



**Technology Services 2 Agreement RM3804
Framework Schedule 4 - Annex 1**

Order Form

In this Order Form, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions), Framework Schedule 1 or the relevant Call Off Schedule in which that capitalised expression appears.

The Supplier shall provide the Services specified in this Order Form to the Customer on and subject to the terms of the Call Off Contract for the duration of the Call Off Period.

This Order Form should be used by Customers ordering Services under the Technology Services 2 Framework Agreement ref. RM3804 in accordance with the provisions of Framework Schedule 5.

The Call Off Terms, referred to throughout this document, are available from the Crown Commercial Service website <http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm3804>

Section A General information

This Order Form is issued in accordance with the provisions of the Technology Services 2 Framework Agreement RM3804.

Customer details

Customer organisation name

The Secretary of State for Justice

Billing address

SSCL – HMCTS, PO BOX 745, Newport, Gwent, NP10 8FZ (APinvoices-CTS-U@gov.SSCL.com)

Customer representative name

Malcolm Macconnell

Customer representative contact details

Malcolm.Macconnell@justice.gov.uk

Supplier details

Supplier name

Version 1 Solutions Limited

Supplier address

4-5 Lochside View, South Gyle, Edinburgh, EH12 9DH



Supplier's registered address
4-5 Lochside View, South Gyle, Edinburgh, EH12 9DH

Supplier representative name
Julian Prout

Supplier representative contact details
Telephone contact details of the supplier's representative
Julian.Prout@version1.com

Order reference number or the Supplier's Catalogue Service Offer Reference Number

A unique number provided by the supplier at the time of the Further Competition Procedure
Please provide the order reference number, this will be used in management information provided by suppliers to assist CCS with framework management. If a Direct Award, please refer to the Supplier's Catalogue Service Offer Reference Number

[Click here to enter text.](#)

Section B

Overview of the requirement

Framework Lot under which this Order is being placed

Tick one box below as applicable (unless a cross-Lot Further Competition)

1. TECHNOLOGY STRATEGY & SERVICES DESIGN ☐
2. TRANSITION & TRANSFORMATION ☒
3. OPERATIONAL SERVICES
- a: End User Services ☐
- b: Operational Management ☐
- c: Technical Management ☐
- d: Application and Data Management ☐
4. PROGRAMMES & LARGE PROJECTS
- a. OFFICIAL ☐
- a. SECRET (& above) ☐

Customer project reference

Please provide the customer project reference number.

Con_18265 / PRJ_5489

Call Off Commencement Date

The date on which the Call Off Contract is formed – this should be the date of the last signature on Section E of this Order Form

8th February 2021

Call Off Contract Period (Term)

Lot	Maximum Initial Term – Months (Years)	Extension Options – Months (Years)	Maximum permissible overall duration – Years (composition)
-----	---------------------------------------	------------------------------------	------------------------------------------------------------



1	24 (2)	-	
2	36 (3)	24+12 = 36 (2 +1)	3
3	60 (5)	-	
4	60 (5)		

* There is a minimum 2 year term for this Lot

Call Off Initial Period

24 months

Call Off Extension Period (Optional)

12 months

Minimum Notice Period for exercise of Termination Without Cause 30

Calendar days (See call off clause 30.7)

Additional specific standards or compliance requirements

Include any conformance or compliance requirements over and above the Standards (including those listed at paragraph 2.3 of Framework Schedule 2) which the Services must meet.

List below if applicable

- i) HMCTS Reform and MoJ require all potential providers to meet the expectations of the Health and Safety at Work Act 1974 and to be able to report on their current and ongoing adherence to the act.
- ii) All supplier resources must have a Baseline Personnel Security Check (BPSS) which must be dated within three months of the start date. For further guidance see: <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>

Customer's ICT and Security Policy

Please see below document "Security Guidelines".

Security Management Plan

Where the Supplier is required to provide the Customer with the Security Management Plan then append to this Order Form as a clearly marked document



Security
Guidelines.pdf

The Supplier warrants and undertakes to the Customer that the Supplier and Supplier staff have read and understood the above referenced documents and are able to deliver the Services in accordance with the instructions, practices and standards detailed in the above referenced documents.

Section C

Customer Core Services Requirements

Please provide details of all Services required including the locations where the Supplier is required to provide the Services Ordered.

Services

1. Context to the procurement

- i) This procurement is to provide Technical Capabilities services (the Services) to Her Majesty's Courts and Tribunals Service Reform (HMCTS Reform).
- ii) Background regarding HMCTS Reform can be found here: <https://www.gov.uk/guidance/the-hmcts-reform-programme>

2. Scope of procurement

- i) The following is in-scope for this procurement:
 - a) The sourcing and contracting of a supplier for the provision of technical capabilities to the Future Hearings (FH) programme.
 - b) Supplier capabilities should include all capabilities, including but not limited to those within the Future Hearings Strategic Technology Programme Outline (see below).

3.1 FH Strategic Technology Programme Outline

- i) The FH programme is responsible for delivering services which transform court hearings for the Reform programme. The FH programme currently consists of 5 projects:
 - a) Scheduling and listing
 - b) Resource management
 - c) Hearings management interface
 - d) Fully Video Hearings; and
 - e) Publishing and information
- ii) HMCTS Reform, Future Hearings Programme is designed to transform court and tribunal hearings, with view to providing hearings that are:
 - a) timely and effective – listed by judges in the interests of justice;
 - b) certain – take place when expected;
 - c) proportionate – the mode of hearing will reflect the needs of the hearing and participants;
 - d) take account of users' needs; and
 - e) are operable and affordable
- iii.) The Future Hearings Programme contribute to the realisation of the Reform objectives as follow:
 - Making justice more accessible allowing participants to join hearings from outside courtrooms by the adoption of video technology
 - Improving the management and publication of hearing information and outcomes, making the date and time of hearings easily available to both digital and non-digital users
 - Working with the judiciary, operations and services to improve the business processes and technology that support the judicial functions of scheduling and listing, enabling service transformation and making the role of a listing officer easier and quicker

The projects

- i) some existing capabilities in the case management systems that may or may not be leveraged.
- ii) The Future Hearings Programme has a mix of Agile, Waterfall and Hybrid methodologies. An effective strategy for technical capabilities, which aligns to business and user needs, is necessary to develop and deliver an effective cross programme service.
- iii) Scheduling and listing - It is delivered as a SaaS by a 3rd party supplier and will be integrated into our case management systems.

- iv) Resource management - It is currently planned to be delivered through integrations/data extracts and data entry screens.
- v) Hearings management interface - It is planned to be delivered using integration components in Azure.
- vi) Fully Video Hearings - It is currently delivered as a bespoke application that is making use of a web-based video service, with integrations to other video solutions.
- vii) Publishing and information - there are existing bespoke tools that focus on publishing listing information and
- viii) Each project is managed by a Senior Project Manager supported by a Senior Delivery Manager overseeing the technical delivery. Scheduling & Listing, Resource Management and Hearings Management Interface projects reports into the S&L Project board. Video Hearings Service projects reports into the VHS Project board. Publishing & Information (P&I) project will report into the P&I Project Board when it recommences in April '21. All projects are governed by the Future Hearings Programme Board.
- ix) Each project has a different user base for its solution, these include: Judiciary, Magistrates, HMCTS Staff, Legal Professionals, Prosecutors, Other Government Departments, Citizens. By way of an example: Fully video hearings will provide more accessible means for parties to engage with a hearing. Improving the experience for citizens and for professionals working within the justice system including legal professionals, the police, the Prosecutors, other government departments and expert witnesses due to a reduced need to travel to court, resulting in less disruption and inconvenience.
- x) Every team member put forward by the supplier should be able to understand the wider context of the services they are supporting; they are not simply transactions but services that have an impact on users lives. The service provider should seek to understand the context that the services operate in and the users they serve.
- xi) Technical capabilities are required to support FH programme to deliver technical requirements raised by FH in year1; however, the team size will reduce with project completions over the contract's duration. As this is only a forecast the successful supplier must have flexibility to ramp the service level up and down, to match HMCTS Reform business needs and demands, with the right skill set/roles to deliver the Service according to the business demands.
- xii) The service **must** be provided as a managed service.
- xiii) The teams delivering the services under this contract will be skilled in agile delivery methodologies and adhere to all capability requirements, as outlined by the government's Digital, Data and Technology (DDAT) profession capability.
<https://www.gov.uk/government/collections/digital-data-and-technology-profession-capability-framework>.

Location/Site(s) for provision of the Services

The Future Hearings Programme teams work predominantly out of 102 Petty France, London SW1H 9AJ. Other locations include Aldgate Tower, London E1 8FA and regular remote working due to the dispersed nature of the programme team. In the current Covid-19 environment, the majority are working remotely, and the supplier's team will be required to work remotely as well.

Additional Clauses *(see Annex 3 of Framework Schedule 4)*



Crown
Commercial
Service

This Annex can be found on the RM3804 CCS webpage. The document is titled RM3804 Alternative and additional t&c's v4.

**Applicable Call Off Contract Terms
Additional Clauses and Schedules**

A: PROJECTS – Optional

A1 Testing

A2: Key Personnel

B: SERVICES – Optional

B1: Business Continuity and Disaster Recovery

Optional Clauses

E: Security Requirements



Collaboration Agreement The Supplier is expected to work with other HMCTS Suppliers. At this stage it is not envisaged that a Collaboration agreement is required. If during the Term of this contract a Collaboration Agreement is required this will be agreed by both Parties via a Variation to this Call-Off Contract and a Call Off Schedule F will be included.

Organisations required to collaborate (Collaboration Suppliers) n/a
An executed Collaboration Agreement shall be delivered from the Supplier to the Customer within the stated number of Working Days from the Call Off Commencement Date n/a

Licensed Software Where Software owned by a party other than the Customer is used in the delivery of the Services list product details under each relevant heading below

Supplier Software

n/a.

Third Party Software

n/a

Customer Property (see Call Off Clause 21)

Items licensed by the Customer to the Supplier (including any Customer Software, Customer Assets, Customer System, Customer Background IPR and Customer Data)

n/a

Call Off Contract Charges and Payment Profile (see Call Off Schedule 2)

The following Charging methods will be available to use under this contract and will be called out in Work Packages:

Capped Time & Material

Price Per Story

Time & Material (T&M)

Fixed Price

Other Pricing method or a combination of pricing methods agreed by the Parties

Method of payment: BACS

Role	Day Rate
(REDACTED)	£ (R
(REDACTED)	£ (R
(REDACTED)	£ (R
(REDACTED)	£ (R
(REDACTED)	£ (R
(REDACTED)	£ (R
(REDACTED)	£ (R
(REDACTED)	£ (R
(REDACTED)	£ (R

(REDACTED)	£	(R
(REDACTED)	£	(R
(REDACTED)	£	(R
(REDA	£	(R
(REDACT	£	(R
(REDACT	£	(R
(REDACT	£	(R
(REDACTED)	£	(R

Undisputed Sums Limit (£)

Please see Call Off Clause 31.1.1.

Delay Period Limit (calendar days)

Insert right (see Call Off Clause 5.4.1(b)(ii))

30 Calendar Days

Estimated Year 1 Call Off Contract Charges (£)

For Call Off Contract Periods of over 12 Months

N/A Contract Charges on a per order basis.

Enhanced Insurance Cover

Where a specific Call Off Contract requires a higher level of insurance cover than the £1m default in Framework Schedule 14 please specify below

Third Party Public Liability Insurance (£)	1,000,000
Professional Indemnity Insurance (£)	1,000,000



Transparency Reports (see Call Off Schedule 6)

If required by the Customer populate the table below to describe the detail (titles are suggested examples)

Title	Format	Frequency
Performance against WP Deliverables	Report	Monthly
Call Off Contract Charges	Report	Monthly
Performance against Service Levels	Report	Monthly

Quality Plans (see Call Off Clause 7.2)

Time frame for delivery of draft Quality Plans from the Supplier to the Customer – from the Call Off Commencement Date (Working Days) 45 Working Days

Implementation Plan (see Call Off Clause 5.1.1)

Time frame for delivery of a draft Implementation Plan from the Supplier to the Customer – from the Call Off Commencement Date (Working Days) 5 Working Days

Implementation Plan will be based on Work Packages/SoW's.

BCDR

Please see Call Off Schedule B1

Time frame for delivery of a BCDR Plan from the Supplier to the Customer – from the Call Off Commencement Date (Working Days)

60
Working
Days

Disaster Period (calendar days)

7
Calendar
Days

GDPR (see Call Off Clause 23.6)

Please see Call Off Schedule 7 for further details

Supplier Equipment (see Call Off Clause B3)

N/A

X - Service Failures (number)

n/a

Y – Period (Months)

n/a

Where applicable insert right

Where applicable insert right

Key Personnel & Customer Responsibilities (see Call Off Clause A2)

List below or append as a clearly marked document to include Key Roles



Key Personnel

List below or append as a clearly marked document to include Key Roles

n/a

Customer Responsibilities

Customer responsibilities specific to each work package will be detailed in the relevant Work package documents. General Customer responsibilities are detailed in the attached document:

Relevant Conviction(s)

Where applicable the Customer to include details of Conviction(s) it considers relevant to the nature of the Services.

List below or append as a clearly marked document (see Call Off Clause D where used)

All Supplier Staff engaged on this Contract must, as a minimum, hold Baseline Personnel Security Standard (BPSS) security clearance.

SERVICE LEVELS AND SERVICE CREDITS (see Part A of Call Off Schedule 3)

Service Levels

If required by the Customer populate the table below to describe the detail (content is suggested examples).

If a Direct Award, please append the Supplier's Service Level Agreement as attached to the Supplier's Catalogue

Appointment as Agent (see Call Off Clause 19.5.4)

Insert details below or append as a clearly marked document

Specific requirement and its relation to the Services

Other CCS framework agreement(s) to be used

Not Applicable

Not Applicable

Service Performance Criteria	Level	Key Indicator	Service Level Performance Measure	Service Level Threshold	Critical Service Level Threshold	Service Credit for each Service Period
The supplier completes part B of a work package (including the identification and ensuring availability of resources) within 2 weeks of receiving a fully complete part A of a work package.		Responsiveness	Per Service Period 97% of all work packages are responded to within 2 weeks of receipt.	92%		n/a

<i>Individuals initially provided by the supplier should have the correct skills and level of experience to complete deliverables described in the work packages, as well as described in the requirements (Schedule 2) and do not need to be replaced.</i>	<i>Capability</i>	<i>Per Service Period 100% of resources do not need to be replaced as result of not having the relevant skills and experience.</i>	<i>95%</i>		<i>n/a</i>
<i>Deliverables within work packages are consistently delivered</i>	<i>Performance</i>	<i>For each work package 97% of deliverables are</i>	<i>90%</i>		<i>n/a</i>



<i>on-time and in-full. Where a deliverable is not delivered to time due to client cause it shall not be counted as a failure.</i>		<i>delivered to deadlines detailed in the work package.</i>			
<i>Work packages are always delivered compliantly. Individuals are never working at risk, either without a counter-signed work package or by breaching any other contractual terms (within either the call-off contract or work package).</i>	Compliance	<i>Per Service Period 97% of work packages are compliant.</i>	95%		n/a

Critical Service Level Failure (see Call Off Clause 9)

Agree and specify the metrics for Critical Service Level Failures in the marked areas below

In relation to **the above service levels** a Critical Service Level Failure shall be defined as failure to meet any of the Critical Service Level Thresholds more than once in any **rolling three service periods**.

