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## Part 1 – DFFS/5080 Order Form

### SECTION A

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This Order Form is issued in accordance with the provisions of the Framework Agreement (RM1013). The Supplier agrees to supply the Goods and/or Services specified in Call Off Schedule 8 on and subject to the terms of this Call Off Contract and for the avoidance of doubt this Call Off Contract consists of the terms set out in this Order Form and the Call Off Terms, together with the Call Off Schedules thereto.

**Date:** 14<sup>th</sup> October 2015

**Order Number:** DFFS/5080

**FROM: "Customer"**

Ministry of Defence, Elm 2C, #4233, MOD Abbey Wood, Bristol, BS34 8JH

**TO: "Supplier"**

Highland Fuels Limited

### SECTION B

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#### 1. TERM

1.1 Call Off Commencement Date: 1 December 2015

1.2 Call Off Expiry Date: 30 November 2017

#### 2. CUSTOMER CORE CONTRACTUAL REQUIREMENTS

##### 2.1 Goods and/or Services required

2.1.1 The Supplier shall deliver the following products:

2.1.1.1 Ultra Low Sulphur Diesel (ULSD). ULSD is to be supplied to BS EN 590 (latest issue)

2.1.1.2 Ultra Low Sulphur Petrol (ULSP). ULSP is to be supplied to BS EN 228 (latest issue).

2.1.2 The indicative annual volume requirements are listed at Call Off Schedule 8. These volumes are only an estimate of the annual requirement. The Customer shall not be bound to order any quantities, to receive quantities other than those already demanded, or to pay for quantities other than those accepted by the Demanding Officer. The Customer may add additional sites to the call off contract by written notification from the Authority.

2.1.3 The product to be supplied under this contract shall comply in all respects with the specification listed in Clause 2.1.1 of this order form.

2.1.4 In the event of the specification of the fuel being changed during the period of the contract, the Supplier shall supply fuel to the new specification by the implementation date published on the latest edition of the associated British Standard fuel specification. The supplier should, on a best endeavours basis, implement any amendment earlier if possible.

2.1.5.3. Any alternative product offered by the Supplier must be approved by the Customer's Defence Fuels and Food Services Fuel Technical Support Manager.

## **SECTION C**

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### **3. CUSTOMER OTHER CONTRACTUAL REQUIREMENTS**

#### **3.1 Call Off Guarantor**

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### **4. ADDITIONAL AND/OR ALTERNATIVE CLAUSES**

#### **4.1 Alternative and/or Additional Clauses**

4.1.1 Call Off Schedule 11 specifies the additional Clauses requested by the Ministry of Defence as Customer that shall apply to this Call Off Contract.

### **FORMATION OF CALL OFF CONTRACT**

4.2 BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter a Call Off Contract with the Customer to provide the Goods and/or Services.

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

4.4 In accordance with paragraph 6.3 of Framework Schedule 5 (Call Off Procedure), the Parties hereby acknowledge and agree that this Call Off Contract shall be formed when the Customer acknowledges the receipt of the signed copy of the Order Form from the Supplier within two (2) Working Days from receipt (the "Call Off Effective Date").

4.5 This Call Off Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

4.6 Transmission of the executed signature page of a counterpart of this agreement by (a) fax or (b) e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this

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agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

**For and on behalf of the Supplier:**

Name and Title	
Signature	
Date	

**For and on behalf of the Customer:**

Name and Title	Lorna Callun DES Commodities Comrci Fuel SCM
Signature	
Date	14 <sup>th</sup> October 2015

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**Part 2 – DFFS/5080 Call Off Terms**

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**A. GENERAL PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

The definitions set out in the Glossary to the Call Off Form and the Call Off Terms shall apply in relation to this Call Off Contract unless the context otherwise requires.

**1.2. Interpretation**

The interpretation and construction of this Call Off Contract shall be subject to the following provisions:

1.2.1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.2.2. words importing the masculine include the feminine and the neuter;

1.2.3. the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;

1.2.4. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

1.2.5. the Call Off Schedules form part of this Call Off Contract and shall have effect as if set out in full in the body of this Call Off Contract. Any reference to this Call Off Contract includes the Glossary to the Call Off Form and the Call Off Terms and the Call Off Schedules;

1.2.6. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

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

1.2.8. references to "Clauses" and "Schedules" are, unless otherwise provided, references to the Clauses of and Schedules (the "Call Off Schedules") to the Call Off Terms of this Call Off Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the

Call Off Schedule in which the references are made. References to "Contract" are, unless otherwise provided, references to this Call Off Contract;

- 1.2.9. terms or expressions contained in this Call Off Contract which are capitalised but which do not have an interpretation in the Glossary to the Call Off Form and Call Off Terms or, if not that Glossary, in the Glossary to the Framework Agreement shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;
- 1.2.10. reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.11. in the event of and only to the extent of any conflict between a Purchase Order, 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:
  - 1.2.11.1. the Framework Agreement except Framework Schedule 14 (Tender);
  - 1.2.11.2. the Purchase Order;
  - 1.2.11.3. the Order Form;
  - 1.2.11.4. the Call Off Terms, except Call Off Schedule 3 (Supplier's Call Off Solution);
  - 1.2.11.5. Call Off Schedule 3 (Supplier's Call Off Solution);
  - 1.2.11.6. Framework Schedule 14 (Tender).
- 1.2.12. For the avoidance of doubt, Clause 1.2.11 of the Framework Agreement applies so that any permitted changes by the Customer to the Template Call Off Terms and the Template Call Off Form under the Framework Agreement prior to the Parties entering this Call Off Contract shall not constitute any conflict with the provisions of the Framework Agreement.

## **2. DUE DILIGENCE**

- 2.1. The Supplier acknowledges that it:
  - 2.1.1. has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
  - 2.1.2. has raised all relevant due diligence questions with the Customer before the Call Off Commencement Date; and

2.1.3. has entered into this Call Off Contract in reliance on its own due diligence alone.

**3. CALL OFF GUARANTEE**

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**4. CALL OFF CONTRACT PERIOD**

4.1. This Call Off Contract shall take effect on the Call Off Commencement Date and shall expire on the Call Off Expiry Date specified in the Order Form unless terminated (or partially terminated in respect of the terminated part only) earlier pursuant to Clause 38 (Termination Events).

