer, acting reasonably, may specify by written notice to the Supplier;
- (d) prevent a further Breach of Security or any potential or attempted Breach of Security in the future exploiting the same root cause failure;
- (e) supply any requested data to the Customer or the Computer Emergency Response Team for UK Government ("GovCertUK") on the Customer's request within two (2) working days and without charge (where such requests are reasonably related to a possible incident or compromise); and

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

8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy or Baseline Security Requirements or the requirements of this Call Off Schedule, then any required change to the ISMS shall be at no cost to the Customer.

9. VULNERABILITIES AND CORRECTIVE ACTION

9.1 The Customer and the Supplier acknowledge that from time to time vulnerabilities in the ICT Environment will be discovered which unless mitigated will present an unacceptable risk to the Customer's information.

9.2 The severity of threat vulnerabilities for Supplier COTS Software and Third Party COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the ISMS and using the appropriate vulnerability scoring systems including:

9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and

- 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.

9.3 The Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within 14 days of release, 'Important' within 30 days of release and all 'Other' within 60 Working Days of release, except where:

- 9.3.1 the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;
- 9.3.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Customer; or
- 9.3.3 the Customer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.

9.4 The Supplier Solution and Implementation Plan shall include provisions for major version upgrades of all Supplier COTS Software and Third Party COTS Software to be upgraded within 6 months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term unless:

- 9.4.1 where upgrading such Supplier COTS Software and Third Party COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 months of release of the latest version ; or
- 9.4.2 is agreed with the Customer in writing.

9.5 The Supplier shall:

- 9.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;
- 9.5.2 ensure that the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
- 9.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the ICT Environment by actively monitoring the threat landscape during the Call Off Contract Period;
- 9.5.4 pro-actively scan the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 3.3.5;
- 9.5.5 from the date specified in the Security Management Plan provide a report to the Customer within five (5) Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the ICT

Environment (to the extent that the ICT Environment is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;

- 9.5.6 propose interim mitigation measures to vulnerabilities in the ICT Environment known to be exploitable where a security patch is not immediately available;
- 9.5.7 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the ICT Environment); and
- 9.5.8 inform the Customer when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the ICT Environment and provide initial indications of possible mitigations.

9.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under this Paragraph 9, the Supplier shall immediately notify the Customer.

9.7 A failure to comply with Paragraph 9.3 shall constitute a Notifiable Default, and the Supplier shall comply with the Rectification Plan Process.

ANNEX 1: BASELINE SECURITY REQUIREMENTS

1. HIGHER CLASSIFICATIONS

- 1.1 The Supplier shall not handle Customer information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Customer.

2. END USER DEVICES

- 1.2 When Customer Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the UK Government Communications Electronics Security Group ("CESG") to at least Foundation Grade, for example, under the CESG Commercial Product Assurance scheme ("CPA").
- 2.1 Devices used to access or manage Customer Data and services must be under the management authority of Customer or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Customer. Unless otherwise agreed with the Customer in writing, all Supplier devices are expected to meet the set of security requirements set out in the CESG End User Devices Platform Security Guidance (<https://www.gov.uk/government/collections/end-user-devices-security-guidance--2>). Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Customer and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Customer.

3. DATA PROCESSING, STORAGE, MANAGEMENT AND DESTRUCTION

- 3.1 The Supplier and Customer recognise the need for the Customer's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Customer the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Customer Data will be subject to at all times.
- 3.2 The Supplier shall agree any change in location of data storage, processing and administration with the Customer in advance where the proposed location is outside the UK. Such approval shall not be unreasonably withheld or delayed unless specified otherwise in this Agreement and provided that storage, processing and management of any Customer Data is only carried out offshore within:
- 3.2.1 the European Economic Area (EEA);
 - 3.2.2 in the US if the Supplier and or any relevant Sub-contractor have signed up to the EU-US Privacy Shield framework; or
 - 3.2.3 in another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of the international commitments it has entered into which have been defined as adequate by the EU Commission.
- 3.3 The Supplier shall:
- 3.3.1 provide the Customer with all Customer Data on demand in an agreed open format;

- 3.3.2 have documented processes to guarantee availability of Customer Data in the event of the Supplier ceasing to trade;
- 3.3.3 securely destroy all media that has held Customer Data at the end of life of that media in line with Good Industry Practice; and
- 3.3.4 securely erase any or all Customer Data held by the Supplier when requested to do so by the Customer.