The number of Service Level Performance Criteria for the purpose of Call Off Clause 8.6 shall be four.

Service Credits

Service Credits are not applicable. However, the Client reserves the right to apply them in future should a Critical Service Level Failure occur. Formula for calculation and service credit points that will apply shall be agreed between both Parties.

Service Credit Cap

Agree and specify the Service Credit Cap in the marked areas below

Service Credits are not applicable. However, the Client reserves the right to apply them in future should a Critical Service Level Failure occur.

Should Service Credits be applied the Service Level Cap shall, in the period from the Call Off Commencement Date to the end of the first Call Off Contract Year, be capped at **15%** of the Estimated Year 1 Call Off Contract Charges; and during the remainder of the Call Off Contract Period, **15%** of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the period of twelve (12) Months immediately preceding the Month in respect of which Service Credits are accrued.



Additional Performance Monitoring Requirements

Technical Board

If required by the Customer populate the table below to describe the detail

Required Members		Location	Frequency
Job Title	Name		
n/a	n/a	n/a	n/a

Time frame in which the Technical Board shall be established – from the Call Off
Commencement Date (Working Days) N/A

Section D

Supplier response

Suppliers - use this section to provide any details that may be relevant in the fulfilment of the Customer Order

Commercially Sensitive information

(REDACTE

Total contract value

£7,351,860.00 excluding VAT

The Supplier's tender is Annexed to this Order Form as Annex 1 and shall form part of the Call-off Contract.

In the event of any conflict between the content of the Supplier's tender and any other part of the Call-off Contract, the Call off Contract shall prevail.

Section E

Call Off Contract award

This Call Off Contract is awarded in accordance with the provisions of the Technology Services 2 Framework Agreement RM3804.

The Supplier shall provide the Services specified in this Order Form to the Customer on and subject to the terms of this Order Form and the Call Off Terms (together referred to as “the Call Off Contract”) for the duration of the Call Off Contract Period.

SIGNATURES

For and on behalf of the Supplier

Name	
Job role/title	
Signature	
Date	

For and on behalf of the Customer

Name	
Job role/title	
Signature	
Date	

FRAMEWORK SCHEDULE 4

RM3804 TECHNOLOGY SERVICES 2 CALL OFF TERMS

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CALL OFF TERMS

TERMS AND CONDITIONS

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Call Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions) or the relevant Call Off Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Call Off Schedule 1 (Definitions) or relevant Call Off Schedule, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Call Off Contract, unless the context otherwise requires:
 - 1.3.1 the singular includes the plural and vice versa;
 - 1.3.2 reference to a gender includes the other gender and the neuter;
 - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
 - 1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under this Call Off Contract;
 - 1.3.8 references to "**Clauses**" and "**Call Off Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Call Off Contract and references in any Call Off Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Call Off Schedule in which these references appear;
 - 1.3.9 where definitions or interpretations are expressly set out in Call Off Schedule F (Collaboration Agreement), then the definitions and interpretations specified therein shall apply only in the context of that Schedule where used; and

- 1.3.10 the headings in this Call Off Contract are for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract.
- 1.4 Subject to Clauses 1.5 and 1.6 (Definitions and Interpretation), in the event of and only to the extent of any conflict between the Order Form, the Call Off Terms and the provisions of the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 the Framework Agreement, except Framework Schedule 18 (Tender);
 - 1.4.2 the Order Form;
 - 1.4.3 the Call Off Terms;
 - 1.4.4 Framework Schedule 18 (Tender);
 - 1.4.5 the Collaboration Agreement (Schedule 13), where used.
- 1.5 Any permitted changes by the Customer to the Template Call Off Terms and the Template Order Form under Clause 4 (Call Off Procedure) of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to them becoming the Call Off Terms and the Call Off Form shall prevail over the Framework Agreement.
- 1.6 Where any tender by the Supplier at further competition or the Tender contains provisions which are more favourable to the Customer in relation to this Call Off Contract, such provisions of the tender submitted at further competition or the Tender shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the the tender submitted at further competition or the Tender is more favourable to it in this context.

2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
- 2.1.1 the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Call Off Contract;
 - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information and that it has entered into this Call Off Contract in reliance on its own due diligence alone;
 - 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Customer before the Call Off Commencement Date) of all relevant details, including but not limited to, details relating to the:
 - (a) suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Call Off Commencement Date) future Operating Environment;
 - (b) operating processes and procedures and the working methods of the Customer;
 - (c) ownership, functionality, capacity, condition and suitability for use in the provision of the Services of the Customer Assets; and
 - (d) existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated

to, assigned to or managed by the Supplier under this Call Off Contract and/or which the Supplier will require the benefit of for the provision of the Services; and

2.1.4 it has advised the Customer in writing of:

- (a) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
- (b) the actions needed to remedy each such unsuitable aspect; and
- (c) a timetable for and the costs of those actions.

2.1.5 the Supplier shall not be excused from the performance of any of its obligations under this Call Off Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:

- (a) unsuitable aspects of the Operating Environment;
- (b) misinterpretation of the requirements of the Customer in the Order Form or elsewhere in this Call Off Contract; and/or
- (c) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3. REPRESENTATIONS AND WARRANTIES

3.1 Each Party represents and warranties that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Call Off Contract;
- 3.1.2 this Call Off Contract is executed by its duly authorised representative;
- 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Call Off Contract; and
- 3.1.4 its obligations under this Call Off Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

3.2 The Supplier represents and warrants that:

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call Off Contract;
- 3.2.3 its execution, delivery and performance of its obligations under this Call Off Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;

- 3.2.4 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to its tender submitted to the Customer under a Further Competition Procedure and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract;
- 3.2.5 as at the Call Off Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
- 3.2.6 it has and shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Services by the Customer;
- 3.2.7 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;
- 3.2.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Contract;
- 3.2.9 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 3.2.10 for the Call Off Contract Period and for a period of twelve (12) months after the termination or expiry of this Call Off Contract, the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Services without Approval or the prior written consent of the Customer, which shall not be unreasonably withheld. However this Clause 3.2.10 shall not preclude the Supplier's rights to (i) make generalised searches for employees by the use of advertisements in the media (including by any recruitment agency), (ii) hire any employee of the Customer who approaches the Supplier on an unsolicited basis; or (iii) solicit for employment or hire any such employee who ceases to be employed by the Customer.
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.
- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

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

B. DURATION OF CALL OFF CONTRACT

4. CALL OFF CONTRACT PERIOD

- 4.1 This Call Off Contract shall commence on the Call Off Commencement Date and the term of this Call Off Contract shall be the Call Off Contract Period.

C. CALL OFF CONTRACT PERFORMANCE

5. IMPLEMENTATION PLAN

5.1 Formation of Implementation Plan

- 5.1.1 Where the Parties agreed in section C of the Order Form that an Implementation Plan (or parts thereof) shall be provided in draft by the Supplier prior to the commencement of the provision of the Services, the Supplier's draft must contain information at the level of detail necessary to manage the implementation stage effectively and as the Customer may require. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 5.1.2 The Supplier shall submit the draft Implementation Plan to the Customer for Approval (such decision of the Customer to Approve or not shall not be unreasonably delayed or withheld) within such period as specified by the Customer in section C of the Order Form.
- 5.1.3 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
- 5.1.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in the Order Form and report to the Customer on such performance.

5.2 Control of Implementation Plan

- 5.2.1 Subject to Clause 5.2.2, the Supplier shall keep the Implementation Plan under review in accordance with the Customer's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Services. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 5.2.2 Changes to the Milestones (if any), Milestone Payments (if any) and Delay Payments (if any) shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or

otherwise (except in the event of a Customer Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).

- 5.2.3 Where so specified by the Customer in the Implementation Plan or the Order Form, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

5.3 Rectification of Delay in Implementation

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

(a) it shall:

- (i) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and
 - (ii) include in its notification an explanation of the actual or anticipated impact of the Delay; and
 - (iii) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- (b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Implementation Plan, Clause 5.4 (Delay Payments) shall apply.

5.4 Delay Payments

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

- (a) the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to Achieve the corresponding Milestone;
- (b) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
 - (i) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 30 (Customer Termination Rights) except Clause 30.6 (Termination Without Cause); or
 - (ii) the delay exceeds the number of days ("the **“Delay Period Limit”**") specified in section C of the Order Form for the purposes of this sub-Clause, commencing on the relevant Milestone Date;
- (c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified by the Customer in the Implementation Plan);

- (d) no payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver complies with Clause 37 (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Customer's rights to claim Delay Payments; and
- (e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 5.4.1 and Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 25 (Liability).

6. SERVICES

6.1 Provision of the Services

- 6.1.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Call Off Contract.
- 6.1.2 The Supplier shall ensure that the Services:
 - (a) comply in all respects with any description of the Services in the Order Form; and
 - (b) are supplied in accordance with the provisions of this Call Off Contract or the Tender.
- 6.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:
 - (a) all applicable Law;
 - (b) Good Industry Practice;
 - (c) the Standards;
 - (d) the Security Policy;
 - (e) the Quality Plans;
 - (f) the ICT Policy (if so required by the Customer); and
 - (g) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 6.1.3(a) to 6.1.3(f).
- 6.1.4 The Supplier shall:
 - (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Call Off Contract;
 - (b) subject to Clause 15.1 (Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
 - (c) ensure that:
 - (i) the release of any new Supplier Software or upgrade to any Supplier Software complies with the interface requirements of the Customer and (except in

relation to new Software or upgrades which are released to address Malicious Software) shall notify the Customer three (3) Months before the release of any new Supplier Software or Upgrade;

- (ii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- (iii) any products or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Customer;
- (iv) the Supplier System and Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer) and will be Euro Compliant; and
- (v) the Services are fully compatible with any Customer Software, Customer System, Customer Property or Customer Assets described in the Order Form or otherwise used by the Supplier in connection with this Call Off Contract;
 - (d) minimise any disruption to the Sites Services, the ICT Environment and/or the Customer's operations when providing the Services;
 - (e) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the Call Off Expiry Date for any reason, to enable the timely transition of the supply of the Services (or any of them) to the Customer and/or to any Replacement Supplier;
 - (g) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
 - (h) provide the Customer with such assistance as the Customer may reasonably require during the Call Off Contract Period in respect of the supply of the Services;
 - (i) deliver the Services in a proportionate and efficient manner;
 - (j) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and

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

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

6.2 Time of Delivery of the Services

- 6.2.1 The Supplier shall provide the Services on the date(s) specified in the Order Form and the Milestone Dates (if any). Such provision shall include compliance with the obligation on the Supplier set out in Clause 5 (Implementation Plan).

6.3 Location and Manner of Delivery of the Services

- 6.3.1 Except where otherwise provided in this Call Off Contract, the Supplier shall provide the Services to the Customer through the Supplier Personnel at the Sites.
- 6.3.2 The Customer may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Customer Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.

6.4 Undelivered Services

- 6.4.1 In the event that any of the Services are not Delivered in accordance with Clauses 6.1 (Provision of the Services), 6.2 (Time of Delivery of the Services) and 6.3 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.
- 6.4.2 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 6.1, (Provision of the Services), 6.2 (Time of Delivery of the Services) and 6.3 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

6.5 Specially Written Software warranty

- 6.5.1 The Supplier warrants to the Customer that all components of the Specially Written Software shall:
 - (a) be free from material design and programming errors;
 - (b) perform in all material respects in accordance with the relevant specifications contained in the Order Form and Documentation; and
 - (c) not infringe any Intellectual Property Rights.

6.6 Obligation to Remedy of Default in the Supply of the Services

- 6.6.1 Subject to Clauses 22.9.2 and 22.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever

arising (including under Clauses 6.4.2 (Undelivered Services) and 27 (Customer Remedies for Default)), the Supplier shall, where practicable:

- (a) remedy any breach of its obligations in Clause 6 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
- (b) meet all the costs of, and incidental to, the performance of such remedial work.

6.7 Continuing Obligation to Provide the Services

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

- (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Customer to pay any Call Off Contract Charges, unless the Supplier is entitled to terminate this Call Off Contract under Clause 31.1 (Termination on Customer Cause for Failure to Pay) for failure by the Customer to pay undisputed Call Off Contract Charges.

7. STANDARDS AND QUALITY

- 7.1 The Supplier shall at all times during the Call Off Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.
- 7.2 If so required by the Customer the Supplier shall develop, within such period as specified by the Customer in section C of the Order Form, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 7.3 The Supplier shall seek Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed) of the Quality Plans before implementing them. The Supplier acknowledges and accepts that Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Call Off Contract.
- 7.4 Throughout the Call Off Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Customer, of the Services. The adoption of any such new or emergent standard or changes to existing Standards shall be agreed in accordance with the Variation Procedure. Any change to an existing Standard which is included in Framework Schedule 2 (Services and Key Performance Indicators) shall, in addition, require the written consent of the Authority.
- 7.5 Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Customer's receipt of the Services is explained

to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.

- 7.6 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Call Off Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard or Standards shall require Approval (and the written consent of the Authority where the relevant Standard or Standards is/are included in Framework Schedule 2 (Services and Key Performance Indicators)) and shall be implemented within an agreed timescale.
- 7.7 Following the approval by the Customer of the Quality Plans:
 - 7.7.1 the Supplier shall implement all Deliverables in accordance with the Quality Plans; and
 - 7.7.2 any Variation to the Quality Plans shall be agreed in accordance with the Variation Procedure.
- 7.8 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
 - 7.8.1 be appropriately experienced, qualified and trained to supply the Services in accordance with this Call Off Contract;
 - 7.8.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Services; and
 - 7.8.3 obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Services to the reasonable satisfaction of the Customer.
- 7.9 Where a standard, policy or document is referred to in the Order Form by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall agree the impact of such change.

8. SERVICE LEVELS AND SERVICE CREDITS

- 8.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring).
- 8.2 The Supplier shall at all times during the Call Off Contract Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
- 8.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to the rights set out in the provisions of Part A of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.
- 8.4 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 8.5 A Service Credit shall be the Customer's exclusive financial remedy for a Service Level Failure except where:

- 8.5.1 the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;
- 8.5.2 the Service Level Failure:
 - (a) exceeds the relevant Service Level Threshold;
 - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and
 - (c) results in:
 - (i) the corruption or loss of any Customer Data (in which case the remedies under Clause 23.2.8 (Protection of Customer Data) shall also be available); and/or
 - (ii) the Customer being required to make a compensation payment to one or more third parties; and/or
- 8.5.3 the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 30 (Customer Termination Rights) except Clause 30.6 (Termination Without Cause).
- 8.6 Not more than once in each Contract Year the Customer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Level Performance Criteria and the Supplier shall not be entitled to object to, or increase the Call Off Contract Charges as a result of such changes, provided that:
 - 8.6.1 the total number of Service Level Performance Criteria for which the weighting is to be changed does not exceed the number set out, for the purposes of this Clause 8.6, in section C of the Order Form;
 - 8.6.2 the principal purpose of the change is to reflect changes in the Customer's business requirements and/or priorities or to reflect changing industry standards; and
 - 8.6.3 there is no change to the Service Credit Cap.