**5. WARRANTIES AND REPRESENTATIONS**

5.1. The Supplier warrants, represents and undertakes to the Customer that:

5.1.1. it has full capacity and authority and all necessary consents, licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under this Call Off Contract;

5.1.2. this Call Off Contract is executed by a duly authorised representative of the Supplier;

5.1.3. in entering this Call Off Contract it has not committed any Fraud;

5.1.4. in entering this Call Off Contract it has not committed or agreed to commit a Prohibited Act including any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;

5.1.5. in entering this Call Off Contract it has no knowledge, that:

5.1.5.1. in connection with it, any money or other inducement has been, or will be, paid to any person working for or engaged by the Customer or other Contracting Body or any other public body or any person engaged or employed by or on behalf of the Customer in connection with this Call Off Contract; and

5.1.5.2. an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and the Authority before execution of this Call Off Contract;

- 5.1.6. this Call Off Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
  - 5.1.7. as at the Call Off Commencement Date, all information, statements and representations contained in the Tender for the Goods and/or Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Call Off Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the Tender shall be deemed repeated in this Call Off Contract;
  - 5.1.8. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under this Call Off Contract;
  - 5.1.9. it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under this Call Off Contract;
  - 5.1.10. 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;
  - 5.1.11. it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Call Off Contract and shall maintain the same in full force and effect.
- 5.2. The Supplier also warrants, represents and undertakes to the Customer that:
- 5.2.1. in the three (3) years prior to the Call Off Commencement Date (or from when the Supplier was formed if in existence for less than three (3) years prior to the Call Off Commencement Date):
    - 5.2.1.1. it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and
    - 5.2.1.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

- 5.2.1.3. it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Call Off Contract; and
    - 5.2.1.4. for the Call Off Contract Period that all Staff will be vetted in accordance with the Staff Vetting Procedures and Good Industry Practice;
  - 5.2.2. It shall at all times during this Call Off Contract comply with its obligations in Clause 14 (Standards and Quality).
- 5.3. 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 Breach.
- 5.4. The Supplier acknowledges and agrees that:
  - 5.4.1. the warranties, representations and undertakings contained in this Call Off Contract are material and are designed to induce the Customer into entering into it; and
  - 5.4.2. the Customer has been induced into entering into this Call Off Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

## **6. PURCHASING PROCEDURE**

- 6.1. Where the Customer intends to place individual Purchase Orders under this Call Off Contract from time to time, the Customer, following consultation with the Supplier, shall specify the procedure for repeat ordering of Goods and/or Services under this Call Off Contract (in a separate Call Off Schedule if necessary), which shall include as a minimum the following:
  - 6.1.1. The Demanding Officer shall place orders directly with the Supplier, giving a minimum of 3-working days notice.
  - 6.1.2. Deliveries under this Agreement shall be made only against orders that quote a Bulk Fuel Inventory System (BFIS)/ Ground Fuel Management System (GFMS) purchase order number.
  - 6.1.3. The Contractor shall provide the Customer with a unique reference number (Ship to Number) each time an order is placed by the Demanding Officer.
  - 6.1.4. The Contractor shall confirm delivery times with the Demanding Officer prior to any delivery being made, within a minimum of 24 hours prior to the time of delivery.

- 6.2. The Customer may at any time up to 24 hours prior to despatch of the Goods and/or Services amend or cancel a Purchase Order by written notice to the Supplier (inclusive of email and fax communications).
- 6.3. If the Supplier receives the written notice in accordance with clause 6.2 at any time up to 24 hours prior to despatch of the Purchase Order, the Supplier shall not be entitled to recovery any costs from the Customer in relation to any amendment or cancellation of a Purchase Order.
- 6.4. If the Customer amends or cancels the Purchase Order within 24 hours prior to despatch of the Purchase Order, the Supplier shall be entitled to reimbursement of its reasonably incurred costs provided that it mitigates such costs and provides evidence of them to the Customer.
- 6.5. Where the amendment or cancellation of a Purchase Order is directly or indirectly due to the Supplier's failure to comply with its obligations under this Call Off Contract, the Customer shall have no liability to the Supplier in respect of it.
- 6.6. For the avoidance of doubt, where the amendment or cancellation of a Purchase Order is directly or indirectly due to the Supplier's failure to comply with its obligations under this Call Off Contract, the Customer shall have no liability to the Supplier in respect of it.
- 6.7. For the avoidance of doubt, a Purchase Order shall be carried out in accordance with the provisions of this Call Off Contract and the Parties agree that any purchase order not carried out in this way shall not constitute a valid Purchase Order.

## **7. SUPPLY OF SERVICES**

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## **8. SUPPLY OF GOODS**

### **8.1. Provision of the Goods**

- 8.1.1. The Supplier shall provide the Goods in accordance with the Order, Implementation Plan and Milestones (if any) and any other requirements (including any Installation Works) of the Customer as set out in the Order Form and obligations of Supplier in this Call Off Contract.
- 8.1.2. The Supplier shall ensure that the Goods are fully compatible with any Customer's equipment described in the Order Form.
- 8.1.3. The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Goods and the performance of its obligations under this Call off Contract.

### **8.2. Time of Delivery of the Goods**

- 8.2.1. The Supplier shall provide the Goods on the date(s) and times(s) specified in the Order Form and the Milestone Dates (if any) or the Purchase Order.
- 8.2.2. Deliveries shall predominantly be made into the Customer's Mechanical Transport Fuel Installations (MTFIs) located at the Units listed in Call Off Schedule 8. There may be an ad hoc requirement for deliveries to non-listed locations for exercise and operational activities. These are to be agreed in advance between the customer and supplier.
- 8.2.3. Subject to prior arrangement between the Customer and Supplier, deliveries may also be made to the Customer's Bulk Fuel Carrying Vehicles (BFCVs). The Supplier's BFCVs are required to connect via standard 4" API and 3" dry break couplings. Each BFCV will be manned by trained personnel and equipped with all necessary couplings, adapters and spill prevention kits.
- 8.2.4. In order to support the operational needs of Military Exercises, the supplier may be required to deliver to a unit and/or location not listed in their call off contract.
- 8.2.5. In the event of significant additional requirement (including but not limited to, military exercises and industrial action) suppliers must allow the Customer's close supplier takers (CSTs) to collect fuel directly from the Supplier's depot provided that the appropriate risk assessments are carried out.
- 8.2.6. The delivery date shall be:
  - 8.2.6.1. a **maximum** of three (3) working days from the date of the order: or
  - 8.2.6.2. as agreed between the Customer and Supplier
- 8.2.7. Subject to Clause 8.3.7 where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle and transferred into the Customer's storage tank at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
- 8.2.8. If so specified by the Customer in the Order Form or Purchase Order, time of delivery in relation to the provision of the Goods (including any Installation Works) shall be of the essence and if the Supplier fails to Deliver the Goods at the time or within the time period specified in accordance with Clause 8.2.1 (and without prior Approval) the Customer may release itself from any obligation to accept and pay for the Goods and/or be entitled to terminate this Call Off Contract for Material Breach, in either case without prejudice to any

other rights and remedies of the Customer under this Call Off Contract or at Law.

**8.3. Manner of Delivery of the Goods**

- 8.3.1. Except where otherwise provided in this Call Off Contract, the Goods shall be delivered by the Supplier to the Customer at the Premises.
- 8.3.2. The Goods shall be packed, stored, handled, delivered and marked in a proper manner and in accordance with Good Industry Practice, any applicable Standards, and the Customer's instructions as set out in the Order Form or Purchase Order and any Law. In particular, the Goods shall be marked with the order number and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- 8.3.3. The Supplier shall provide together with the Goods all relevant documentation and information required to be provided under any Laws.
- 8.3.4. Where the Supplier supplies the Goods in drums, barrels or other containers, the Supplier shall ensure that the barrels, drums or other containers will be of satisfactory quality, fit for their purpose and comply with the Law, any applicable Standards and any other standards.
- 8.3.5. On dispatch of any consignment of the Goods the Supplier shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the number of packages, their weight and volume together with the all other relevant documentation and information required to be provided under any Laws.
- 8.3.6. The Customer may inspect and examine the manner in which the Supplier supplies the Goods at the Premises and, if the Premises are not the Customer's Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.
- 8.3.7. Except where otherwise provided in this Call Off Contract, Delivery shall include the unloading, transfer and, where the Customer has specified any Installation Works in the Order Form, installation of the Goods by the Staff at the Premises or at such place as the Customer or Customer's duly authorised person shall reasonably direct.