4. NETWORKING

- 4.1 The Customer requires that any Customer Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA or through the use of pan-government accredited encrypted networking services via the Public Sector Network ("PSN") framework (which makes use of Foundation Grade certified products).
- 4.2 The Customer requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

5. SECURITY ARCHITECTURES

- 5.1 The Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Customer Data.
- 5.2 When designing and configuring the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (<http://www.cesg.gov.uk/awarenesstraining/IA-certification/Pages/index.aspx>) for all bespoke or complex components of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier).

6. PERSONNEL SECURITY

- 6.1 Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
- 6.2 The Supplier shall agree on a case by case basis Supplier Personnel roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Customer Data.
- 6.3 The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Customer Data except where agreed with the Customer in writing.
- 6.4 All Supplier Personnel that have the ability to access Customer Data or systems holding Customer Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Customer in writing, this training must be undertaken annually.
- 6.5 Where the Supplier or Sub-Contractors grants increased ICT privileges or access rights to Supplier Personnel, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need

elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.

7. IDENTITY, AUTHENTICATION AND ACCESS CONTROL

7.1 The Supplier shall operate an access control regime to ensure all users and administrators of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the ICT Environment that they require. The Supplier shall retain an audit record of accesses.

8. AUDIT AND MONITORING

8.1 The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:

8.1.1 Logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier). To the extent the design of the Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.

8.1.2 Security events generated in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.

8.2 The Supplier and the Customer shall work together to establish any additional audit and monitoring requirements for the ICT Environment.

8.3 The Supplier shall retain audit records collected in compliance with this Paragraph 8 for a period of at least 6 months.

ANNEX 2: SECURITY POLICY

[incorporated at section B of the Order Form]

ANNEX 3: SECURITY MANAGEMENT PLAN

[incorporated at section B of the Order Form]

F. COLLABORATION AGREEMENT

- F.1. Where the Customer has specified in section C of the Order Form that the Customer requires the Supplier to enter into a Collaboration Agreement, either:
- F.1.1. the Supplier shall deliver to the Customer an executed Collaboration Agreement within the time period specified in section C of the Order Form; or
 - F.1.2. a Collaboration Agreement should be executed between the Parties and such contractors as are named by the Customer in section C of the Order Form, on or prior to the Call Off Commencement Date as a condition precedent for entry into the Call Off Contract,
as specified by the Customer in section C of the Order Form.
- F.2. In addition to its obligations under any Collaboration Agreement, the Supplier shall:
- F.2.1. work pro-actively with each of the Customer's contractors in a spirit of trust and mutual confidence;
 - F.2.2. in addition to its obligations under the Collaboration Agreement the Supplier shall cooperate with the Customer's contractors of other services to enable the efficient operation of the ICT services; and
 - F.2.3. assist in sharing information with the Customer's contractors for the purposes of facilitating adequate provision of the Services.]

CALL OFF SCHEDULE F: Template Collaboration Agreement

Attached separately

G. SECURITY MEASURES

- G.1. This Clause G shall apply if so specified in section C of the Order Form.
- G.2. The following definitions to be added to Call Off Schedule 1 (Definitions) to the Call Off Form and the Call Off Terms:
- "**Document**" includes specifications, plans, drawings, photographs and books;
 - "**Secret Matter**" means any matter connected with or arising out of the performance of this Call Off Contract which has been, or may hereafter be, by a notice in writing given by the Customer to the Supplier be designated 'top secret' or 'secret';
 - "**Servant**" where the Supplier is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.