9. CRITICAL SERVICE LEVEL FAILURE

- 9.1 On the occurrence of a Critical Service Level Failure:
 - 9.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
 - 9.1.2 the Customer shall (subject to the Service Credit Cap set out in Clause 25.2.1(a) (Financial Limits)) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Call Off Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this Clause 9.1 shall be without prejudice to the right of the Customer to terminate this Call Off Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.

- 9.2 The Supplier:
 - 9.2.1 agrees that the application of Clause 9.1 is commercially justifiable where a Critical Service Level Failure occurs; and

- 9.2.2 acknowledges that it has taken legal advice on the application of Clause 9.1 and has had the opportunity to price for that risk when calculating the Call Off Contract Charges.

10. DISRUPTION

- 10.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call Off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 10.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.
- 10.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Call Off Contract.
- 10.4 If the Supplier's proposals referred to in Clause 10.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.
- 10.5 If the Supplier is temporarily unable to fulfil the requirements of this Call Off Contract owing to disruption of normal business solely due to a Customer Cause, then subject to Clause 11 (Supplier Notification of Customer Cause), an appropriate allowance by way of an extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

11. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

- 11.1 Without prejudice to any other obligations of the Supplier in this Call Off Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 31.1.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall notify the Customer as soon as reasonably practicable (and in any event within two (2) Working Days of the Supplier becoming aware) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:
- 11.1.1 the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Call Off Contract; and
- 11.1.2 any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
- 11.1.3 use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

D. CALL OFF CONTRACT GOVERNANCE

12. PERFORMANCE MONITORING

- 12.1 Unless otherwise Approved or notified by the Customer, the Supplier shall comply with the monitoring requirements set out in Part B of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring).

- 12.2 In the case of any additional or alternative monitoring requirements of the Customer, the provisions relating to performance monitoring of this Call Off Contract shall apply as set out in section C of the Order Form.

13. REPRESENTATIVES

- 13.1 Each Party shall have a representative for the duration of this Call Off Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Call Off Contract.
- 13.2 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 18 (Supplier Personnel).
- 13.3 The Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Call Off Commencement Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.

14. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

- 14.1 The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Customer.
- 14.2 The Supplier shall:
- 14.2.1 keep the records and accounts referred to in Clause 14.1 in accordance with Good Industry Practice and Law; and
 - 14.2.2 afford any Auditor access to the records and accounts referred to in Clause 14.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 14.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call Off Contract Agreement including for the following purposes to:
 - (a) verify the accuracy of the Call Off Contract Charges and any other amounts payable by the Customer under this Call Off Contract (and any proposed or actual variations to them in accordance with this Call Off Contract);
 - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
 - (c) verify the Open Book Data;
 - (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened Breach of Security and in these circumstances the Customer shall

have no obligation to inform the Supplier of the purpose or objective of its investigations;

- (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Call Off Guarantor and/or any Sub-Contractors or their ability to perform the Services;
- (g) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Call Off Contract;
- (i) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;
- (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
- (k) review any Performance Monitoring Reports provided under Part B of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (l) verify the accuracy and completeness of any information delivered or required by this Call Off Contract;
- (m) inspect the ICT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (n) review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (o) review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (p) review the Supplier's compliance with the Standards;
- (q) inspect the Customer Assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date; and/or
- (r) review the integrity, confidentiality and security of the Customer Data.

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

- 14.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 14.4.1 all reasonable information requested by the Customer within the scope of the audit;
 - 14.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 14.4.3 access to the Supplier Personnel.
- 14.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 14, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

15. CHANGE

15.1 Variation Procedure

- 15.1.1 Subject to the provisions of this Clause 15 and of Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 15.1.2 A Party may request a Variation by completing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 15.1.3 The Customer may require the Supplier to carry out an impact assessment of the Variation on the Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:
- (a) details of the impact of the proposed Variation on the Services and the Supplier's ability to meet its other obligations under this Call Off Contract;
 - (b) details of the cost of implementing the proposed Variation;
 - (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Call Off Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - (e) such other information as the Customer may reasonably request in (or in response to) the Variation request.
- 15.1.4 The Parties may agree to adjust the time limits specified in the Variation request to allow for the preparation of the Impact Assessment.
- 15.1.5 Subject to 15.1.4, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be

reasonable and ultimately at the discretion of the Customer having regard to the nature of the Services and the proposed Variation.

15.1.6 In the event that:

- (a) the Supplier is unable to agree to or provide the Variation; and/or
- (b) the Parties are unable to agree a change to the Call Off Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof,

the Customer may:

- (i) agree to continue to perform its obligations under this Call Off Contract without the Variation; or
- (ii) terminate this Call Off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Services in accordance with this Call Off Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Call Off Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

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

15.2 Legislative Change

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

- (a) General Change in Law;
- (b) Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Call Off Commencement Date.

15.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 15.2.1(b)), the Supplier shall:

- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
 - (i) whether any Variation is required to the provision of the Services, the Call Off Contract Charges or this Call Off Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
- (b) provide to the Customer with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause B2.7 (Continuous

Improvement) where used, has been taken into account in amending the Call Off Contract Charges.

15.2.3 Any change in the Call Off Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 15.2.1(b)) shall be implemented in accordance with the Variation Procedure.

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

16. CALL OFF CONTRACT CHARGES AND PAYMENT

16.1 Call Off Contract Charges

16.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Services, the Customer shall pay the undisputed Call Off Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing).

16.1.2 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses A1 (Testing) where used, 14 (Records, Audit Access and Open Book Data), 23.5 (Freedom of Information), 23.6 (Data Protection).

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

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

16.2 VAT

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

16.2.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 16.2 (VAT) shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

16.3 Retention and Set Off

- 16.3.1 The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Call Off Contract or under any other agreement between the Supplier and the Customer.
- 16.3.2 If the Customer wishes to exercise its right pursuant to Clause 16.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Call Off Contract Charges.
- 16.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

16.4 Foreign Currency

- 16.4.1 Any requirement of Law to account for the Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 16.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 16.4.1 by the Supplier.

16.5 Income Tax and National Insurance Contributions

- 16.5.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call Off Contract, the Supplier shall:
- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Personnel.
- 16.5.2 In the event that any one of the Supplier Personnel is a Worker as defined in Call Off Schedule 1 (Definitions), and that particular Worker is liable to be taxed in the UK in respect of any consideration it receives relating to the Services, then the Supplier shall ensure that its contract with the Worker includes the following requirements:
- (a) that the Worker must comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration;
 - (b) that the Worker must comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to national insurance contributions in respect of that consideration;

- (c) that the Customer may, at any time during the Call Off Contract Period, request that the Worker provide information which demonstrates how the Worker complies with the above requirements (a) and (b), or why those requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided;
- (d) that the Worker's contract may be terminated at the Customer's request if:
 - (i) the Worker fails to provide information requested by the Customer within the time specified by the Customer; and/or
 - (ii) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with requirements (a) or (b) or confirms that the Worker is not complying with those requirements; and
- (e) that the Customer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

17. PROMOTING TAX COMPLIANCE

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

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

17.1.2 promptly provide to the Customer:

- (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.

17.2 In the event that the Supplier fails to comply with this Clause 17 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable, then the Customer reserves the right to terminate this Call Off Contract for material Default.

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

18. SUPPLIER PERSONNEL

18.1 Supplier Personnel

18.1.1 The Supplier shall:

- (a) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- (b) ensure that all Supplier Personnel:

- (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
- (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards;
- (iii) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call Off Schedule E (Security), if applicable; and
- (iv) obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Services to the reasonable satisfaction of the Customer.
 - (c) subject to Call Off Schedule A3 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
 - (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Call Off Contract shall be a Default by the Supplier;
 - (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
 - (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
 - (h) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.

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

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

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

19. SUPPLY CHAIN RIGHTS AND PROTECTION

19.1 Appointment of Sub-Contractors

19.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:

- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Call Off Contract in the Delivery of the Services; and

- (c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Call Off Contract.

19.1.2 Prior to sub-contacting any of its obligations under this Call Off Contract, the Supplier shall notify the Customer and provide the Customer with:

- (a) the proposed Sub-Contractor's name, registered office and company registration number;
- (b) the scope of any Services to be provided by the proposed Sub-Contractor; and
- (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.

19.1.3 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 19.1.2, the Supplier shall also provide:

- (a) a copy of the proposed Sub-Contract; and
- (b) any further information reasonably requested by the Customer.

19.1.4 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 19.1.2 (or, if later, receipt of any further information requested pursuant to Clause 19.1.3), object to the appointment of the relevant Sub-Contractor they consider that:

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Customer under this Call Off Contract;
- (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Sub-Contractor employs unfit persons, in which case, the Supplier shall not proceed with the proposed appointment.

19.1.5 If:

- (a) the Customer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 19.1.2; and
 - (ii) any further information requested by the Customer pursuant to Clause 19.1.3; and
- (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority and the Customer in accordance with Clause 19.2 (Appointment of Key Sub-Contractors).

the Supplier may proceed with the proposed appointment.

19.2 Appointment of Key Sub-Contractors

- 19.2.1 The Authority and the Customer have consented to the engagement of the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors).
- 19.2.2 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Customer (the decision to consent not to be unreasonably withheld or delayed). The Authority and/or the Customer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:
- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;
 - (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (c) the proposed Key Sub-Contractor employs unfit persons.
- 19.2.3 Except where the Authority and the Customer have given their prior written consent under Clause 19.2.1, the Supplier shall ensure that each Key Sub-Contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Call Off Contract;
 - (b) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
 - (c) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
 - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
 - (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Call Off Contract in respect of:
 - (i) data protection requirements set out in Clauses E (Security Requirements) where used, 23.2 (Protection of Customer Data) and 23.6 (Data Protection);
 - (ii) FOIA requirements set out in Clause 23.5 (Freedom of Information);
 - (iii) the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in Clause 6.1.4(j) (Provision of Services);
 - (iv) the keeping of records in respect of the Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
 - (v) the conduct of audits set out in Clause 14 (Records, Audit Access & Open Book Data);
 - (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 30 (Customer Termination Rights), 32 (Termination by Either Party) and 34 (Consequences of Expiry or Termination) of this Call Off Contract;
 - (g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Services provided

to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;

- (h) a provision, where a provision in Call Off Schedule A3 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be.

19.3 Supply Chain Protection

- 19.3.1 The Supplier shall ensure that all Sub-Contracts contain a provision: (a) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed; and
- (b) a right for the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
 - (c) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses (a) and (b) directly above.

Also, any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

19.3.2 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
- (b) include within the Performance Monitoring Reports required under Part B of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring) a summary of its compliance with this Clause 19.3.2, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.

19.3.3 Notwithstanding any provision of Clauses 23.3 (Confidentiality) and 24 (Publicity and Branding) if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

19.4 Termination of Sub-Contracts

19.4.1 The Customer may require the Supplier to terminate:

- (a) a Sub-Contract where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant to any of the termination events in Clause 30 (Customer Termination Rights) except Clause 30.6 (Termination Without Cause); and/or

- (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or
 - (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
 - (i) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Customer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

19.5 Competitive Terms

19.5.1 If the Customer is able to obtain from any Sub-Contractor or any other third party (including any supplier on CCS's Technology Products 2 framework agreement (RM3733) or any other of CCS's framework agreements and any successors to these available during the Call Off Contract Period) more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Customer may:

- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or
- (b) subject to Clause 19.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

19.5.2 If the Customer exercises the option pursuant to Clause 19.5.1, then the Call Off Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.

19.5.3 The Customer's right to enter into a direct agreement for the supply of the relevant items is subject to:

- (a) the Customer making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
- (b) any reduction in the Call Off Contract Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

19.5.4 The Supplier agrees to procure any products necessary for the provision of the Services through CCS's Technology Products 2 framework agreement (RM3733) or services through any other CCS framework agreement where requested to do so by the Customer (in section C of the Order Form) except where the Supplier itself features on the relevant lot, in which case a clear conflict of interest would exist. In such circumstances the Supplier shall promptly advise the Customer of the conflict of interest and shall not act as Agent.

19.5.5 Where the Customer makes a request pursuant to Clause 19.5.4, the Supplier shall act as an Agent of the Customer to procure products from the Technology Products

2 framework agreement (RM3733) or other CCS framework agreement, as applicable and the Parties shall agree the terms on which the Supplier shall act as Agent, except where rendered unable due to the conflict of interest described in Clause 19.5.4.

19.5.6 In acting as an Agent for the Customer the Supplier shall as a minimum: (a)

comply with the Agency terms agreed pursuant to Clause 19.5.5 together with all reasonable instructions made by the Customer;

(b) comply with all terms and conditions governing the call off procedure under the relevant framework agreement, as if it were the Customer; and

(c) comply with the Public Contracts Regulations 2015 as if it were the Customer including the observation of the overarching treaty principles governing public procurement procedure; to treat economic operators equally and fairly, without discrimination, and in a transparent and proportionate manner.

19.6 Retention of Legal Obligations

19.6.1 Notwithstanding the Supplier's right to Sub-Contract pursuant to this Clause 19 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

G. PROPERTY MATTERS

20. CUSTOMER PREMISES

20.1 Licence to occupy Customer Premises

20.1.1 Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Call Off Contract. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Call Off Contract and in accordance with Call Off Schedule A4 (Exit Management) where used.

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

20.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2.1.3(a) (Due Diligence) and set out in the Order Form, should the Supplier require modifications to the Customer Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this

Clause 20.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.

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

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

20.2 Security of Customer Premises

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

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

21. CUSTOMER PROPERTY

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

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

21.3 The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Customer Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Customer Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.

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

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

21.6 The Supplier shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services,

in accordance with the Customer's Security Policy, where applicable, and the Customer's reasonable security requirements from time to time.

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

H. INTELLECTUAL PROPERTY AND INFORMATION

22. INTELLECTUAL PROPERTY RIGHTS

22.1 Allocation of title to IPR

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

- (a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
 - (i) in the Supplier Software;
 - (ii) the Supplier Background IPR;
 - (iii) in the Third Party Software;
 - (iv) the Third Party IPR;
 - (v) in the Specially Written Software; and
 - (vi) the Project Specific IPR.
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the:
 - (i) Customer Software;
 - (ii) Customer Background IPR; and
 - (iii) Customer Data.

22.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 22.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

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

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

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

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software (including any Supplier Background

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

- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “**Software Supporting Materials**”); and
- (c) the Project Specific IPR including but not limited to the right to copy, adapt, publish (including on the ICT Environment) and distribute such Project Specific IPR.