**8.4. Assessment of quantity and quality of the Goods**

- 8.4.1. If requested by the Customer prior to Delivery, the Supplier shall provide the Customer (or another person acting on behalf of the Customer) with a sample or samples



of Goods for evaluation and Approval, at the Supplier's cost and expense.

8.4.2. The quantity of Goods delivered shall be measured at the time of delivery, and be the number of SI litres delivered into the Customer's tank. Volumes will be adjusted to a temperature of 15 degrees Celsius.

8.4.3. The Customer shall have the right to verify the quantity of Goods recorded as having been delivered and to check the accuracy of any equipment provided by the Supplier for measurement of the quantities delivered. Any dispute regarding the measurement of the quantity provided shall be referred to the Dispute Resolution Procedure in accordance with Clause 63.

8.4.4. All calibrations, measurements and taking of samples shall be carried out in accordance with the Law and Good Industry Practice.

8.4.5. On reasonable notice, the Supplier shall allow the Customer to take samples of the Goods at the Premises to test the quality of the Goods being supplied by the Supplier. If the sample taken does not comply with the Standards for such Goods, the Supplier shall indemnify the Customer for the losses, expenses, costs ("Losses") incurred including without limit the Losses suffered or incurred in conducting such tests, replacing the Goods which are not compliant with the Standards and for the cleaning of any affected storage tank.

8.4.6. If there is any disagreement as to the quality of the Goods supplied to the Customer, the Customer and the Supplier shall accept the results of an agreed independent laboratory (and follow the Dispute Resolution Procedure of the identity of the independent laboratory cannot be agreed).

## **8.5. Spillage and contamination of the Goods**

8.5.1. For deliveries of bulk products to Units, it shall be the responsibility of the Demanding Unit to ensure that the storage into which the fuel is to be delivered shall safely receive the full quantity ordered, and the connecting hose is properly and securely connected to the fuelling point of the said storage. The Customer accepts responsibility for dealing with any loss, leakage or contamination that may occur from the point at which the Suppliers hose connects to the Customer's coupling.

8.5.2. The Customer is required to have adequate emergency procedures and to provide immediate assistance to the Supplier or its Supplier in the event of a spill of product upon delivery. If an escape, spillage or discharge of fuel (hereinafter referred to as a 'spill') occurs during a delivery to

the Customer, the Customer will promptly take such action as is deemed necessary to remove the spill and mitigate its effects.

8.5.3. In the event of loss or contamination of the Goods at the time of delivery, responsibility for such loss or contamination and for any costs incurred in cleaning up any spillage of the Goods shall be as follows:

8.5.3.1. where loss or contamination of the Goods has occurred as a result of defects in the equipment provided by the Supplier (including, without limitation, the delivery vehicles, hoses and hose connections) the Supplier shall be responsible for such loss or contamination;

8.5.3.2. where loss or contamination of the Goods has occurred as a result of defects in the equipment provided by the Customer (including, without limitation, tank gauges and couplings) the Customer shall be responsible for such loss or contamination;

8.5.3.3. where loss or contamination of the Goods has occurred as a result of any act, omission or default of the Supplier or any of the Staff, the Supplier shall be responsible for any such loss or contamination.

8.5.3.4. If both parties have acted negligently, any expenses or other such loss or damage, shall be divided between the parties in accordance with the respective degree of negligence

## 8.6. Undelivered Goods

8.6.1. In the event that not all of the Goods are Delivered in accordance with Clause 8.1 ("**Undelivered Goods**") then at its discretion:

8.6.1.1. the Customer may, (provided that the Customer has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of the notified date of delivery, give notice to the Supplier that the Goods have not been Delivered and may notify the Supplier that the Supplier should deliver free of charge substitute Goods within the timescales specified by the Customer; and/or

8.6.1.2. deem the failure to comply with Clause 8.1 and meet the relevant Milestone Date (if any) to be a Material Breach.

- 8.6.2. The right of the Customer under Clause 8.6.1.2 shall be without prejudice to any other rights and remedies that the Customer has under this Call Off Contract and at Law.

**8.7. Over-Delivered Goods**

- 8.7.1. The Customer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity specified in the Order Form or Purchase Order ("**Over-delivered Goods**"). If the Customer elects not to accept such Over-delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such over-delivery (including but not limited to the costs of moving and storing the Over-delivered Goods), failing which the Customer may dispose of such Over-delivered Goods and charge the Supplier for the costs of such disposal. The risk in any Over-delivered Goods shall remain with the Supplier.

- 8.7.2. The right of the Customer under Clause 8.7.1 shall be without prejudice to any other rights and remedies that the Customer has under this Call Off Contract and at Law.

**8.8. Delivery of the Goods by Instalments**

- 8.8.1. Unless expressly agreed to the contrary, the Customer shall not be obliged to accept delivery of the Goods by instalments. If, however, the Customer does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its Delivery shall, without prejudice to any other rights or remedies of the Customer under this Call Off Contract and at Law, entitle the Customer to terminate the whole or any unfulfilled part of this Call Off Contract for Material Breach without further liability to the Customer.

**8.9. Title and Risk in relation to the Goods**

- 8.9.1. Subject to paragraph 9 of Call Off Schedule 9 (SMR and SMI), title to the Goods shall, without prejudice to any other rights or remedies of the Customer, pass to the Customer on the earlier of payment by the Customer of the Call Off Contract Charges or Delivery of the Goods into the Customer's tank.

- 8.9.2. Subject to paragraph 9 of Call Off Schedule 9 (SMR and SMI), risk in the Goods shall, without prejudice to any other rights or remedies of the Customer, pass to the Customer at the time of acceptance of Delivery.

**8.10. Responsibility for Damage to or Loss of the Goods**

- 8.10.1. Without prejudice to the Supplier's other obligations to provide the Goods in accordance with this Call Off Contract,

the Supplier accepts responsibility for all damage to or loss of the Goods if:

8.10.1.1. the same is notified in writing to the Supplier within three (3) Working Days of receipt and inspection of the Goods by the Customer; and

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

8.10.2. Where the Supplier accepts responsibility under Clause 8.10.1 it shall, at its sole option, replace or repair the Goods (or part thereof) within such time as is reasonable having regard to the circumstances and as agreed with the Customer

#### **8.11. Warranty of the Goods**

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

8.11.2. If the Customer shall within such Warranty Period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such faults or defects (whether by repair or replacement as the Customer shall elect) free of charge.

### **9. INSTALLATION WORKS**

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### **10. CUSTOMER RESPONSIBILITIES**

10.1. The Customer shall identify to the Supplier the correct storage tank for receipt of the Goods at the Premises and ensure that the storage tank has sufficient capacity and can receive and store safely the quantity of the Goods ordered.