- G.3. The Supplier shall not, either before or after the completion or termination of this Call Off Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a Secret Matter being:
- G.3.1. without the prior consent in writing of the Customer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;
 - G.3.2. disclosed to or acquired by a person as respects whom the Customer has given to the Supplier a notice in writing which has not been cancelled stating that the Customer requires that Secret Matters shall not be disclosed to that person;
 - G.3.3. without the prior consent in writing of the Customer, disclosed to or acquired by any person who is not a servant of the Supplier; or
 - G.3.4. disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Call Off Contract that such person shall have the information.
- G.4. Without prejudice to the provisions of Clause G.3, the Supplier shall, both before and after the completion or termination of this Call Off Contract, take all reasonable steps to ensure:
- G.4.1. no such person as is mentioned in Clauses G.3, G.3.1 or G.3.2 hereof shall have access to any item or document under the control of the Supplier containing information about a Secret Matter except with the prior consent in writing of the Customer;
 - G.4.2. that no visitor to any premises in which there is any item to be supplied under this Call Off Contract or where Services are being supplied shall see or discuss with the Supplier or any person employed by him any Secret Matter unless the visitor is authorised in writing by the Customer so to do;
 - G.4.3. that no photograph of any item to be supplied under this Call Off Contract or any portions of the Services shall be taken except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;
 - G.4.4. that all information about any Secret Matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and
 - G.4.5. that if the Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such document, model or item as is mentioned in Clause G.4.3, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.

- G.5. The decision of the Customer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause G.3 shall be final and conclusive.
- G.6. If and when directed by the Customer, the Supplier shall furnish full particulars of all people who are at any time concerned with any Secret Matter.
- G.7. If and when directed by the Customer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Call Off Contract.
- G.8. If, at any time either before or after the expiry or termination of this Call Off Contract, it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Call Off Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Customer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.
- G.9. The Supplier shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any Secret Matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by Clauses G.3 and G.4 and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any Secret Matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause G observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.
- G.10. The Supplier shall, if directed by the Customer, include in the Sub-Contract provisions in such terms as the Customer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Clause G, but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:
- G.10.1. give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this Clause G into operation in such cases and to such extent as the Customer may direct;
- G.10.2. if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Clause G, notify such breach forthwith to the Customer; and

G.10.3. if and when so required by the Customer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause G.13.

G.11. The Supplier shall give the Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer that the obligations imposed by or under the foregoing provisions of this Clause G have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Customer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Call Off Contract or in which there is or will be any item to be supplied under this Call Off Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Call Off Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

G.12. Nothing in this Clause G shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

G.13. If the Customer shall consider that any of the following events has occurred:

G.13.1. that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause G; or

G.13.2. that the Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Customer, or with any department or person acting on behalf of the Crown; or

G.13.3. that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in G.13.2, information about a Secret Matter has been or is likely to be acquired by a person who, in the opinion of the Customer, ought not to have such information;

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

G.14. A decision of the Customer to terminate this Call Off Contract in accordance with the provisions of Clause G.13 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Customer's decision is based.

G.15. Supplier's notice

G.15.1. The Supplier may within five (5) Working Days of the termination of this Call Off Contract in accordance with the provisions of Clause G.13, give the Customer notice in writing requesting the Customer to state whether the event upon which the Customer's decision to terminate was based is an event mentioned in Clauses G.13, G.13.1 or G.13.2 and to give particulars of that event; and

- G.15.2. the Customer shall within ten (10) Working Days of the receipt of such a request give notice in writing to the Supplier containing such a statement and particulars as are required by the request.
- G.16. Matters pursuant to termination
 - G.16.1. The termination of this Call Off Contract pursuant to Clause G.13 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;
 - G.16.2. The Supplier shall be entitled to be paid for any work or thing done under this Call Off Contract and accepted but not paid for by the Customer at the date of such termination either at the price which would have been payable under this Call Off Contract if this Call Off Contract had not been terminated, or at a reasonable price;
 - G.16.3. The Customer may take over any work or thing done or made under this Call Off Contract (whether completed or not) and not accepted at the date of such termination which the Customer may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of this Clause G shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Customer, deliver any work or thing taken over under this Clause, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this Clause; and
 - G.16.4. Save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination of this Call Off Contract
 - G.16.5. If, after notice of termination of this Call Off Contract pursuant to the provisions of G.13:
 - G.16.6. the Customer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in Clause G.14.1; or
 - G.16.7. the Customer shall state in the statement and particulars detailed in Clause G.14.2. that the event upon which the Customer's decision to terminate this Call Off Contract was based is an event mentioned in Clause G.12.3,

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

- G.16.8. the Customer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Supplier upon the termination of this Call Off Contract under the provisions of Clause G.12 and properly provided by or supplied to the Supplier for the performance of this Call Off Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Customer, elect to retain;
- G.16.9. the Supplier shall prepare and deliver to the Customer within an agreed period or in default of agreement within such period as the Customer