22.2.2 The Supplier shall:

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

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

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

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

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

22.3.2 At any time during the Call Off Contract Period or following the Call Off Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Software or the Supplier Background IPR under Clause

22.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Customer Cause which constitutes a material breach of the terms of Clauses 22.3.1(a) or 22.3.1(b) (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.

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

- (a) immediately cease all use of the Supplier Software or the Supplier Background IPR (as the case may be);
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Customer may destroy the documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Supplier Software and/or Supplier Background IPR that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Customer) from any computer, word processor, voicemail system or any other device containing such Supplier Software and/or Supplier Background IPR.

22.4 Customer's right to sub-license

22.4.1 The Customer shall be freely entitled to sub-license the rights granted to it pursuant to Clause 22.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR).

22.4.2 The Customer may sub-license:

- (a) the rights granted under Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-license is on terms no broader than those granted to the Customer; and
 - (ii) the sub-license only authorises the third party to use the rights licensed in Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and
- (b) the rights granted under Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPR provided that the sub-license is on terms no broader than those granted to the Customer.

22.5 Customer's right to assign/novate licences

22.5.1 The Customer:

- (a) shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 22.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR); and
 - (b) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to:
 - (i) a Central Government Body; or
 - (ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.
 - (c) Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 22.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR). If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 22.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR).
 - (d) If a licence granted in Clause 22.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) is novated under Clause 22.5.1(a) and/or Clause 22.5.1(b) or there is a change of the Customer's status pursuant to Clause 22.5.1(c) (both such bodies being referred to as the “**Transferee**”), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

22.6 Third Party IPR and Third Party Software

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

- (a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there

are alternative software providers which the Supplier could seek to use; and

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

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

22.7 Licence granted by the Customer

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

- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 23.3 (Confidentiality); and
- (b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

22.8 Termination of licenses

22.8.1 Subject to Clauses 22.3.2 and/or 22.3.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR), all licences granted pursuant to this Clause 22 (Intellectual Property Rights) (other than those granted pursuant to Clause 22.6.2 (Third Party IPR and Third Party Software) and 22.7.1 (Licence granted by the Customer)) shall survive the Call Off Expiry Date.

22.8.2 The Supplier shall, if requested by the Customer in accordance with Call Off Schedule A4 (Exit Management) where used, grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPR, Third Party IPR and/or Third Party Software on terms equivalent to those set out in Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

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

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

the documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be); and

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

22.9 IPR Indemnity

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

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

- (a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;
 - (iii) there is no additional cost to the Customer; and
 - (iv) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Services.

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

- (a) the Customer may terminate this Call Off Contract by written notice with immediate effect; and
- (b) without prejudice to the indemnity set out in Clause 22.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute services including the additional costs of procuring, implementing and maintaining the substitute items.

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

22.9.5 The Customer agrees that:

- (a) it will notify the Supplier in writing of any IPR Claim;
- (b) it will allow the Supplier to conduct all negotiations and proceedings and will provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and
- (c) it will not, without first consulting with the Supplier, agree to make any payment or make an admission relating to the IPR Claim.

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

23. SECURITY AND PROTECTION OF INFORMATION

23.1 Malicious Software

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

23.1.2 Notwithstanding Clause 23.1.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.

23.1.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 23.1.2 shall be borne by the Parties as follows:

- (a) by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Customer has waived the obligation set out in Clause 23.1.1) or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
- (b) by the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived its obligation set out in Clause 23.1.1) or the Customer Data (whilst the Customer Data was under the control of the Customer).

23.2 Protection of Customer Data

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

- 23.2.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call Off Contract or as otherwise Approved by the Customer.
- 23.2.3 To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified in this Call Off Contract and in any event as specified by the Customer from time to time in writing.
- 23.2.4 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 23.2.5 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with any BCDR Plan or otherwise. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 23.2.6 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 23.2.7 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 23.2.8 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Call Off Schedule B1 (Business Continuity and Disaster Recovery) where used, or as otherwise required by the Customer, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
 - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Call Off Schedule B1 (Business Continuity and Disaster Recovery) where used, or as otherwise required by the Customer.

23.3 Confidentiality

- 23.3.1 For the purposes of this Clause 23.3, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

23.3.2 Except to the extent set out in this Clause 23.3 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call Off Contract or without obtaining the owner's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

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

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 23.5 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with: (i)

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

- (ii) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Services provided under this Call Off Contract; or
 - (iii) the conduct of a Central Government Body review in respect of this Call Off Contract; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

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

23.3.5 Subject to Clauses 23.3.2 and 23.3.7, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:

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

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

23.3.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 23.3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.

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

- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 23.3.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Call Off Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer,

and for the purposes of the foregoing, references to disclosure 23.3.5 on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause 23.3.5.

23.3.8 Nothing in this Clause 23.3 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

23.3.9 In the event that the Supplier fails to comply with Clauses 23.3.2 to 23.3.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

23.4 Transparency

23.4.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Contract and any Transparency Reports under it is not Confidential Information and shall be made available in accordance with the procurement policy note 13/15 <https://www.gov.uk/government/publications/procurement-policy-note-1315-increasing-the-transparency-of-contract-information> (note that his PPN has been superseded by procurement policy note 01/17 <https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>) and the

Transparency Principles referred to therein. The Customer shall determine whether any of the content of this Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

23.4.2 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives his consent for the Customer to publish this Call Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Call Off Contract agreed from time to time.

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

23.5 Freedom of Information

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

- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;
- (b) transfer to the Customer all Requests for Information relating to this Call Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

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

23.6 Data Protection

23.6.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Call Off Schedule 7 by the Customer and may not be determined by the Supplier.

- 23.6.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 23.6.3 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- 23.6.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 23.6.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 23.6.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 23.6.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 23.6.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract:
- 23.6.4.1 process that Personal Data only in accordance with Call Off Schedule 7 unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - 23.6.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - 1. nature of the data to be protected;
 - 2. harm that might result from a Data Loss Event;
 - 3. state of technological development; and
 - 4. cost of implementing any measures;
 - 23.6.4.3 ensure that :
 - 1. the Supplier Personnel do not process Personal Data except in accordance with this Call-Off Contract (and in particular Call Off Schedule 7);
 - 2. it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
 - i. are aware of and comply with the Supplier's duties under this clause;
 - ii. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

- iii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call-Off Contract; and
 - iv. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 23.6.4.4 not transfer Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- 1. the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - 2. the Data Subject has enforceable rights and effective legal remedies;
 - 3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - 4. the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 23.6.4.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Call-Off Contract unless the Supplier is required by Law to retain the Personal Data.
- 23.6.5 Subject to clause 23.6.6, the Supplier shall notify the Customer immediately if it:
- 23.6.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 23.6.5.2 receives a request to rectify, block or erase any Personal Data;
 - 23.6.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 23.6.5.4 receives any communication from the Information Commissioner or any other regulatory Customer in connection with Personal Data processed under this Call-Off Contract;
 - 23.6.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 23.6.5.6 becomes aware of a Data Loss Event.
- 23.6.6 The Supplier's obligation to notify under clause 23.6.5 shall include the provision of further information to the Customer in phases, as details become available.

- 23.6.7 Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 23.6.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- 23.6.7.1 the Customer with full details and copies of the complaint, communication or request;
 - 23.6.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 23.6.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 23.6.7.4 assistance as requested by the Customer following any Data Loss Event;
 - 23.6.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 23.6.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 23.6.8.1 the Customer determines that the processing is not occasional;
 - 23.6.8.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 23.6.8.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 23.6.9 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 23.6.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 23.6.11 Before allowing any Sub-processor to process any Personal Data related to this Call-Off Contract, the Supplier must:
- 23.6.11.1 notify the Customer in writing of the intended Sub-processor and processing;
 - 23.6.11.2 obtain the written consent of the Customer;
 - 23.6.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 23.6 such that they apply to the Sub-processor; and

23.6.11.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

23.6.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

23.6.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Call-Off Contract).

23.6.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office publishes guidance. The Customer may on not less than 30 Working Days' notice to the Supplier amend this Call-Off Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Officer.

24. PUBLICITY AND BRANDING

24.1 The Supplier shall not:

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

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

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

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

I. LIABILITY AND INSURANCE

25. LIABILITY

25.1 Unlimited Liability

25.1.1 Neither Party excludes or limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (b) bribery or Fraud by it or its employees;
- (c) breach of any obligation as to title implied by section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be excluded or limited by Law.

25.1.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 22.9 (IPR Indemnity) and in each case whether

before or after the making of a demand pursuant to the indemnity therein.

25.2 Financial Limits

25.2.1 Subject to Clause 25.1.1 (Unlimited Liability), the Supplier's total aggregate liability

(a) in respect of all:

(i) Service Credits; and

(ii) Compensation for Critical Service Level Failure;

incurred in any rolling period of twelve (12) Months shall be subject in aggregate to the Service Credit Cap;

(b) Subject to Clause 25.2.1 (c) in respect of all other Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:

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

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

(c) The Supplier's liability in respect of any breach of its obligations under Clause 23.6 shall be limited to £17 million

25.2.2 Subject to Clauses 25.1.1 (Unlimited Liability) and 25.2.1 (Financial Limits) and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:

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

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

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

25.3 Non-recoverable Losses

25.3.1 Subject to Clause 25.1.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:

- (a) indirect, special or consequential Loss;
- (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

25.4 Recoverable Losses

25.4.1 Subject to Clause 25.2.1 (Financial Limits), and notwithstanding Clause 25.3.1 (Non-recoverable Losses), the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Services for the remainder of the Call Off Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Call Off Contract;
- (d) any compensation or interest paid to a third party by the Customer; and
- (e) any fine, penalty or costs incurred by the Customer pursuant to Law.

25.5 Miscellaneous

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

25.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 25.2.1 (Financial Limits).

26. INSURANCE

26.1 Without limitation to the generality of Clause 26.2, the Supplier shall ensure that it maintains the policy or policies of insurance as are stipulated in the Order Form.

26.2 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 29 (Insurance) of the Framework Agreement, the Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Framework Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract.

26.3 The Supplier shall effect and maintain the policy or policies of insurance referred to in Clauses 26.1 and 26.2 above for six (6) years after the Call Off Expiry Date.

26.4 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clauses 26.1 and 26.2 or a broker's verification of insurance to

demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 26.5 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under this Clause 26, the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 26.6 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 26.7 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

J. REMEDIES AND RELIEF

27. CUSTOMER REMEDIES FOR DEFAULT

27.1 Remedies

27.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising (including under Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 8.5 (Service Levels and Service Credits) and 5.4.1(b) (Delay Payments), if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:

- (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Customer's instructions;
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Call Off Contract;
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) instruct the Supplier to comply with the Rectification Plan Process;

- (ii) suspend this Call Off Contract (whereupon the relevant provisions of Clause 33 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
 - (iii) without terminating or suspending the whole of this Call Off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 33 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services;
- 27.1.2 Where the Customer exercises any of its step-in rights under Clauses 27.1.1(c)(ii) or 27.1.1(c)(iii), the Customer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

27.2 Rectification Plan Process

- 27.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 27.1.1(c)(i):
- (a) the Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.
 - (b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a root cause analysis;
 - (ii) the actual or anticipated effect of the Default; and
 - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- 27.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of Call Off Schedule 4 (Dispute Resolution Procedure).
- 27.2.3 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent recurrence of the Default; and/or

- (d) will rectify the Default but in a manner which is unacceptable to the Customer.

27.2.4 The Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.

27.2.5 If the Customer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

28. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

28.1 If the Supplier has failed to:

- 28.1.1 Achieve a Milestone by its Milestone Date;
 - 28.1.2 provide the Services in accordance with the Service Levels;
 - 28.1.3 comply with its obligations under this Call Off Contract,
- (each a "Supplier Non-Performance"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 11 (Supplier Notification of Customer Cause)):

- (a) the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (b) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 30 (Customer Termination Rights) except Clause 30.6 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
 - (ii) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;
 - (iii) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and/or
- (d) where the Supplier Non-Performance constitutes a Service Level Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits;
 - (ii) the Customer shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 9 (Critical Service Level Failure); and

- (iii) the Supplier shall be entitled to invoice for the Call Off Contract Charges for the provision of the relevant Services affected by the Customer Cause,
- (iv) in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Customer Cause.

28.2 In order to claim any of the rights and/or relief referred to in Clause 28.1, the Supplier shall:

28.2.1 comply with its obligations under Clause 11 (Notification of Customer Cause); and

28.2.2 within ten (10) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer notice (a “**Relief Notice**”) setting out details of:

- (a) the Supplier Non-Performance;
- (b) the Customer Cause and its effect on the Supplier’s ability to meet its obligations under this Call Off Contract; and
- (c) the relief claimed by the Supplier.

28.3 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief, consulting with the Supplier where necessary.

28.4 Without prejudice to Clauses 6.7 (Continuing obligation to provide the Services), if a Dispute arises as to:

28.4.1 whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or

28.4.2 the nature and/or extent of the relief claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

28.5 Any Variation that is required to the Implementation Plan or to the Call Off Contract Charges pursuant to this Clause 28 shall be implemented in accordance with the Variation Procedure.

29. FORCE MAJEURE

29.1 Subject to the remainder of this Clause 29 (and, in relation to the Supplier, subject to its compliance with its obligations in Clause B1 (Business Continuity and Disaster Recovery) where used), a Party may claim relief under this Clause 29 from liability for failure to meet its obligations under this Call Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

29.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect

on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

29.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 29 to the extent that consequences of the relevant Force Majeure Event:

29.3.1 are capable of being mitigated by any of the provision of any Services including the BCDR Services, but the Supplier has failed to do so; and/or

29.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Call Off Contract.

29.4 Subject to Clause 29.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

29.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

29.6 Where, as a result of a Force Majeure Event:

29.6.1 an Affected Party fails to perform its obligations in accordance with this Call Off Contract, then during the continuance of the Force Majeure Event:

(a) the other Party shall not be entitled to exercise any rights to terminate this Call Off Contract in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and

(b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Cause arising as a result of such failure;

29.6.2 the Supplier fails to perform its obligations in accordance with this Call Off Contract:

(a) the Customer shall not be entitled:

- (i) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 27.1.1(b) and 27.1.1(c) (Customer Remedies for Default) as a result of such failure;
- (ii) to receive Delay Payments pursuant to Clause 5.4 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
- (iii) to receive Service Credits or withhold and retain any of the Call Off Contract Charges as Compensation for Critical Service Level Failure pursuant to Clause 9 (Critical Service Level Failure) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; and

- (b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.
- 29.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract.
- 29.8 Relief from liability for the Affected Party under this Clause 29 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract and shall not be dependent on the serving of notice under Clause 29.7.

K. TERMINATION

30. CUSTOMER TERMINATION RIGHTS

30.1 Termination in Relation to Guarantee

30.1.1 Where this Call Off Contract is conditional upon the Supplier procuring a Call Off Guarantee pursuant to Clause C (Call Off Guarantee), the Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where:

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

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

- (e) the Supplier fails to provide the documentation required by Clause C.1 by the date so specified by the Customer.