10.2. The Customer shall ensure that the Supplier has access to the Premises to make deliveries on the delivery date (or relevant Milestone Date) specified in the Order Form. If the Supplier cannot gain access to the Premises on the delivery date it shall inform the Customer's Representative immediately.

10.3. If the Customer's Representative cannot arrange access to the Premises within one hour of being informed in accordance with Clause 10.2, the Supplier shall agree with the Customer's Representative a revised delivery date which shall be within two days of the original delivery date (or relevant Milestone Date). The reasonable costs incurred by the Supplier in such re-delivery shall be borne by the Customer (subject to the Supplier mitigating such costs where reasonable).

- 10.4. If the Customer has not complied with any of its obligations set out in this Clause 10, the Supplier shall inform the Customer as soon as becoming aware of such failure and the Customer shall endeavour to rectify any such failure. If the Customer does not rectify such failure within a reasonable timescale, the Supplier shall be entitled to refuse to deliver the Goods and such non-delivery shall not be deemed to be a breach of this Call Off Contract by the Supplier.
- 10.5. If the Supplier would have provided the Goods in accordance with this Call Off Contract (including the Service Levels) but has failed to do so as a result of a Customer Cause the Supplier shall:
- 10.5.1. in measuring the performance of any affected Service against Service Levels be treated as though the relevant Service had met the relevant Service Level to the extent that the Service Level Failure is due to any Customer Cause;
  - 10.5.2. not be treated as being in breach of this Agreement to the extent that non performance or breach is due to any Customer Cause; and
  - 10.5.3. where as a result of the Customer Cause, the Supplier and the Customer have agreed a way to provide the Goods and/or Services in accordance with this Call Off Contract by working around the Customer Cause ("**Work Around Solution**") the Supplier shall provide the Work Around Solution and shall be entitled to be paid for all reasonable costs incurred in so doing where:
    - 10.5.3.1. such costs are in excess of the Call Off Contract Charges it has been paid because it has been treated as though it has supplied the Goods in accordance with this Call Off Contract; and
    - 10.5.3.2. they have been agreed by the Customer when discussing the scope of the Work Around Solution under this Clause 10.5.3
- and any resulting Variation that may be required in connection with a Work Around Solution shall be dealt with in accordance with Clause 53 (Variation).
- 10.6. In order to claim the rights and reliefs in Clause 10.5, the Supplier shall provide the Customer with details of the Customer Cause within 10 Working Days of the date when the Supplier became aware or ought reasonably to have become aware of the occurrence of the Customer 's default
- 10.7. Any disputes about or arising out of whether a Customer Cause applies to the Supplier's failure to supply the Goods in accordance with this Call Off Contract (including in accordance with the Service Levels) shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the dispute both Parties shall continue to resolve the causes of, and mitigate the effects of such failure.

**B. CALL OFF CONTRACT PERFORMANCE**

**11. PROVISION AND REMOVAL OF EQUIPMENT**

- 11.1. Unless otherwise stated in the Order Form or Purchase Order, the Supplier shall provide all the Equipment necessary for the supply of the Goods and/or Services.
- 11.2. The Supplier and the Staff shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.
- 11.3. All Equipment brought onto the Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Supplier is able to demonstrate that such loss or damage was caused by or contributed to by the Customer Cause. The Supplier shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required by the Customer and in each case at the Supplier's sole cost. Unless otherwise stated in this Call Off Contract, Equipment brought onto the Premises will remain the property of the Supplier.
- 11.4. The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 11.5. The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
  - 11.5.1. remove from the Premises any Equipment or any component part of Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Call Off Contract; and
  - 11.5.2. replace such Equipment or component part of Equipment with a suitable substitute item of Equipment.
- 11.6. Where a failure of Equipment or any component part of Equipment causes two (2) or more Service Failures in any twelve (12) Month period, the Supplier shall notify the Customer in writing and shall, at the Customer's request (acting reasonably), replace such Equipment or component part thereof at its own cost with a new item of Equipment or component part thereof (of the same specification or having the same capability as the Equipment being replaced).
- 11.7. Upon termination or expiry of this Call Off Contract, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Goods and/or Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and any Staff.

**12. PREMISES**

**12.1. Inspection of Premises**

- 12.1.1. Unless the Parties agree in the Order Form that inspection of the Premises is not required or, where inspection of the Premises is required, subject to the Customer Responsibilities set out in Clause 10.1, the Supplier acknowledges and agrees that it has inspected the Premises before the Call Off Commencement Date or within such period from the Call Off Commencement Date as agreed between the Parties and has advised the Customer of any aspect of the Premises that is not suitable for the provision of the Goods and/or Services and that the specified actions to remedy the unsuitable aspects of the Premises, together with a timetable for and the costs of those actions, have been specified in the Order Form or Purchase Order.
- 12.1.2. If the Supplier has either failed to inspect the Premises or failed to notify the Customer of any required remedial actions in accordance with Clause 12.1.1 then the Supplier shall not be entitled to recover any additional costs or charges from the Customer relating to any unsuitable aspects of the Premises except in respect of any latent structural defect in the Premises. The onus shall be on the Supplier to prove to the Customer that any work to the Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Supplier shall not incur such additional costs or charges without obtaining Approval.
- 12.1.3. Any disputes relating to due diligence as set out in Clause 2 (Due Diligence) or this Clause 12 shall be resolved in accordance with the Dispute Resolution Procedure.

**12.2. Licence to access Premises**

- 12.2.1. Unless provided otherwise in the Order Form, any Customer's 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's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Call Off Contract and in accordance with Clause 35.3.4.
- 12.2.2. The Supplier shall limit access to the Customer's Premises to such Staff 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 Staff co-operate) with such other persons working concurrently on such Customer's Premises as the Customer may reasonably request.
- 12.2.3. Save in relation to such actions identified by the Supplier in accordance with Clause 12.1.1 and set out in the Order Form or Purchase Order, should the Supplier require modifications to the Customer's 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 12.2.3 without undue delay. Ownership of such modifications shall rest with the Customer.

12.2.4. The Supplier shall (and shall ensure that the Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Customer's Premises and conduct of personnel at the Customer's Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Staff 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.

12.2.5. 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 Staff 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's Premises in any manner it sees fit.

### **12.3. Security of Premises**

12.3.1. The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with the Security Policy. The Supplier shall comply and shall ensure that all Staff comply with the Security Policy and any other reasonable security requirements of the Customer while on the Customer's Premises.

12.3.2. Subject to paragraph 3.4.9 of Call Off Schedule 11 (MoD Additional Clauses), the Customer shall provide the Supplier upon written request with a copy of its Security Policy and any other written security requirements and shall, subject to Approval (the decision to Approve or not will not be unreasonably withheld or delayed), afford the Supplier upon written request an opportunity to inspect its physical security arrangements.

## **13. PROPERTY**

13.1. Where the Customer issues Property free of charge to the Supplier such 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 Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and at all times the Supplier shall possess the Property as fiduciary agent and bailee of the Customer. The Supplier shall take all reasonable steps to ensure that the title of the Customer to the 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 Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.

- 13.2. The 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.
- 13.3. The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with this Call Off Contract and for no other purpose without Approval.
- 13.4. The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Goods and/or Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.
- 13.5. The Supplier shall be liable for all loss of, or damage to the 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 Property.