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

- G.16.10. the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Call Off Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract;
- G.16.11. if hardship to the Supplier should arise from the operation of this Clause G.16 it shall be open to the Supplier to refer the circumstances to the Customer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this Clause shall be final and conclusive; and
- G.16.12. subject to the operation of Clauses G.16.3, G.16.4, G.16.5 and G.16.6 termination of this Call Off Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

H. MOD ADDITIONAL CLAUSES

- H.1. This Clause H shall apply if so specified in section C of the Order Form.
- H.2. The definition of Call Off Contract in Call Off Schedule 1 (Definitions) to the Call Off Terms shall be replaced with the following:

"Call Off Contract" means this written agreement between the Customer and the Supplier consisting of the Order Form and the Call Off Terms and the MoD Terms and Conditions.
- H.3. The following definitions shall be inserted into in Call Off Schedule 1 (Definitions) to the Call Off Terms:

"MoD Terms and Conditions" means the contractual terms and conditions listed in Schedule H which form part of the Call Off Terms

"Site" shall include any of Her Majesty's Ships or Vessels and Service Stations.

"Officer in charge" shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.
- H.4. The following clauses shall be inserted into Clause 2 of this Call Off Contract (Due Diligence):
 - H.4.1. The Supplier confirms that it has had the opportunity to review the MoD Terms and Conditions and has raised all due diligence questions in relation to those documents with the Customer prior to the Commencement Date.
 - H.4.2. Where required by the Customer, the Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions

constitute legal, valid, binding and enforceable obligations on the Supplier.

H.5. ACCESS TO MOD SITES

H.5.1. In this Clause H.5:

H.5.1.1. The Customer shall issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Customer and shall be surrendered on demand or on completion of the supply of the Services.

H.5.1.2. The Supplier's representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.

H.5.1.3. The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Customer wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Call Off Contract where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Customer and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Customer with other evidence relating to the costs of this Call Off Contract.

H.5.1.4. Where the Supplier's representatives are required by this Call Off Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Supplier shall make such arrangements through the Technical Branch named for this purpose in this Call Off Contract. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Customer shall reimburse the Supplier's reasonable costs for such transport of its representatives on presentation of evidence supporting the use

of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Call Off Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.

H.5.1.5. Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.

H.5.1.6. Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.

H.5.1.7. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.

H.5.1.8. The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Customer shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Customer shall be recovered from the Supplier.

H.5.2. The following new Call Off Schedule H shall apply:

CALL OFF SCHEDULE H: MOD DEFCONS AND DEFFORMS

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

DEFCON Number	Description
DEFCON 5J	Unique Identifiers
DEFCON 76	Contractor's Personnel at Government Establishments

DEFCON 129J	The Use of The Electronic Business Delivery Form
DEFCON 513	Value Added Tax
DEFCON 514	Material Breach
DEFCON 515	Bankruptcy and Insolvency
DEFCON 516	Equality
DEFCON 518	Transfer
DEFCON 520	Corrupt Gifts and Payments of Commission
DEFCON 522	Payment and Recovery of Sums Due
DEFCON 526	Notices
DEFCON 527	Waiver
DEFCON 529	Law (English)
DEFCON 531	Disclosure of Information
DEFCON 532A	Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)
DEFCON 534	Subcontracting and Prompt Payment
DEFCON 537	Rights of Third Parties
DEFCON 539	Transparency
DEFCON 550	Child Labour and Employment Law
DEFCON 566	Change of Control of Contractor
DEFCON 602B	Quality Assurance (without Quality Plan)
DEFCON 604	Progress Reports
DEFCON 611	Issued Property
DEFCON 625	Co-operation on Expiry of Contract
DEFCON 632	Third Party Intellectual Property – Rights and Restrictions
DEFCON 642	Progress Meetings
DEFCON 658	Cyber
DEFCON 659A	Security Measures
DEFCON 660	Official-Sensitive Security Requirements
DEFCON 694	Accounting for Property of the Authority
The latest version of the above documents can be accessed at – https://www.gov.uk/acquisition-operating-framework	

**AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL
PROPERTY RIGHTS**

- 1.1 Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.