30.2 Termination on Material Default

30.2.1 The Customer may terminate this Call Off Contract for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier commits a Critical Service Level Failure;
- (b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable;
- (c) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clauses 25.2.1(a) and 25.2.1(b) (Liability);

- (d) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: 5.2.3 (Implementation Plan), 6.4.2 (Services), 9.1 (Critical Service Level Failure), 10.4 (Disruption), 14.5 (Records, Audit Access and Open Book Data), 17 Promoting Tax Compliance, 23.3.9 (Confidentiality), 39.6.2 (Prevention of Fraud and Bribery), Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Call Off Schedule A3 (Staff Transfer) where applicable;
- (e) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Customer, capable of remedy; and/or
- (f) the Supplier commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer in accordance with the Rectification Plan Process;
- (g) the Call Off Contract was entered into by way of a Direct Award and such Direct Award was concluded on the basis of an Invalid Service Offer

30.2.2 For the purpose of Clause 30.2.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

30.3 Termination in Relation to Financial Standing

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

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

30.4 Termination on Insolvency

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

30.5 Termination on Change of Control

- 30.5.1 The Supplier shall notify the Customer immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
- 30.5.2 The Supplier shall ensure that any notification made pursuant to Clause 30.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 30.5.3 The Customer may terminate this Call Off Contract under Clause 30.5 by issuing a Termination Notice to the Supplier within six (6) Months of:

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

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

30.6 Termination for breach of Regulations

30.6.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

30.7 Termination Without Cause

30.7.1 The Customer shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving written notice of at least the number of days stipulated, for the purposes of this Clause 30.7.1, in section B of the Order Form.

30.8 Termination in Relation to Framework Agreement

30.8.1 The Customer may terminate this Call Off Contract by giving by issuing a Termination Notice to the Supplier if the Framework Agreement is terminated for any reason whatsoever.

30.9 Termination In Relation to Benchmarking

30.9.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in paragraphs 3 and 4 of Framework Schedule 12 (Continuous Improvement and Benchmarking).

30.10 Termination in Relation to Variation

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

30.11 Termination in relation to Tax Compliance

30.11.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier in the event that:

- a) the warranty given by the Supplier pursuant to Clause 3.2.5 is materially untrue; or
- b) the Supplier commits a material breach of its obligation to notify the Customer of any Occasion of Tax Non-Compliance as required by Clause 17; or
- c) the Supplier fails to provide details of proposed mitigating factors as required by Clause 17.1.2(a) which in the reasonable opinion of the Customer, are acceptable.

31. SUPPLIER TERMINATION RIGHTS

31.1 Termination on Customer Cause for Failure to Pay

31.1.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call Off Contract if the Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract which in aggregate exceeds an amount equal to one month's average Call Off Contract Charges (unless a different amount has been specified in the Call Off Order Form), for the purposes of this Clause 31.1.1 (the "**Undisputed Sums Limit**"), and the said undisputed sum due remains outstanding for forty (40) Working Days (the "**Undisputed Sums Time Period**") after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

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

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 16.3 (Retention and Set off).

31.1.2 The Supplier shall not suspend the supply of the Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part).

32. TERMINATION BY EITHER PARTY

32.1 Termination for continuing Force Majeure Event

32.1.1 Either Party may, by, by issuing a Termination Notice to the other Party terminate this Call Off Contract if, in accordance with Clause 29.6.1(a) (Force Majeure).

33. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

33.1 Where the Customer has the right to terminate this Call Off Contract, the Customer shall be entitled to terminate or suspend all or part of this Call Off Contract provided always that, if the Customer elects to terminate or suspend this Call Off Contract in part, the parts of this Call Off Contract not terminated or suspended can, in the Customer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Call Off Contract.

33.2 Any suspension of this Call Off Contract under Clause 33.1 shall be for such period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

33.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Call Off Contract Charges, provided that the Supplier shall not be entitled to:

33.3.1 an increase in the Call Off Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights

under Clause 30 (Customer Termination Rights) except Clause 30.6 (Termination Without Cause); and

33.3.2 reject the Variation.

34. CONSEQUENCES OF EXPIRY OR TERMINATION

34.1 Consequences of termination under Clauses 30.1 (Termination in Relation to Guarantee), 30.2 (Termination on Material Default), 30.3 (Termination in Relation to Financial Standing), 30.8 (Termination in Relation to Framework Agreement), 30.9 (Termination in Relation to Benchmarking) and 30.10 (Termination in Relation to Variation)

34.1.1 Where the Customer:

- (a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 34.1; and
- (b) then makes other arrangements for the supply of the Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period provided that Customer shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

34.2 Consequences of termination under Clauses 30.7 (Termination without Cause) and 31.1 (Termination on Customer Cause for Failure to Pay)

34.2.1 Where:

- (a) the Customer terminates (in whole or in part) this Call Off Contract under Clause 30.6 (Termination without Cause); or
- (b) the Supplier terminates this Call Off Contract pursuant to Clause 31.1 (Termination on Customer Cause for Failure to Pay),

the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 30.6 (Termination without Cause).

34.2.2 The Customer shall not be liable under Clause 34.2.1 to pay any sum which:

- (a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Supplier under this Call Off Contract, exceeds the total sum that would have been

payable to the Supplier if this Call Off Contract had not been terminated.

34.3 Consequences of termination under Clause 32.1 (Termination for Continuing Force Majeure Event)

34.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause 32.1 (Termination for Continuing Force Majeure Event).

34.4 Consequences of Termination for Any Reason

34.4.1 Save as otherwise expressly provided in this Call Off Contract:

- (a) termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 14 (Records, Audit Access & Open Book Data), 22 (Intellectual Property Rights), 23.3 (Confidentiality), 23.5 (Freedom of Information) 23.6 (Data Protection), 25 (Liability), 34 (Consequences of Expiry or Termination), 40 (Severance), 42 (Entire Agreement), 43 (Third Party Rights) 45 (Dispute Resolution) and 46 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing), Call Off Schedule 8 (Exit Management) where used, Call Off Schedule A3 (Staff Transfer) where applicable, Call Off Schedule 4 (Dispute Resolution Procedure), Call Off Schedule F (Collaboration Agreement) where used and, without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

L. MISCELLANEOUS AND GOVERNING LAW

35. COMPLIANCE

35.1 Health and Safety

35.1.1 The Supplier shall perform its obligations under this Call Off Contract (including those in relation to the Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Customer's health and safety policy (as provided to the Supplier from time to time) whilst at the Customer Premises.

35.1.2 Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Call Off Contract.

35.1.3 While on the Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Personnel and other persons working there and any instructions from the Customer on any necessary associated safety measures.

35.2 Equality and Diversity

35.2.1 The Supplier shall:

- (a) perform its obligations under this Call Off Contract (including those in relation to provision of the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - (ii) any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

35.3 Official Secrets Act and Finance Act

35.3.1 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

35.4 Environmental Requirements

35.4.1 The Supplier shall, when working on the Sites, perform its obligations under this Call Off Contract in accordance with the Environmental Policy of the Customer.

35.4.2 The Customer shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

36. ASSIGNMENT AND NOVATION

36.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Call Off Contract or any part of it without Approval.

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

36.2.1 any other Contracting Body; or

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

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

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 36.2.

- 36.3 A change in the legal status of the Customer shall not, subject to Clause 36.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.
- 36.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a private sector body in accordance with Clause 36.2.3 (the “**Transferee**” in the rest of this Clause) the right of termination of the Customer in Clause 30.4 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in Clause 30.4 (Termination on Insolvency) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee).

37. WAIVER AND CUMULATIVE REMEDIES

- 37.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 44 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Call Off Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.
- 37.2 Unless otherwise provided in this Call Off Contract, rights and remedies under this Call Off Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

38. RELATIONSHIP OF THE PARTIES

- 38.1 Except as expressly provided otherwise in this Call Off Contract, nothing in this Call Off Contract, nor any actions taken by the Parties pursuant to this Call Off Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

39. PREVENTION OF FRAUD AND BRIBERY

- 39.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Call Off Commencement Date:
- 39.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 39.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 39.2 The Supplier shall not during the Call Off Contract Period:
- 39.2.1 commit a Prohibited Act; and/or
 - 39.2.2 do or suffer anything to be done which would cause the Customer or any of the Customer’s employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

39.3 The Supplier shall during the Call Off Contract Period:

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

39.3.2 keep appropriate records of its compliance with its obligations under Clause 39.3.1 and make such records available to the Customer on request;

39.3.3 if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Call Off Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and

39.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.

39.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 39.1, or has reason to believe that it has or any of the Supplier Personnel have:

39.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

39.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

39.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call Off Contract or otherwise suspects that any person or Party directly or indirectly connected with this Call Off Contract has committed or attempted to commit a Prohibited Act.

39.5 If the Supplier makes a notification to the Customer pursuant to Clause 39.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with Clause 14 (Records, Audit Access and Open Book Data).

39.6 If the Supplier breaches Clause 39.3, the Customer may by notice:

39.6.1 require the Supplier to remove from performance of this Call Off Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or

39.6.2 immediately terminate this Call Off Contract for material Default.

39.7 Any notice served by the Customer under Clause 39.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).

40. SEVERANCE

- 40.1 If any provision of this Call Off Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Call Off Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call Off Contract shall not be affected.
- 40.2 In the event that any deemed deletion under Clause 40.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract or materially alters the balance of risks and rewards in this Call Off Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.
- 40.3 If the Parties are unable to resolve the Dispute arising under this Clause 40 within twenty (20) Working Days of the date of the notice given pursuant to Clause 40.2, this Call Off Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Contract is terminated pursuant to this Clause 40.

41. FURTHER ASSURANCES

- 41.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Call Off Contract.

42. ENTIRE AGREEMENT

- 42.1 This Call Off Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 42.2 Neither Party has been given, nor entered into this Call Off Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call Off Contract.
- 42.3 Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

43. THIRD PARTY RIGHTS

- 43.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part D of Call Off Schedule A3 (Staff Transfer) where applicable and the provisions of paragraph 9.9 of Schedule A4 (Exit Management) where used (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.]
- 43.2 Subject to Clause 43.1, a person who is not a Party to this Call Off Contract has no right under the CTRPA to enforce any term of this Call Off Contract but this

does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

- 43.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.
- 43.4 Any amendments or modifications to this Call Off Contract may be made, and any rights created under Clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

44. NOTICES

- 44.1 Except as otherwise expressly provided within this Call Off Contract, any notices sent under this Call Off Contract must be in writing. For the purpose of this Clause 44, an e-mail is accepted as being "in writing".
- 44.2 Subject to Clause 44.3, the following table sets out the method by which notices may be served under this Call Off Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 44.3 and 44.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 44.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 44.2:

- 44.3.1 any Termination Notice (Clause 30 (Customer Termination Rights));
- 44.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 33 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 37 (Waiver and Cumulative Remedies))
- (c) Default or Customer Cause; and

44.3.3 any Dispute Notice.

- 44.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 44.5 This Clause 44 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).
- 44.6 For the purposes of this Clause 44, the address and email address of each Party shall be the address and email address set out in the Order Form.

45. DISPUTE RESOLUTION

- 45.1 The Parties shall resolve Disputes arising out of or in connection with this Call Off Contract in accordance with the Dispute Resolution Procedure.
- 45.2 The Supplier shall continue to provide the Services in accordance with the terms of this Call Off Contract until a Dispute has been resolved.

46. GOVERNING LAW AND JURISDICTION

- 46.1 This Call Off Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 46.2 Subject to Clause 45 (Dispute Resolution) and Call Off Schedule 4 (Dispute Resolution Procedure) (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.

CALL OFF SCHEDULE A1: TESTING

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;

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

15. SEVERITY 1 ERROR

- 15.1 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.

16. SEVERITY 2 ERROR

- 16.1 This is an error for which, as reasonably determined by the Customer, there is no practicable workaround available, and which:
- 16.1.1 causes a Component to become unusable;
 - 16.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - 16.1.3 has an adverse impact on any other Component(s) or any other area of the Services;

17. SEVERITY 3 ERROR

- 17.1 This is an error which:
- 17.1.1 causes a Component to become unusable;
 - 17.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 17.1.3 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;

18. SEVERITY 4 ERROR

- 18.1 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

19. SEVERITY 5 ERROR

- 19.1 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.

0.

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]

CALL OFF SCHEDULE A2: KEY PERSONNEL

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.

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.

CALL OFF SCHEDULE B1: BUSINESS CONTINUITY AND DISASTER RECOVERY]

2. DEFINITIONS

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

"Business Continuity Plan"	has the meaning given to it in paragraph 3.2.1(b) of this Call Off Schedule;
"Disaster Recovery Plan"	has the meaning given to it in 3.2.1(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 7.2 of this Call Off Schedule;
"Supplier's Proposals"	has the meaning given to it in paragraph 7.2.3 of this Call Off Schedule;

3. BCDR PLAN

3.1 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:

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

3.2 The BCDR Plan shall:

3.2.1 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

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

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

- 3.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and
- 3.3.2 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.

3.4 If the Customer rejects the draft BCDR Plan:

- 3.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and
- 3.4.2 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 3.3 and 3.4 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.

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

4.1 Part A of the BCDR Plan shall:

- 4.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
 - 4.1.2 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;
 - 4.1.3 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;
 - 4.1.4 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;
 - 4.1.5 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;
 - 4.1.6 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;
 - 4.1.7 provide for documentation of processes, including business processes, and procedures;
 - 4.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Customer;
 - 4.1.9 identify the procedures for reverting to "normal service";
 - 4.1.10 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;
 - 4.1.11 identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
 - 4.1.12 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.
- 4.2 The BCDR Plan shall be designed so as to ensure that:
- 4.2.1 the Services are provided in accordance with this Call Off Contract at all times during and after the invocation of the BCDR Plan;

- 4.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
 - 4.2.3 it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
 - 4.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 4.3 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.
- 4.4 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.

5. BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

- 5.1 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:
- 5.1.1 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
 - 5.1.2 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.
- 5.2 The Business Continuity Plan shall:
- 5.2.1 address the various possible levels of failures of or disruptions to the provision of Services;
 - 5.2.2 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**”);
 - 5.2.3 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
 - 5.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

6. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

- 6.1 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.
- 6.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 6.3 The Disaster Recovery Plan shall include the following:
- 6.3.1 the technical design and build specification of the Disaster Recovery System;
 - 6.3.2 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;

6.3.3 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;

6.3.4 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;

6.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and

6.3.6 testing and management arrangements.

7. REVIEW AND AMENDMENT OF THE BCDR PLAN

7.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):

7.1.1 on a regular basis and as a minimum once every six (6) months;

7.1.2 within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and

7.1.3 where the Customer requests any additional reviews (over and above those provided for in paragraphs 7.1.1 and 7.1.2 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.