#### **14. STANDARDS AND QUALITY**

- 14.1. The Supplier shall at all times during the Call Off Contract Period comply with the Standards and where applicable shall maintain accreditation with the relevant Standards' authorisation body.
- 14.2. To the extent that the standard to which the Goods and/or Services must be provided has not been specified in this Call Off Contract, the Supplier shall agree the relevant standard for the provision of the Goods and/or Services with the Customer prior to the commencement of the supply of the Goods and/or Services and, in any event, the Supplier shall perform its obligations under this Call Off Contract in accordance with the Law and Good Industry Practice.
- 14.3. The Supplier shall ensure that the Staff shall at all times during the Call Off Contract Period:
  - 14.3.1. faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Goods and/or Services;
  - 14.3.2. obey all lawful instructions and reasonable directions of the Customer and provide the Goods and/or Services to the reasonable satisfaction of the Customer; and
  - 14.3.3. apply all due skill, care, diligence and are appropriately experienced, qualified and trained to supply the Goods and/or Services in accordance with this Call Off Contract.

14.4. The Supplier shall ensure at all times during the Call Off Contract Period that it:

14.4.1. supplies the Goods and/or Services in conformity with the specification(s) in Framework Schedule 1 (Goods and/or Services and Key Performance Indicators), the Order Form, the Purchase Order and in accordance with all applicable Laws including but not limited to, as applicable, any obligation under sections 12, 13 and 14 of the Sale of Goods Act 1979 (in respect of any Goods) and section 2 of the Supply of Goods and Services Act 1982 (in respect of any Goods and/or Services) which are implied into this Call Off Contract;

14.4.2. supplies the Goods and/or Services in accordance with the Tender or, where the Customer has entered into this Call Off Contract following a Further Competition Procedure, in accordance with the Supplier Call Off Solution.

**15. TESTING**

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**16. SERVICE LEVELS AND SERVICE CREDITS**

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**17. MONITORING OF CALL OFF CONTRACT PERFORMANCE**

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**18. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE IN THE SUPPLY OF THE GOODS AND/OR SERVICES**

18.1. Without prejudice to any other right or remedy which the Customer may have under this Call Off Contract or at Law, if any Goods and/or Services are not supplied in accordance with this Call Off Contract then the Customer may (whether or not any part of the Goods and/or Services have been Delivered) do any of the following:

18.1.1. at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the supply of the Goods and/or Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply Replacement Goods and/or 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;

18.1.2. if, following a Further Competition Procedure, the Customer has stipulated the payment of Delay Payments then, if a Milestone has not been achieved by the relevant

Milestone Date the Supplier, demand the Supplier to pay such amounts (calculated as set out by the Customer in the Implementation Plan). The Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is achieved. 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 50 (Waiver) and refers specifically to a waiver of the Customer's rights to claim Delay Payments;

- 18.1.3. reject the Goods and/or Services (in whole or in part) and require the Supplier to remove them (in whole or in part) at the risk and cost of the Supplier and a full refund of the Call Off Contract Charges for the Goods and/or Services so rejected shall be paid to the Customer forthwith by the Supplier;
- 18.1.4. refuse to accept any further Goods and/or Services to be Delivered without any liability to the Customer as a result of any Loss to the Supplier arising from such refusal;
- 18.1.5. carry out, at the Supplier's expense, any work necessary to make the supply of the Goods and/or Services comply with this Call Off Contract;
- 18.1.6. without terminating this Call Off Contract, itself supply or procure the supply of all or part of the Goods and/or Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Goods and/or Services in accordance with this Call Off Contract;
- 18.1.7. without terminating the whole of this Call off Contract, terminate this Call Off Contract in respect of part of the Goods and/or Services only (whereupon a corresponding reduction in the Call Off Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and/or Services; and/or
- 18.1.8. charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or Services by the Customer or a third party to the extent that such costs exceed the Call Off Contract Charges which would otherwise have been payable to the Supplier for such part of the Goods and/or Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Goods and/or Services.

## **19. CONTINUOUS IMPROVEMENT**

- 19.1. The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the Goods and/or Services and their provision to the Customer.
- 19.2. Pursuant to its obligation under Clause 19.1, the Supplier will regularly review with the Customer the Goods and/or Services, including the manner in which it is providing the Goods and/or Services and performing against the Customer's requirements (including the Implementation Plan and the Service Levels), with a view to reducing the Customer's costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Goods and/or Services and their supply to the Customer. Any amendments to the Goods and/or Services and/or their supply to the Customer and/or the Call Off Contract Charges, required by the Customer to implement or effect such improvements identified as a result of the Supplier's compliance with Clause 19.1, shall be implemented by the Supplier (subject to compliance with the Law and the Framework Agreement) and the Supplier shall implement such variation, amendment or improvement at no additional cost to the Customer.
- 19.3. The Supplier shall ensure that the information that it provides to the Customer in accordance with Clause 19.1 shall be sufficient for the Customer to decide whether any improvement to the Goods and/or Services and/or their provision to the Customer should be implemented. The Supplier shall provide any further information that the Customer requests in connection with any improvements to the Goods and/or Services and/or their provision to the Customer identified by the Supplier.
- 19.4. Notwithstanding the Supplier's obligations under Clauses 19.1 to 19.3 above, the Customer shall be entitled to regularly benchmark the Call Off Contract Charges and performance by the Supplier of the supply of the Goods and/or Services, against other suppliers providing goods and/or services substantially the same as the Goods and/or Services during the Call Off Contract Period.
- 19.5. The Customer shall be entitled to the right set out in Clause 19.4 in order to compare the Call Off Contract Charges and level of performance by the Supplier of the supply of the Goods and/or Services with charges and level of performance in the provision of goods and/or services offered by third parties so as to provide the Customer with information for comparison purposes.
- 19.6. The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 19.4 above.
- 19.7. The Customer shall be entitled to disclose the results of any benchmarking of the Call Off Contract Charges and provision of the Goods and/or Services carried out under Clause 19.4 to the Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).
- 19.8. The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the

benchmarking in accordance with Clause 19.4 and such information requirements shall be at the discretion of the Customer.

- 19.9. Where, as a consequence of any benchmarking carried out by the Customer under Clause 19.4, the Customer decides improvements to the Goods and/or Services should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Customer.
- 19.10. The benefit of any work carried out by the Supplier at any time during the Call Off Contract Period to update, improve or provide the Goods and/or Services, facilitate their delivery to any other Contracting Body and/or any alterations or variations to the Charges or the provision of the Goods and/or Services, which are identified in the Continuous Improvement Plan produced by the Supplier and/or as a consequence of any benchmarking carried out by the Authority pursuant to Framework Schedule 7 (Value for Money), shall be implemented by the Supplier at no additional cost to the Customer.

## **20. BUSINESS CONTINUITY AND DISASTER RECOVERY**

- 20.1. If there is a Disaster, the Parties shall co-operate in good faith and use all reasonable endeavours to as soon as possible re-establish their capacity to fully perform their obligations under this Call Off Contract. A Disaster will only relieve a Party of its obligations to the extent it constitutes a Force Majeure Event in accordance with Clause 44 (Force Majeure).
- 20.2. Without prejudice to Clause 20.1 if there is a Disaster that damages the Equipment or otherwise reduces its operability, the Parties shall agree reasonable timescales within which the Supplier shall use all reasonable endeavours to restore the Equipment.

## **21. DISRUPTION**

- 21.1. 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.
- 21.2. The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Staff or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.
- 21.3. In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods and/or Services in accordance with its obligations under this Call Off Contract.
- 21.4. If the Supplier's proposals referred to in Clause 21.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for Material Breach.

- 21.5. If the Supplier is temporarily unable to fulfil the requirements of this Call Off Contract owing to disruption of normal business solely caused by the Customer, 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

**22. EXIT PLANNING**

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**23. ASSISTANCE ON EXPIRY OR TERMINATION**

- 23.1. In the event that this Call Off Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Goods and/or Services to a Replacement Supplier.

**24. CALL OFF CONTRACT CHARGES AND PAYMENT**

**24.1. Call Off Contract Charges**

- 24.1.1. The charges for the Product shall be calculated in accordance with Framework Schedule 3: Charging Structure.
- 24.1.2. The applicable supplier margins can be found at Call Off Schedule 8.
- 24.1.3. In accordance with Condition 4.2 of Framework Schedule 3, the method of calculation of the Commodity Price shall be Weekly Lagged Pricing.
- 24.1.4. The Authority shall calculate the Commodity Price on the first working day of each week in accordance with Condition 4.2.2. of Framework Schedule 3. A pricing letter advising the Commodity Price(s) will be issued to the Supplier before 1200 hrs on the first working day of each week.
- 24.1.5. In consideration of the Supplier's performance of its obligations under this Call Off Contract, the Customer shall pay the undisputed Call Off Contract Charges in accordance with Clause 24.2 (Payment and VAT).
- 24.1.6. The Customer shall, in addition to the Call Off Contract Charges and following delivery by the Supplier of a Valid Invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with this Call Off Contract.
- 24.1.7. If at any time during this Call Off Contract Period the Supplier reduces its Supplier Maximum Margins for any Goods and/or Services which are provided under the Framework Agreement (whether or not such Goods and/or 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 Goods and/or Services under this Call Off Contract by the same amount.

#### **24.2. Payment and VAT**

24.2.1. 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 in accordance with the provisions of this Call Off Contract.

24.2.2. The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Customer may specify) contains the following minimum information:

24.2.2.1. Contract Number

24.2.2.2. description of the Goods and/or Services supplied. The Goods should be described using the generic descriptions as used by the Platts prices;

24.2.2.3. quantity of Goods (litres) and/or Services supplied;

24.2.2.4. commodity price;

24.2.2.5. VAT;

24.2.2.6. Supplier Margin;

24.2.2.7. discounts applied

24.2.2.8. applicable Management Charge

24.2.2.9. delivery date;

24.2.2.10. delivery location;

24.2.2.11. Unit Identity Number (UIN) of the delivery location

and is accompanied by all other documentation reasonably required by the Customer to substantiate the invoice including but not limited to delivery notes and other forms of evidence of delivery.

24.2.3. The Supplier shall ensure that all invoices submitted to the Customer for the Goods and/or Services are inclusive of any Management Charge applicable to the invoiced Goods and/or Services.

24.2.4. In the event that the Customer queries the invoice, the Supplier must undertake to resolve the issue within 3 Working Days of being notified of the issue. If a Customer query cannot be resolved within this timescale, the Customer

and the Authority must be notified immediately together with the Supplier's suggested timescale for resolution.

24.2.5. Where the Supplier enters into a Sub-Contract it shall comply with Clause 48.2.4.6.

24.2.6. The Supplier shall add VAT to the Call Off Contract Charges at the prevailing rate as applicable.

24.2.7. The Supplier shall fully indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or 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 and/or excise duty relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 24.2.7 shall be paid 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.

24.2.8. Without prejudice to Clause 38.5 (Termination on Default), the Supplier shall not suspend the supply of the Goods and/or Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part). Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

24.2.9. The Supplier shall accept the Government Procurement Card as a means of payment for the Goods and/or 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.

### **24.3. Recovery of Sums Due**

24.3.1. Wherever under this Call Off Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Call Off Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under this Call Off Contract or under any other Call Off Agreement or other agreement between the Supplier and the Customer.

24.3.2. Any overpayment by either Party, whether of the Call Off Contract Charges or of VAT or otherwise, shall be a sum of



money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

24.3.3. 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 a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

24.3.4. All payments due shall be made within the time period set out in Clause 24.2.1 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.

#### **24.4. Euro**

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

24.4.2. The Customer shall provide all reasonable assistance to facilitate compliance with Clause 24.4.1 by the Supplier.

### **25. KEY PERSONNEL**

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### **26. STAFF AND STAFFING SECURITY**

#### **26.1. Staff**

26.1.1. The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:

26.1.1.1. any member of the Staff; or

26.1.1.2. any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

26.1.2. At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission to the Premises in connection with this Call Off Contract, specifying the capacities in which they are concerned with this Call Off Contract and giving such other particulars as the Customer may reasonably request.

26.1.3. Staff engaged within the boundaries of the Premises shall comply with such rules, regulations and requirements (including all those relating to security arrangements and the

Security Policy) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.

26.1.4. If the Supplier fails to comply with Clause 26.1.2 within three (3) weeks of the date of the request or such other reasonable period which the Customer may specify, the Customer may terminate this Call Off Contract for Material Breach, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

26.1.5. The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause 26.1.2 shall be final and conclusive.

**26.2. Relevant Convictions**

INTENTIONALLY LEFT BLANK – NOT REQUIRED

**26.3. Additional Staffing Security**

INTENTIONALLY LEFT BLANK – NOT REQUIRED

**27. TRAINING**

INTENTIONALLY LEFT BLANK – NOT REQUIRED

**28. NOT USED**

**C. PROTECTION OF INFORMATION**

**29. INTELLECTUAL PROPERTY RIGHTS**

29.1. Save as expressly granted elsewhere under this Call Off Contract:

29.1.1. the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including the Supplier Background IPRs, and

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

29.1.2.1. the Customer Background IPRs;

29.1.2.2. IPRs in the Customer Data; and

29.1.2.3. the Project Specific IPRs.

29.2. 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 29.1, 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).