7.2 Each review of the BCDR Plan pursuant to paragraph 7.1 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:

- 7.2.1 the findings of the review;
- 7.2.2 any changes in the risk profile associated with the provision of Services; and
- 7.2.3 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.

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

- 7.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
- 7.3.2 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.

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

- 7.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and
- 7.4.2 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 7.3 and 7.4 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.

7.5 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.

8. TESTING OF THE BCDR PLAN

8.1 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 8.2 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.

8.2 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.

- 8.3 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.
- 8.4 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.
- 8.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
- 8.5.1 the outcome of the test;
 - 8.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 8.5.3 the Supplier's proposals for remedying any such failures.
- 8.6 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.
- 8.7 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.
- 8.8 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.

9. INVOCATION OF THE BCDR PLAN

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

CALL OFF SCHEDULE E - SECURITY REQUIREMENTS

- C.1. This Clause 0 shall apply if so specified in section C of the Order Form.
- C.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.
- C.3. The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- C.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.

- C.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

10. DEFINITIONS

10.1 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"	<p>means the occurrence of:</p> <ul style="list-style-type: none">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/orb) 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, <p>in either case as more particularly set out in:</p> <ul style="list-style-type: none">(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 15.1 of this Call Off Schedule E (Testing of the ISMS).

11. INTRODUCTION

- 11.1 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.
- 11.2 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.
- 11.3 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.

- 11.4 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.
- 11.5 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.
- 11.6 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.

12. ISMS

- 12.1 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:
- 12.1.1 if required by the Implementation Plan, shall have been tested in accordance with Call Off Schedule A1 (Testing); and
 - 12.1.2 shall comply with the requirements of paragraphs 12.3 to 12.5 of this Call Off Schedule E (Security).
- 12.2 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.
- 12.3 The ISMS shall:
- 12.3.1 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;
 - 12.3.2 meet the relevant standards in ISO/IEC 27001 and ISO/IEC 27002 in accordance with Paragraph 16; and
 - 12.3.3 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 16; and
 - (h) complies with the Customer's ICT policies.
 - 12.3.4 document the security incident management processes and incident response plans;

- 12.3.5 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
- 12.3.6 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).
- 12.4 Subject to Clause C.1 of this Call Off Contract (Security And Protection of Information) the references to standards, guidance and policies set out in paragraph 12.3 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.
- 12.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 12.3 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.
- 12.6 If the ISMS submitted to the Customer pursuant to paragraph 12.1 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 11 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 12.3 to 12.5 of this Call Off Schedule E shall be deemed to be reasonable.
- 12.7 Approval by the Customer of the ISMS pursuant to paragraph 12.6 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.

13. SECURITY MANAGEMENT PLAN

- 13.1 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 13 of this Call Off Schedule a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 13.2 of this Call Off Schedule E.
- 13.2 The Security Management Plan shall:
- 13.2.1 be based on the initial Security Management Plan set out in Annex 3 (Security Management Plan);
- 13.2.2 comply with the Baseline Security Requirements and Security Policy;

- 13.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Call Off Schedule E is complied with by the Supplier;
 - 13.2.4 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;
 - 13.2.5 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;
 - 13.2.6 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 13.2 of this Call Off Schedule E);
 - 13.2.7 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);
 - 13.2.8 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;
 - 13.2.9 set out the scope of the Customer System that is under the control of the Supplier;
 - 13.2.10 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
 - 13.2.11 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.
- 13.3 If the Security Management Plan submitted to the Customer pursuant to paragraph 13.1 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 13.2 of this Call Off Schedule E shall be deemed to be reasonable.

- 13.4 Approval by the Customer of the Security Management Plan pursuant to paragraph 13.3 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.

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

- 14.1 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:

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

- 14.2 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:

- 14.2.1 suggested improvements to the effectiveness of the ISMS;
- 14.2.2 updates to the risk assessments;
- 14.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
- 14.2.4 suggested improvements in measuring the effectiveness of controls.

- 14.3 Subject to paragraph 14.4 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 14.1 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.

- 14.4 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.

15. TESTING OF THE ISMS

- 15.1 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.

- 15.2 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.
- 15.3 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.
- 15.4 Where any Security Test carried out pursuant to paragraphs 15.2 or 15.3 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.
- 15.5 If any repeat Security Test carried out pursuant to paragraph 15.4 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.

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

- 16.1 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.
- 16.2 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.
- 16.3 If, as a result of any such independent audit as described in paragraph 16.2 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.

17. BREACH OF SECURITY

- 17.1 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.

17.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 17.1 of this Call Off Schedule, the Supplier shall:

17.2.1 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

17.2.2 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.

17.3 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.

18. VULNERABILITES AND CORRECTIVE ACTION

18.1 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.

18.2 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:

18.2.1 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

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

18.3 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:

18.3.1 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;

18.3.2 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

18.3.3 the Customer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.

18.4 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:

18.4.1 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

18.4.2 is agreed with the Customer in writing.

18.5 The Supplier shall:

18.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;

18.5.2 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;

18.5.3 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;

18.5.4 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 12.3.5;

18.5.5 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;

18.5.6 propose interim mitigation measures to vulnerabilities in the ICT Environment known to be exploitable where a security patch is not immediately available;

18.5.7 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

18.5.8 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.

18.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under this Paragraph 18, the Supplier shall immediately notify the Customer.

18.7 A failure to comply with Paragraph 18.3 shall constitute a Notifiable Default, and the Supplier shall comply with the Rectification Plan Process.

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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]

CALL OFF SCHEDULE 1: DEFINITIONS

1. In accordance with Clause 1 (Definitions and Interpretations) of this Call Off Contract including its recitals the following expressions shall have the following meanings:

"Achieve"	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Strategy Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "Achieved" , "Achieving" and "Achievement" shall be construed accordingly;
"Acquired Rights Directive"	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Additional Clauses"	means any of the additional Clauses from Annex 3 of Framework Schedule 4 (Alternative and Additional Clauses) selected by the Customer in the Order Form;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Alternative Clauses"	means any of the additional Clauses from Annex 3 of Framework Schedule 4 (Alternative and Additional Clauses) selected by the Customer in the Order Form;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Approved Sub-Licensee"	means any of the following: a) a Central Government Body; b) any third party providing services to a Central Government Body; and/or c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;
"Auditor"	means: a) the Customer's internal and external auditors; b) the Customer's statutory or regulatory auditors; c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office

	<p>d) HM Treasury or the Cabinet Office</p> <p>e) any party formally appointed by the Customer to carry out audit or similar review functions; and</p> <p>f) successors or assigns of any of the above;</p>								
"Authority"	means THE MINISTER FOR THE CABINET OFFICE (" Cabinet Office ") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at Rosebery Court, St Andrews Business Park, Norwich, NR7 0HS;								
"BCDR Plan"	means the plan prepared pursuant to paragraph 2 of Call Off Schedule B1 (Business Continuity and Disaster Recovery), as may be amended from time to time;								
"BCDR Services"	means the Business Continuity Services and Disaster Recovery Services;								
"Business Continuity Services"	has the meaning given to it in paragraph 4.2.2 of Call Off Schedule B1 (Business Continuity and Disaster Recovery);								
"Call Off Agreement"	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);								
"Call Off Commencement Date"	means the date of commencement of this Call Off Contract set out in the Order Form;								
"Call Off Contract"	means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Order Form and the Call Off Terms;								
"Call Off Contract Charges"	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under this Call Off Contract less any Deductions;								
"Call Off Contract Period"	<p>means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date, which shall in no event exceed the maximum durations specified below:</p> <table border="1"> <tr> <td>Lot 1</td><td>2 years</td></tr> <tr> <td>Lot 2</td><td>3 years</td></tr> <tr> <td>Lot 3</td><td>5 years</td></tr> <tr> <td>Lot 4</td><td>7 years</td></tr> </table>	Lot 1	2 years	Lot 2	3 years	Lot 3	5 years	Lot 4	7 years
Lot 1	2 years								
Lot 2	3 years								
Lot 3	5 years								
Lot 4	7 years								

"Call Off Contract Year"	means a period of twelve consecutive (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;								
"Call Off Expiry Date"	means: <ul style="list-style-type: none"> a) the end date of the Call Off Initial Period or any Call Off Extension Period; or b) if this Call Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call Off Contract; 								
"Call Off Extension Period"	<p>means the extension term of this Call Off Contract from the end date of the Call Off Initial Period to the end date of the extension period stated in the Order Form, which shall in no event exceed the maximum durations specified below:</p> <table border="1"> <tr> <td>Lot 1</td><td>N/A</td></tr> <tr> <td>Lot 2</td><td>N/A</td></tr> <tr> <td>Lot 3</td><td>N/A</td></tr> <tr> <td>Lot 4</td><td>2 years</td></tr> </table>	Lot 1	N/A	Lot 2	N/A	Lot 3	N/A	Lot 4	2 years
Lot 1	N/A								
Lot 2	N/A								
Lot 3	N/A								
Lot 4	2 years								
"Call Off Guarantee"	means a deed of guarantee that may be required under this Call Off Contract in favour of the Customer in the form set out in Framework Schedule 13 (Guarantee) granted pursuant to Clause C (Call Off Guarantee) where used;								
"Call Off Guarantor"	means the person in the event that a Call Off Guarantee is required under this Call Off Contract acceptable to the Customer to give a Call Off Guarantee;								
"Call Off Initial Period"	<p>means the initial term of this Call Off Contract from the Call Off Commencement Date to the end date of the initial term stated in the Order Form;</p> <table border="1"> <tr> <td>Lot 1</td><td>up to 2 years</td></tr> <tr> <td>Lot 2</td><td>up to 3 years</td></tr> <tr> <td>Lot 3</td><td>up to 5 years</td></tr> <tr> <td>Lot 4</td><td>5 years</td></tr> </table>	Lot 1	up to 2 years	Lot 2	up to 3 years	Lot 3	up to 5 years	Lot 4	5 years
Lot 1	up to 2 years								
Lot 2	up to 3 years								
Lot 3	up to 5 years								
Lot 4	5 years								
"Call Off Schedule"	means a schedule to this Call Off Contract;								
"Call Off Terms"	means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Services, together with the Call Off Schedules hereto;								
"Central Government Body"	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> a) Government Department; 								

	<p>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</p> <p>c) Non-Ministerial Department; or</p> <p>d) Executive Agency;</p>
"Change in Law"	means any change in Law which impacts on the supply of the Services and performance of the Call Off Terms which comes into force after the Call Off Commencement Date;
"Change of Control"	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	means the charges raised under or in connection with a Call Off Agreement from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure;
"Charging Structure"	means the structure to be used in the establishment of the charging model which is applicable to each Call Off Agreement, which structure is set out in Framework Schedule 3 (Framework Prices and Charging Structure);
"Collaboration Agreement"	means an agreement between the Customer, the Supplier and those contractors named in the Order Form, to ensure the Customer's contractors including the Supplier work collaboratively in the delivery of the Services and such other services as are provided to the Customer to ensure an efficient end to end ICT service; such agreement to be in the form set out in Call Off Schedule F (Collaboration Agreement) where used;
"Commercially Sensitive Information"	means the Confidential information listed in section D of the Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
"Compensation for Critical Service Level Failure"	has the meaning given to it in Clause 9.1.2 (Critical Service Level Failure);
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
"Continuous Improvement Plan"	means a plan for improving the provision of the Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);
"Contracting Body"	means the Authority, the Customer and any other bodies listed in paragraph VI.3 of the OJEU Notice;

"Controller"	takes the meaning given in the Data Protection Legislation.
"Conviction"	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;
"Costs"	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <ul style="list-style-type: none"> a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including: <ul style="list-style-type: none"> i) base salary paid to the Supplier Personnel; ii) employer's national insurance contributions; iii) pension contributions; iv) car allowances; v) any other contractual employment benefits; vi) staff training; vii) work place accommodation; viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and ix) reasonable recruitment costs, as agreed with the Customer; b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Customer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets; c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services; <p>but excluding:</p>

	<ul style="list-style-type: none"> a) Overhead; b) financing or similar costs; c) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Call Off Contract Period whether in relation to Supplier Assets or otherwise; d) taxation; e) fines and penalties; f) amounts payable under Clause B2 (Benchmarking) where used; and g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);
"Critical Service Level Failure"	means any instance of critical service level failure specified in section C of the Order Form;
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown Body"	means any department, office or executive agency of the Crown;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Customer"	means the customer(s) identified in the Order Form;
"Customer Assets"	means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Services;
"Customer Background IPR"	<p>means:</p> <ul style="list-style-type: none"> a) IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, processes and procedures; b) IPRs created by the Customer independently of this Call Off Contract; and/or c) Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract; <p>but excluding IPRs owned by the Customer subsisting in the Customer Software;</p>
"Customer Cause"	means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in

	connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Customer is liable to the Supplier;
"Customer Data"	<p>means:</p> <ul style="list-style-type: none"> a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which: <ul style="list-style-type: none"> i) are supplied to the Supplier by or on behalf of the Customer; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or b) any Personal Data for which the Customer is the Controller;
"Customer Premises"	means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for provision of the Services (or any of them);
"Customer Property"	means the property, other than real property and IPR, including the Customer System issued or made available to the Supplier by the Customer in connection with this Call Off Contract;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to this Call Off Contract;
"Customer Responsibilities"	means the responsibilities of the Customer set out in section C of the Order Form or agreed in writing between the Parties from time to time in connection with this Call Off Contract;
"Customer Software"	means any software identified as such in the Order Form together with all other software which is not identified as such in the Order Form but which is owned by or licensed to the Customer and which is or will be used by the Supplier for the purposes of providing the Services;
"Customer System"	means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Call Off Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the Services;
"Customer's Confidential Information"	<p>means:</p> <ul style="list-style-type: none"> a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-

	<p>How and IPR of the Customer (including all Customer Background IPR and Project Specific IPR);</p> <p>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Customer's attention or into the Customer's possession in connection with this Call Off Contract; and</p> <p>c) information derived from any of the above;</p>
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Call-Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call-Off Contract, including any Personal Data Breach.
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
"Data Protection Legislation"	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"Data Protection Officer"	takes the meaning given in the Data Protection Legislation
"Data Subject"	takes the meaning given in the Data Protection Legislation
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
"Deductions"	means all Service Credits, Delay Payments or any other deduction which the Customer is paid or is payable under this Call Off Contract;
"Default"	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;
"Defect"	<p>means any of the following:</p> <p>a) any error, damage or defect in the manufacturing of a Deliverable; or</p> <p>b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</p>