- 29.3. The Supplier shall not, and shall procure that the Staff shall not, (except when necessary for the performance of this Call Off Contract) without Approval (which the Customer shall have the sole and absolute right to grant or deny) use or disclose any of the Customer Background IPR, Customer Data or the Project Specific IPRs to or for the benefit of any third party.
- 29.4. The Supplier hereby grants, or shall procure the direct grant, to the Customer (and to any Replacement Supplier) of a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty-free licence to copy, modify, disclose and use the Supplier Background IPRs for any purpose connected with the receipt of the Goods and/or Services that is incidental to the exercise of the rights granted to the Customer under this Call Off Contract and to enable the Customer:
  - 29.4.1. to receive the Goods and/or Services; and
  - 29.4.2. to make use of the goods and/or services provided by the Replacement Supplier.
- 29.5. Unless the Customer has Approved or notified the Supplier otherwise, the Supplier hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs, or shall procure that the first owner of the Project Specific IPRs assigns them to the Customer on the same basis. Such assignment shall either take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Project Specific IPRs, as appropriate. The Supplier shall waive or procure a waiver of any moral rights in the Project Specific IPRs assigned to the Customer under this Call Off Contract.
- 29.6. If requested to do so by the Customer, the Supplier shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under Clause 29.5.
- 29.7. The Customer hereby grants to the Supplier a non-exclusive, non-assignable royalty-free licence to use the Customer Background IPRs, Customer Data and the Project Specific IPRs during the Call Off Contract Period for the sole purpose of enabling the Supplier to perform its obligations under this Call Off Contract and provide the Goods and/or Services. The Customer gives no warranty as to the suitability for the Supplier's purpose of any IPRs licensed to the Supplier hereunder. Such licence:
  - 29.7.1. includes the right to grant sub-licences to Sub-Contractors engaged in providing or delivering any of the Goods and/or Services (or part thereof) provided that any such Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 32 (Confidentiality) and that any such Sub-contracts

shall be non-transferable and personal to the relevant Sub-contractor; and

29.7.2. is granted solely to the extent necessary for the provision of the Goods and/or Services in accordance with this Call Off Contract. The Supplier shall not, and shall procure that the Sub-Contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Customer;

29.8. In the event of the termination or expiry of this Call Off Contract, the licence referred to in Clause 29.7 and any sub-licence granted in accordance with Clause 29.7.1 shall terminate automatically, and the Supplier shall immediately deliver to the Customer (or destroy and confirm receipt of such destruction to the Customer) all material licensed to the Supplier pursuant to Clause 29.7 in the Supplier's possession or control in accordance with Clause 40.3 (Consequences of expiry or termination of the Call Off Contract for any reason).

29.9. Subject to Clause 29.10 and Clause 29.11 the Supplier shall ensure that no unlicensed software or open source software is interfaced with or embedded within any Customer Software.

29.10. Prior to using any third party IPRs in connection with the supply of the Goods and/or Services, the Supplier shall submit all details of such third party IPRs as the Customer may request to the Customer for Approval ("Request for Approval"). The Supplier shall provide the Customer with details of any third party licence required by the Supplier and/or the Customer in order for the Supplier to carry out its obligations under this Call Off Contract using the third party IPRs in the Request for Approval. The Customer reserves the right to withhold or deny Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.

29.11. Where the Supplier is granted Approval to use the third party IPRs set out in a Request for Approval, the Supplier shall procure that the owner of such third party IPRs grants to the Customer a licence upon the terms informed to the Customer in the Request for Approval.

29.12. The Supplier shall on demand, during and after the Call Off Contract Period, fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all Losses which the Customer or the Crown may suffer or incur at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) as a result of any claim (whether actual alleged asserted and/or substantiated and including third party claims) that the rights granted to the Customer pursuant to this Call Off Contract and/or the performance by the Supplier of the provision of the Goods and/or Services and/or the possession or use by the Customer of the Goods and/or Services (as appropriate) infringes or allegedly infringes a third party's Intellectual Property Rights ("Claim") except where the Claim arises from:

29.12.1. designs supplied by the Customer; or

29.12.2. the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of this Call Off Contract.

29.13. The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:

29.13.1. shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;

29.13.2. shall take due and proper account of the interests of the Customer;

29.13.3. shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and

29.13.4. shall not settle or compromise the Claim without Approval (such decision to Approve or not shall not be unreasonably withheld or delayed).

29.14. If a Claim is made in connection with this Call Off Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to Approval (such decision to Approve or not to be unreasonably withheld or delayed), use its best endeavours to:

29.14.1. modify the relevant part of the Goods and/or Services and/or the Deliverables without reducing the functionality or performance of the same, or substitute alternative goods and/or services and/or deliverables of equivalent functionality or performance, so as to avoid the infringement or the alleged infringement, provided that:

29.14.1.1. the provisions herein shall apply with any necessary changes to such modified goods and/or services and/or deliverables or to the substitute goods and/or services and/or deliverables; and

29.14.1.2. such substitution shall not increase the burden on the Customer; and

29.14.1.3. the replaced or modified good and/or service and/or deliverable does not have an adverse effect on any other Goods and/or Services and/or Deliverables; and

29.14.1.4. there is no additional cost to the Customer; and

29.14.1.5. such modified or substituted goods and/or services and/or deliverables shall be acceptable

to the Customer (such decision to accept or not shall not be unreasonably withheld); or

29.14.2. procure a licence to use and supply the Goods and/or Services and/or Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer; and

29.14.3. in relation to the performance of the Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations,

29.14.4. and in the event that the Supplier is unable to comply with Clauses 29.14.1 or 29.14.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate this Call Off Contract for Material Breach and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Good and/or Service and/or Deliverable that is subject to the Claim.

29.15. The Supplier's compliance with Clause 29.14 shall be at its own expense and the Supplier shall be liable for all costs and expenses that the Customer may incur resulting from the Customer's compliance with Clause 29.14.

29.16. In the event that a modification or substitution in accordance with Clause 29.14.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 29.14.2, the Customer, without prejudice to any other rights of remedies under this Call Off Contract or at Law, shall be entitled to delete the relevant Good and/or Service and/or Deliverable from this Call Off Contract.

29.17. If the Supplier elects to modify or replace the Good and/or Service and/or Deliverable pursuant to Clause 29.14.1 or to procure a licence in accordance with Clause 29.14.2, but this has not avoided or resolved the Claim, then the Customer may terminate this Call Off Contract for Material Breach and, without prejudice to the indemnity set out in Clause 29.12, the Supplier shall, be liable for all reasonable and unavoidable costs of the substitute goods and/or services and/or deliverables including the additional costs of procuring and implementing the substitute goods and/or services.

29.18. The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without prior Approval.

## **30. SECURITY AND PROTECTION OF INFORMATION**

### **30.1. Security Requirements**

30.1.1. The Supplier shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Management Plan (if any) and the Supplier shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

- 30.1.2. The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 30.1.3. If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Goods and/or Services it may notify 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.
- 30.1.4. Until and/or unless a change to the Call Off Contract Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Goods and/or Services in accordance with its existing obligations.

## **30.2. Malicious Software**

- 30.2.1. The Supplier shall, as an enduring obligation throughout the Call Off Contract Period where any Software is used in the provision of the Goods and/or Services or the performance of this Call Off Contract, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).
- 30.2.2. Notwithstanding Clause 30.2.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of the Goods and/or Services to its desired operating efficiency.
- 30.2.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 30.2.1 shall be borne by the Parties as follows:
  - 30.2.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software 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
  - 30.2.3.2. by the Customer if the Malicious Software originates from the Customer Software or the Customer Data (whilst the Customer Data was under the control of the Customer).