	<p>c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract; or</p> <p>d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract;</p>
"Delay"	<p>means:</p> <p>a) a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</p>
"Delay Payments"	means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
"Delay Period Limit"	shall be the number of days specified in section C of the Order Form, for the purposes of Clause 5.4.1(b)(ii);
"Deliverable"	means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan (if any) or at any other stage during the performance of this Call Off Contract;
"Delivery"	means, in respect of the Services, the time at which the Services have been provided or performed by the Supplier as confirmed by the issue by the Customer of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Call Off Contract and accepted by the Customer and "Deliver" and "Delivered" shall be construed accordingly;
"Disaster"	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable for the period specified in section C of the Order Form (for the purposes of this definition the "Disaster Period");
"Disaster Recovery Services"	means the services embodied in the processes and procedures for restoring the provision of Services following

	the occurrence of a Disaster, as detailed further in Call Off Schedule B1 (Business Continuity and Disaster Recovery);
"Disclosing Party"	has the meaning given to it in Clause 23.3.1 (Confidentiality);
"Dispute"	means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Call Off Schedule 4 (Dispute Resolution Procedure);
"Documentation"	means all documentation as: <ul style="list-style-type: none"> a) is required to be supplied by the Supplier to the Customer under this Call Off Contract; b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services; c) is required by the Supplier in order to provide the Services; and/or d) has been or shall be generated for the purpose of providing the Services;
"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"DPA 2018"	means the Data Protection Act 2018
"Due Diligence Information"	means any information supplied to the Supplier by or on behalf of the Customer prior to the Call Off Commencement Date;
"Emergency Maintenance"	means ad hoc and unplanned maintenance provided by the Supplier where:

	<ul style="list-style-type: none"> a) the Customer reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or b) the Supplier reasonably suspects that the ICT Environment or the Services, or any part the ICT Environment or the Services, has or may have developed a fault;
"Employee Liabilities"	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"> a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; b) unfair, wrongful or constructive dismissal compensation; c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; d) compensation for less favourable treatment of part-time workers or fixed term employees; e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date; f) claims whether in tort, contract or statute or otherwise; g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
"Employment Regulations"	<p>means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;</p>

"Environmental Information Regulations or EIRs"	means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Customer;
"Environmental Policy"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Estimated Year 1 Call Off Contract Charges"	means the sum in pounds estimated by the Customer to be payable by it to the Supplier as the total aggregate Call Off Contract Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year stipulated in section C of the Order Form;
"Euro Compliant"	<p>means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Customer's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):</p> <ul style="list-style-type: none"> a) be able to perform all such functions in any number of currencies and/or in Euros; b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations; c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro; d) incorporate protocols for dealing with rounding and currency conversion; e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and f) permit the input of data in euro and display an outcome in euro where such data, supporting the Customer's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

"Expedited Dispute Timetable"	means the timetable set out in paragraph 5 of Schedule 4 (Dispute Resolution Procedure);
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
"Force Majeure"	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Call Off Contract; b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of the Crown, local government or Regulatory Bodies; d) fire, flood or any disaster; and e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;
"Force Majeure Notice"	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Former Supplier"	means a supplier supplying the 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);
"Framework Agreement"	means the framework agreement between the Authority and the Supplier referred to in the Order Form;
"Framework Commencement Date"	means the date of commencement of the Framework Agreement as stated in the Call Off Schedule 1 (Definitions);

"Framework Period"	means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;
"Framework Schedule"	means a schedule to the Framework Agreement;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"Further Competition Procedure"	means the award procedure described in paragraph 2 of Framework Schedule 5 (Call Off Procedure);
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679)
"General Anti-Abuse Rule"	means (a) the legislation in Part 5 of the Finance Act 2013 and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	means Her Majesty's Revenue and Customs;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"ICT Environment"	means the Customer System and the Supplier System;
"ICT Policy"	means the Customer's ICT policy in force as at the Call Off Commencement Date (a copy of which has been provided to the Supplier at section B of the Order Form), as updated from time to time in accordance with the Variation Procedure;

"Impact Assessment"	has the meaning given to it in Clause 15.1.3 (Variation Procedure);
"Implementation Plan"	means the plan set out in section C of the Order Form;
"Information"	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
"Insolvency Event"	<p>means, in respect of the Supplier or Call Off Guarantor (as applicable):</p> <ul style="list-style-type: none"> a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or h) where the Supplier or Framework Guarantor or Call Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;
"Intellectual Property Rights" or "IPR"	means

	<ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights having equivalent or similar effect in any country or jurisdiction;
"IPR Claim"	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of its obligations under this Call Off Contract;
"Key Performance Indicators" or "KPIs"	means the performance measurements and targets in respect of the Supplier's performance of the Framework Agreement set out in Part B of Framework Schedule 2 (Services and Key Performance Indicators);
"Key Personnel"	means the individuals (if any) identified as such in section C of the Order Form;
"Key Role(s)"	has the meaning given to it in Clause A2 (Key Personnel) where used;
"Key Sub-Contract"	means each Sub-Contract with a Key Sub-Contractor;
"Key Sub-Contractor"	<p>means any Sub-Contractor:</p> <ul style="list-style-type: none"> a) listed in Framework Schedule 7 (Key Sub-Contractors); b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;

"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
"LED"	Law Enforcement Directive (Directive (EU) 2016/680)
"Licensed Software"	means all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party for the purposes of or pursuant to this Call Off Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"Maintenance Schedule"	has the meaning given to it in Clause B4 (Maintenance of the ICT Environment) where used;
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Man Day"	means 8 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Man Hours"	means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Milestone"	means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;
"Milestone Date"	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
"Milestone Payment"	means a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;

"New Release"	means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Occasion of Tax Non Compliance"	<p>means:</p> <ul style="list-style-type: none"> a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or b) any tax return of the Supplier's submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a civil penalty for fraud or evasion;
"Open Book Data"	<p>means complete and accurate financial and non-financial information which is sufficient to enable the Customer to verify the Call Off Contract Charges already paid or payable and Call Off Contract Charges forecast to be paid during the remainder of this Call Off Contract, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; b) operating expenditure relating to the provision of the Services including an analysis showing: <ul style="list-style-type: none"> i) the unit costs and any other consumables and bought-in services; ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;

	<p>iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin.</p> <p>c) Overheads;</p> <p>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;</p> <p>e) the Supplier Profit achieved over the Call Off Contract Period and on an annual basis;</p> <p>f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and</p> <p>h) the actual Costs profile for each Service Period.</p>
"Open Source Software"	means computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes;
"Operating Environment"	means the Customer System and the Sites;
"Order"	means the order for the provision of the Services placed by the Customer with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;
"Order Form"	means the form, as completed and forming part of this Call Off Contract, which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied;
"Other Supplier"	means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Overhead"	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";

"Parent Company"	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Customer or the Supplier and "Parties" shall mean both of them;
"Performance Monitoring System"	has the meaning given to it in paragraph 7.1.2 in Part B of Schedule 5 (Service Levels, Service Credits and Performance Monitoring);
"Performance Monitoring Reports"	has the meaning given to it in paragraph 9.1 of Part B of Schedule 5 (Service Level, Service Credit and Performance Monitoring);
"Personal Data"	takes the meaning given in the Data Protection Legislation.
"Personal Data Breach"	takes the meaning given in the Data Protection Legislation
"Permitted Maintenance"	has the meaning given to it in Clause B4 (Maintenance of the ICT Environment) where used;
"Processor"	takes the meaning given in the Data Protection Legislation
"Prohibited Act"	<p>means any of the following:</p> <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority or other Contracting Body or any other public body a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; c) committing any offence: <ul style="list-style-type: none"> i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act) ii) under legislation or common law concerning fraudulent acts; or iii) defrauding, attempting to defraud or conspiring to defraud the Customer; or iv) any activity, practice or conduct which would constitute one of the offences listed under (c)

	above if such activity, practice or conduct had been carried out in the UK;
"Project Specific IPR"	<p>means:</p> <ul style="list-style-type: none"> a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or b) IPR in or arising as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same; <p>but shall not include the Supplier Background IPR or the Specially Written Software;</p>
"Protective Measures"	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
"Quality Plans"	shall have the meaning given in Clause 7.2 (Standards and Quality);
"Recipient"	has the meaning given to it in Clause 23.3.1 (Confidentiality);
"Rectification Plan"	means the rectification plan pursuant to the Rectification Plan Process;
"Rectification Plan Process"	means the process set out in Clause 27.2 (Rectification Plan Process);
"Registers"	has the meaning given to in Call Off Schedule A4 (Exit Management) where used;
"Regulations"	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
"Reimbursable Expenses"	has the meaning given to it in Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing);
"Related Supplier"	means any person who provides Services to the Customer which are related to the Services from time to time;
"Relevant Conviction"	means a Conviction that is relevant to the nature of the Services to be provided or as specified by the Customer in section C of the Order Form;
"Relevant Requirements"	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Relief Notice"	has the meaning given to it in Clause 28.2.2 (Supplier Relief Due to Customer Cause);
"Replacement Services"	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the Call Off Expiry Date, whether those services are provided by the Customer internally and/or by any third party;
"Replacement Sub-Contractor"	means 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);
"Replacement Supplier"	means any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;
"Request for Information"	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
"Satisfaction Certificate"	means the certificate materially in the form of the document contained in Annex 3 to Call Off Schedule A1 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph 4 of Call Off Schedule E (Security) where used, a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 4 of Call Off Schedule E (Security) where used and as updated from time to time;
"Security Policy"	means the Customer's security policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
"Security Policy Framework"	the HMG Security Policy Framework https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf ;
"Service Credit Cap"	has the meaning given to it in Paragraph 6 of Part A of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring);

"Service Credits"	means any service credits specified in section C of the Order Form being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Failure"	means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future;
"Service Level Failure"	means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
"Service Level Performance Criteria"	has the meaning given to it in paragraph 3.2 of Part A of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring);
"Service Level Performance Measure"	shall be as set out against the relevant Service Level Performance Criterion in section C of the Order Form;
"Service Level Threshold"	shall be as set out against the relevant Service Level Performance Criterion in section C of the Order Form;
"Service Levels"	means any service levels applicable to the provision of the Services under this Call Off Contract specified in section C of the Order Form;
"Service Period"	has the meaning given to in paragraph 4.1 of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring);
"Service Transfer"	means 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"	means the date of a Service Transfer;
"Services"	means the services to be provided by the Supplier to the Customer as specified in the Order Form and those services which are deliverable by the Supplier under the Collaboration Agreement, where used;
"Sites"	means: <ul style="list-style-type: none"> a) any premises (including the Customer Premises, the Supplier's premises or third party premises): <ul style="list-style-type: none"> i) from, to or at which: <ul style="list-style-type: none"> (1) the Services are (or are to be) provided; or (2) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or ii) where: any part of the Supplier System is situated; or

	b) any physical interface with the Customer System takes place;
"Software"	means Specially Written Software, Supplier Software, Open Source Software and Third Party Software;
"Software Supporting Materials"	has the meaning given to it in Clause 22.2.1(b);
"Source Code"	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Call Off Contract;
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
"Staffing Information"	has the meaning give to it in Call Off Schedule A3 (Staff Transfer), where used;
"Standards"	<p>means any:</p> <ul style="list-style-type: none"> a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; b) standards detailed in the specification in Framework Schedule 2 (Services and Key Performance Indicators); c) standards detailed by the Customer in section B of the Order Form or agreed between the Parties from time to time; d) any relevant Government codes of practice and guidance applicable from time to time as the Supplier would reasonably and ordinarily be expected to comply with

"Sub-Contract"	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide: (a) the Services or any part thereof; or (b) facilities and/or, services necessary for the provision of the Services or any part thereof; or (c) is responsible for the management, direction or control of the provision of the Services or any part thereof;
"Sub-Contractor"	means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Sub Processor"	any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract
"Supplier"	means the person, firm or company with whom the Customer enters into this Call Off Contract as identified in the Order Form;
"Supplier Assets"	means all assets and rights used by the Supplier to provide the Services in accordance with this Call Off Contract but excluding the Customer Assets;
"Supplier Background IPR"	means a) Intellectual Property Rights owned by the Supplier before the Call Off Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or b) Intellectual Property Rights created by the Supplier independently of this Call Off Contract, but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;
"Supplier Equipment"	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Call Off Contract;
"Supplier Non-Performance"	has the meaning given to it in Clause 28.1 (Supplier Relief Due to Customer Cause);
"Supplier Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Call Off Contract;
"Supplier Profit"	means, in relation to a period or a Milestone (as the context requires), the difference between the total Call Off Charges (in nominal cash flow terms but excluding any Deductions)

	and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
"Supplier Profit Margin"	means, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Call Off Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supplier Representative"	means the representative appointed by the Supplier named in the Order Form;
"Supplier Software"	means any software which is proprietary to the Supplier (or an Affiliate of the Supplier) and identified as such in the Order Form together with all other such software which is not identified in section C of the Order Form but which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for the Customer to receive the benefit of and/or make use of the Services;
"Supplier System"	means the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer System);
"Supplier's Confidential Information"	<p>means</p> <ul style="list-style-type: none"> a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier; b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Call Off Contract; c) information derived from any of the above.
"Tender"	means the tender submitted by the Supplier to the Authority and annexed to or referred to in Framework Schedule 18;
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Call Off Contract on a specified date and setting out the grounds for termination;
"Third Party IPR"	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;

"Third Party Software"	means any software identified as such in section C of the Order Form together with all other software which is not listed in the Order Form which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which is or will be used by the Supplier for the purposes of providing the Services);
"Transferring Supplier Employees"	means those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.
"Transparency Reports"	means the information relating to the Services and performance of this Call Off Contract which the Supplier is required to provide to the Customer in accordance with the reporting requirements in Call Off Schedule 6;
"Undelivered Services"	has the meaning given to it in Clause 6.4.1 (Supply of Services);
"Undisputed Sums Time Period"	has the meaning given to it Clause 31.1.1 (Termination of Customer Cause for Failure to Pay);
"Update"	means in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
"Upgrade"	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Call Off Contract Period;
"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph 5 (Invoicing Procedure) of Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing);
"Variation"	has the meaning given to it in Clause 15.1 (Variation Procedure);
"Variation Form"	means the form set out in Call Off Schedule 5 (Variation Form);
"Variation Procedure"	means the procedure set out in Clause 15.1 (Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Worker"	means any one of the Supplier Personnel which the Customer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 0712 – Tax Arrangements of Public Appointees https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees applies in respect of the Services; and

"Working Day"	means any Day other than a Saturday or Sunday or public holiday in England and Wales.
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2.

CALL OFF SCHEDULE 2: CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING

1. DEFINITIONS

- 1.1 The following terms used in this Call Off Schedule shall have the following meaning:

"Maximum Percentage Margin Rates"	means the maximum percentage margin the Supplier may add to the Costs in relation to their Services;
"Discount Structure"	means the Supplier commitment to provide a detailed discount documented approach applicable to offering discounts under the this Call Off Contract as included at Annex 2 to Framework Schedule 3.

2. GENERAL PROVISIONS

- 2.1 This Call Off Schedule details:
- 2.1.1 the Call Off Contract Charges for the Services under this Call Off Contract; and
 - 2.1.2 the payment terms/profile for the Call Off Contract Charges;
 - 2.1.3 the invoicing procedure; and
 - 2.1.4 the procedure applicable to any adjustments of the Call Off Contract Charges.

3. CALL OFF CONTRACT CHARGES

- 3.1 The Call Off Contract Charges which are applicable to this Call Off Contract are set out in Annex 1 of this Call Off Schedule.
- 3.2 The Supplier acknowledges and agrees that:
- 3.2.1 In accordance with paragraph 2 (General Provisions) of Framework Schedule 3 (Framework Prices and Charging Structure), the Maximum Percentage Margin Rates set out in Annex 1 of Framework Schedule 3 are the maximum margin rates that the Supplier may charge pursuant to any Call Off Agreement); and
 - 3.2.2 the Discount Structure as set out in Annex 2 to Framework Schedule 3 shall be applied by the Supplier to this Call Off Contract.
- 3.3 Subject to paragraph 6 of this Call Off Schedule 2 (Adjustment of Call Off Contract Charges), the Call Off Contract Charges cannot be increased during the Call Off Contract Period.
- 3.4 For the avoidance of doubt discounts applied to the Charges pursuant to Framework Schedule 3 shall not be subject to the Variation Procedure.

4. PAYMENT TERMS/PAYMENT PROFILE

- 4.1 The payment terms/profile applicable to this Call Off Contract are set out in the Order Form.

5. INVOICING PROCEDURE

- 5.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Customer in the Order Form and in accordance with the provisions of this Call Off Contract.
- 5.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Customer may specify):
 - 5.2.1 contains:
 - (a) all appropriate references, including the unique Order reference number as instructed in the Order Form; and
 - (b) a detailed breakdown of the Delivered Services, including the Milestone(s) (if any) and Deliverable(s) within this Call Off Contract to which the Delivered Services relate, against the applicable due and payable Call Off Contract Charges; and
 - 5.2.2 shows separately:
 - (a) any Service Credits due to the Customer; and
 - (b) the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 16.2.1 of this Call Off Contract (VAT) and the tax point date relating to the rate of VAT shown; and
 - 5.2.3 is exclusive of any Management Charge (and the Supplier shall not attempt to increase the Call Off Contract Charges or otherwise recover from the Customer as a surcharge the Management Charge levied on it by the Authority); and
 - 5.2.4 it is supported by any other documentation reasonably required by the Customer to substantiate that the invoice is a Valid Invoice.
- 5.3 The Supplier shall accept the Government Procurement Card as a means of payment for the Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.
- 5.4 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Call Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- 5.5 The Supplier shall submit invoices directly to the invoicing address specified in the Order Form.

6. ADJUSTMENT OF CALL OFF CONTRACT CHARGES

- 6.1 The Call Off Contract Charges shall only be varied:
 - 6.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Call Off Contract Charges in accordance with Clause 15.2 of this Call Off Contract (Legislative Change);
 - 6.1.2 where all or part of the Call Off Contract Charges are reduced as a result of a review of the Call Off Contract Charges in accordance with Clause B2.7 of this Call Off Contract (Continuous Improvement) where used;

- 6.1.3 where all or part of the Call Off Contract Charges are reduced as a result of a review of Call Off Contract Charges in accordance with Clause and/or Clause B2 of this Call Off Contract (Benchmarking) where used;
- 6.1.4 where all or part of the Call Off Contract Charges are reviewed and reduced in accordance with paragraph 7 of this Call Off Schedule;
- 6.1.5 where a review and increase of Call Off Contract Charges is requested by the Supplier and Approved, in accordance with the provisions of Clause B5 of this Call Off Contract; or
- 6.1.6 where Call Off Contract Charges or any component amounts or sums thereof are expressed in this Call Off Schedule as "subject to increase by way of Indexation", in accordance with the provisions in Clause B6 of this Call Off Contract.

For the avoidance of doubt discounts applied to the Charges pursuant to this Framework Schedule 3 shall not be subject to the Variation Procedure.

- 6.2 Subject to paragraphs 6.1.1 to 6.1.4 of this Call Off Schedule, the Call Off Contract Charges will remain fixed for the first three (3) Call Off Contract Years.

7. SUPPLIER PERIODIC ASSESSMENT OF CALL OFF CONTRACT CHARGES

- 7.1 Every six (6) Months during the Call Off Contract Period, the Supplier shall assess the level of the Call Off Contract Charges to consider whether it is able to reduce them.
- 7.2 Such assessments by the Supplier under paragraph 7 of this Call Off Schedule shall be carried out on 1 May and 1 December in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Call Off Contract Charges it shall promptly notify the Customer in writing and such reduction shall be implemented in accordance with paragraph 8.1.5 of this Call Off Schedule below.

8. IMPLEMENTATION OF ADJUSTED CALL OFF CONTRACT CHARGES

- 8.1 Variations in accordance with the provisions of this Call Off Schedule to all or part the Call Off Contract Charges (as the case may be) shall be made by the Customer to take effect:
 - 8.1.1 in accordance with Clause 15.2 of this Call Off Contract (Legislative Change) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.1.1 of this Call Off Schedule;
 - 8.1.2 in accordance with Clause 16.1.1 of this Call Off Contract (Call Off Contract Charges and Payment) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.1.2 of this Call Off Schedule;
 - 8.1.3 in accordance with Clause B2.7 of this Call Off Contract (Continuous Improvement) where used, where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.1.2 of this Call Off Schedule;

- 8.1.4 in accordance with Clause B2 of this Call Off Contract (Benchmarking) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.1.3 of this Call Off Schedule; or
- 8.1.5 on 1 June for assessments made on 1 May and on 1 January for assessments made on 1 December where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.1.4 of this Call Off Schedule; or
- 8.1.6 on the Review Adjustment Date where an adjustment to the Call Off Contract Charges is made in accordance with Clause B5 of this Call Off Contract, where used; or
- 8.1.7 on the Indexation Adjustment Date where an adjustment to the Call Off Contract Charges is made in accordance with Clause B6 of this Call Off Contract, where used;

and the Parties shall amend the Call Off Contract Charges shown in the Order Form to reflect such variations.

CALL OFF SCHEDULE 3: SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING

1. SCOPE

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

PART A: SERVICE LEVELS AND SERVICE CREDITS

1. GENERAL PROVISIONS

- 1.1 The Supplier shall provide a proactive Call Off Contract manager to ensure that all Service Levels in this Call Off Contract and Key Performance Indicators in the Framework Agreement are achieved to the highest standard throughout, respectively, the Call Off Contract Period and the Framework Period.
- 1.2 The Supplier shall provide a managed service through the provision of a dedicated Call Off Contract manager where required on matters relating to:
 - 1.2.1 Supply performance;
 - 1.2.2 Quality of Services;
 - 1.2.3 Customer support;
 - 1.2.4 Complaints handling; and
 - 1.2.5 Accurate and timely invoices.
- 1.3 The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table at section C of the Order Form will result in Service Credits becoming due to the Customer.

2. PRINCIPAL POINTS

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

3. SERVICE LEVELS

- 3.1 Section C in the Order Form sets out the Service Levels the performance of which the Parties have agreed to measure.
- 3.2 The Supplier shall monitor its performance of this Call Off Contract by reference to the relevant performance criteria for achieving the Service Levels shown in section C of the Order Form (the "**Service Level Performance Criteria**") and shall send the Customer a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Call Off Schedule 3.
- 3.3 The Supplier shall, at all times, provide the Services in such a manner that the Service Levels Performance Measures are achieved.
- 3.4 If the level of performance of the Supplier of any element of the provision by it of the Services during the Call Off Contract Period:
 - 3.4.1 is likely to or fails to meet any Service Level Performance Measure or
 - 3.4.2 is likely to cause or causes a Critical Service Failure to occur,

the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under Clause 8 of this Call Off Contract (Service Levels and Service Credits), may:

- (a) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and
- (b) if the action taken under paragraph (a) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Customer shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or
- (c) if a Service Level Failure has occurred, deduct from the Call Off Contract Charges the applicable Service Level Credits payable by the Supplier to the Customer in accordance with the calculation formula set out in section C of the Order Form; or
- (d) if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause 9 of this Call Off Contract (Critical Service Level Failure) (including subject, for the avoidance of doubt, the proviso in Clause 9.1.2 of this Call Off Contract in relation to Material Breach).

3.5 Approval and implementation by the Customer of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Customer.

4. SERVICE CREDITS

- 4.1 Section C in the Order Form sets out the formula used to calculate a Service Credit payable to the Customer as a result of a Service Level Failure in a given service period which, for the purpose of this Call Off Schedule, shall be a recurrent period of one (1) Month during the Call Off Contract Period (the “**Service Period**”).
- 4.2 Section C in the Order Form includes details of each Service Credit available to each Service Level Performance Criterion if the applicable Service Level Performance Measure is not met by the Supplier.
- 4.3 The Customer shall use the Performance Monitoring Reports supplied by the Supplier under Part B (Performance Monitoring) of this Call Off Schedule to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
- 4.4 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in section C of the Order Form.

5. NATURE OF SERVICE CREDITS

- 5.1 The Supplier confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Call Off Contract Charges. Both

Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

6. SERVICE CREDIT CAP

- 6.1 For the purposes of this Call Off Contract the **Service Credit Cap** shall be as specified in section C of the Order Form.

PART B: PERFORMANCE MONITORING

7. PRINCIPAL POINTS

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

8. REPORTING OF SERVICE FAILURES

- 8.1 The Supplier shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Customer in accordance with the processes agreed in paragraph 7.2 of Part B of this Call Off Schedule above.

9. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

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

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

10. SATISFACTION SURVEYS

- 10.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 10.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Call Off Contract.
- 10.3 All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to Clause B2.7 of this Call Off Contract (Continuous Improvement) where used.

CALL OFF SCHEDULE 4: DISPUTE RESOLUTION PROCEDURE DEFINITIONS

1.

1.1 In this Call Off Schedule 4, the following definitions shall apply:

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Counter Notice"	has the meaning given to it in paragraph 6.2 of this Call Off Schedule;
"Exception"	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Services;
"Expert"	the person appointed by the Parties in accordance with paragraph 5.2 of this Call Off Schedule 4;
"Mediation Notice"	has the meaning given to it in paragraph 3.2 of this Call Off Schedule; and
"Mediator"	the independent third party appointed in accordance with paragraph 4.2 of this Call Off Schedule 4.

2. INTRODUCTION

2.1 If a Dispute arises then:

2.1.1 the representative of the Customer and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

2.2.1 the material particulars of the Dispute;

2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen;

2.2.3 the names and contact details of the Parties' respective escalation points; and

2.2.4 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this Call Off Schedule, the reason why.

2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Call Off Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

2.4 Subject to paragraph 3.2 of this Call Off Schedule, the Parties shall seek to resolve Disputes:

2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Call Off Schedule);

2.4.2 then by mediation (as prescribed in paragraph 4 of this Call Off Schedule); and

- 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Call Off Schedule) or litigation (in accordance with Clause 46 of this Call Off Contract (Governing Law and Jurisdiction)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Call Off Schedule) where specified under the provisions of this Call Off Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Call Off Schedule.
- 2.6 In exceptional circumstances where the use of the times in this Call Off Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
 - 2.7.1 in paragraph 3.2.3, ten (10) Working Days;
 - 2.7.2 in paragraph 4.2, ten (10) Working Days;
 - 2.7.3 in paragraph 5.2, five (5) Working Days; and
 - 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

- 3.1 Following the service of a Dispute Notice, the Customer and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Parties' respective escalation points as nominated in the Dispute Notice in accordance with paragraph 2.2.3.
- 3.2 If:
 - 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
 - 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Call Off Schedule; or
 - 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Call Off Schedule within thirty (30) Working Days of service of the Dispute Notice either Party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with paragraph 4 of this Call Off Schedule.

4. MEDIATION

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to

be incorporated by reference into this Call Off Contract.

- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

5. EXPERT DETERMINATION

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to an ICT technical, financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).
- 5.3 The Expert shall act on the following basis:
 - 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - 5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
 - 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
 - 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
 - ~~5.3.5~~ 5.3.5 the process shall be conducted in private and shall be confidential; and the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6. ARBITRATION

- 6.1 The Customer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Call Off Schedule.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve

written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 46 of this Call Off Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

6.3 If:

- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Call Off Schedule shall apply;
- 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 61 of this Call Off Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
- 6.3.3 the Customer does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Call Off Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Call Off Schedule or commence court proceedings in the courts in accordance with Clause 46 of this Call Off Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Call Off Schedule, the Parties hereby confirm that:

- 6.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to paragraphs 6.4.5 to 6.4.7 of this Call Off Schedule);
- 6.4.2 the arbitration shall be administered by the LCIA;
- 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- ~~6.4.4~~ 6.4.5 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA; the chair of the arbitral tribunal shall be British;
- 6.4.6 the arbitration proceedings shall take place in London and in the English language; and
- 6.4.7 the seat of the arbitration shall be London.

7. URGENT RELIEF

- 7.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
 - 7.1.1 for interim or interlocutory remedies in relation to this Call Off Contract or infringement by the other Party of that Party’s Intellectual Property

Rights; and/or

- 7.1.2 where compliance with paragraph 2.1 of this Call Off Schedule and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

CALL OFF SCHEDULE 5: VARIATION FORM

No of Order Form being varied:

.....

Variation Form No:

.....

BETWEEN:

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

and

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

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

[Guidance Note: Insert details of the Variation]

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

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

.....


CALL OFF SCHEDULE 6: TRANSPARENCY REPORTS

- 1.1 Within three (3) months from the Call Off Commencement Date or the date so specified by the Customer in the Order Form the Supplier shall provide to the Customer for Approval (the Customer's decision to approve or not shall not be unreasonably withheld or delayed) draft Transparency Reports consistent with the content and format requirements specified in section C of the Order Form.
- 1.2 If the Customer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for Approval by the Customer within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Customer. If the Parties fail to agree on a draft Transparency Report the Customer shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Customer at the frequency referred to in Section C of the Order Form.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements in this Call Off Schedule 6 are in addition to any other reporting requirements in this Call Off Contract.

CALL OFF SCHEDULE 7: SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS

Description	Details
Subject matter of the processing	<p>There will be no storing of live or personal data.</p> <p>The Supplier will be tasked with accessing 'Live' data in some instances, during the course of this call of contract. This access to 'Live' data will be granted and accessed via a portal, of which permissions will be granted where necessary and revoked once the piece of work has been completed.</p> <p>The Supplier has assured the Buyer that they are compliant with GDPR legislation and has implemented GDPR and Data Handling training across all Supplier Staff which is mandatory and measured.</p>
Duration of the processing	Full term of the Call Off contract
Nature and purposes of the processing	The Supplier will be limited to 'view' access to 'Live' systems only.
Type of Personal Data	The data may include, but not be name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.
Categories of Data Subject	The data will be relevant to the Technical Capabilities Services within the HMCTS Future Hearings Programme.
Plan for return or destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The Supplier will not retain any data. The Supplier will have view access only.

APPENDIX ONE - FURTHER INFORMATION

Customer Further Competition Document	 FH_Tech_Capabilitie s_Invitation_To_Tenc
Supplier Response	
Supplier Pricing Response	