**30.3. Customer Data**

- 30.3.1. The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 30.3.2. The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call Off Contract or as otherwise Approved by the Customer.
- 30.3.3. To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified in this Call Off Contract and in any event as specified by the Customer from time to time in writing.
- 30.3.4. To the extent that Customer Data is held and/or Processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 30.3.5. 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).
- 30.3.6. The Supplier shall ensure that any system on which the Supplier holds any Customer Data which is protectively marked shall be accredited using such accreditation policy or system as specified by the Customer (such as the HMG Security Policy Framework and Information Assurance Policy, taking into account guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems, and/or relevant HMG Information Assurance Standard(s), as in force from time to time) and, where the Call Off Contract Period exceeds one year, the Supplier shall review such accreditation status at least once in each year to assess whether material changes have occurred which could alter the original accreditation decision. If any such changes have occurred then the Supplier shall resubmit such system for accreditation.
- 30.3.7. If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Supplier's Default so as to be unusable, the Customer may:
  - 30.3.7.1. require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Customer Data to the extent and in accordance with the BCDR Plan and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or



30.3.7.2. 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 the BCDR Plan.

30.3.8. If at any time the Supplier suspects or has reason to believe that the Customer Data has or may become 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.

30.3.9. The Supplier shall, at all times during and after the Call Off Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under this Clause 30.3 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

## **31. PROTECTION OF PERSONAL DATA**

31.1. Where any Personal Data are processed with respect to the Parties' rights and obligations under this Call Off Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor.

31.2. The Supplier shall:

31.2.1. Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Call Off Contract or as otherwise notified by the Customer to the Supplier during the Call Off Contract Period);

31.2.2. Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Goods and/or Services or as is required by Law or any Regulatory Body;

31.2.3. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- 31.2.4. take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
- 31.2.5. obtain Approval in order to transfer the Personal Data to any Sub-Contractors or Affiliates for the provision of the Services;
- 31.2.6. ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 31;
- 31.2.7. ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;
- 31.2.8. notify the Customer (within five (5) Working Days) if it receives:
  - 31.2.8.1. a request from a Data Subject to have access to that person's Personal Data; or
  - 31.2.8.2. a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 31.2.9. provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
  - 31.2.9.1. providing the Customer with full details of the complaint or request;
  - 31.2.9.2. complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
  - 31.2.9.3. providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
  - 31.2.9.4. providing the Customer with any information requested by the Customer;
- 31.2.10. permit the Customer or the Customer Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Call Off Contract;
- 31.2.11. provide a written description of the technical and organisational methods employed by the Supplier for

Processing Personal Data (within the timescales required by the Customer); and

31.2.12. not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Call Off Commencement Date, the Supplier (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:

31.2.12.1. the Supplier shall submit a request for Variation to the Customer which shall be dealt with in accordance with the Variation Procedure and paragraphs (b) to (d) below;

31.2.12.2. the Supplier shall set out in its request for a Variation details of the following:

- i. the Personal Data which will be Processed and/or transferred outside the European Economic Area;
- ii. the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
- iii. any Sub-Contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
- iv. how the Supplier will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Customer's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;

31.2.12.3. in providing and evaluating the request for Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Government and Information Commissioner Office's policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally but, for the avoidance of doubt, the Customer may, in its absolute discretion, refuse to grant Approval of such process and/or transfer any Personal Data outside the European Economic Area; and

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

- i. incorporating standard and/or model Clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Call Off Contract or a separate data processing agreement between the parties; and
- ii. procuring that any Sub-Contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the Customer on such terms as may be required by the Customer, which the Supplier acknowledges may include the incorporation of standard and/or model Clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).

31.3. The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Call Off Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.

31.4. The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

31.5. The Supplier shall, at all times during and after the Call Off Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under this Clause 31 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

## **32. CONFIDENTIALITY**

32.1. Except to the extent set out in this Clause 32 or where disclosure is expressly permitted elsewhere in this Call Off Contract, each Party shall:

- 32.1.1. treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

- 32.1.2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 32.2. Clause 32.1 shall not apply to the extent that:
  - 32.2.1. such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 34 (Freedom of Information);
  - 32.2.2. such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 32.2.3. such information was obtained from a third party without obligation of confidentiality;
  - 32.2.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call Off Contract; or
  - 32.2.5. such information is independently developed without access to the other Party's Confidential Information.
- 32.3. The Supplier may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 32.4. The Supplier shall not, and shall procure that the Staff shall not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Call Off Contract.
- 32.5. At the written request of the Customer, the Supplier shall procure that those members of Staff identified in a Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Call Off Contract.
- 32.6. In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Call Off Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Supplier is taking appropriate steps to comply with this Clause, including copies of any written communications to and/or from Staff, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.

- 32.7. Nothing in this Call Off Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under Clause 15 of the Framework Agreement):
- 32.7.1. to any Crown body or any other Contracting Body. All Crown bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Body;
  - 32.7.2. to any consultant, contractor or other person engaged by the Customer or any person conducting a Cabinet Office gateway review (formerly known as Office of Government Commerce gateway review);
  - 32.7.3. for the purpose of the examination and certification of the Customer's accounts; or
  - 32.7.4. for any 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.
- 32.8. The Customer shall use all reasonable endeavours to ensure that any Crown body, Contracting Body, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 32.7 is made aware of the Customer's obligations of confidentiality.
- 32.9. Nothing in this Clause 32.9 shall prevent either Party 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 other Party's Confidential Information or an infringement of IPR.
- 32.10. The Supplier shall, at all times during and after the Call Off Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under Clauses 32.1 to 32.6 except and to the extent that such liabilities have resulted directly from the Customer's instructions
- 32.11. In the event that the Supplier fails to comply with Clauses 32.1 to 32.6, the Customer reserves the right to terminate this Call Off Contract for Material Breach.
- 32.12. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Call Off Contract, the Supplier shall comply with the Call Off Contract (including the Security Policy) and, in any event, undertakes to maintain

adequate security arrangements that meet the requirements of Good Industry Practice.

**33. OFFICIAL SECRETS ACTS 1911 TO 1989 AND THE FINANCE ACT 1989**

33.1. The Supplier shall comply with and shall ensure that the Staff comply with, the provisions of:

33.1.1. the Official Secrets Acts 1911 to 1989; and

33.1.2. Section 182 of the Finance Act 1989.

33.2. In the event that the Supplier or the Staff fail to comply with this Clause 33, the Customer reserves the right to terminate this Call Off Contract for Material Breach.

**34. FREEDOM OF INFORMATION**

34.1. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

34.2. The Supplier shall and shall procure that its Sub-Contractors shall:

34.2.1. transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

34.2.2. provide the Customer with a copy of all Information 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 specify) of the Customer's request; and

34.2.3. provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

34.3. The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Call Off Contract or any other Call Off Agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

34.4. In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.

34.5. The Supplier acknowledges that (notwithstanding the provisions of Clause 32 (Confidentiality)) the Customer may, acting in accordance with the Ministry of Justice' (formerly Department of Constitutional Affairs') Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA ("the Code"), be obliged under the

FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Goods and/or Services:

34.5.1. in certain circumstances without consulting the Supplier;  
or

34.5.2. following consultation with the Supplier and having taken their views into account,

provided always that where Clause 34.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

34.6. The Supplier shall ensure that all Information relating to this Call Off Contract is retained for disclosure in accordance with the provisions of this Call Off Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.

34.7. The Supplier acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 34.5.

## **35. TRANSPARENCY**

35.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of this Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA.

35.2. Notwithstanding any other term 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 from time to time agreed changes to this Call Off Contract, to the general public.

35.3. The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.

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

## **D. LIABILITY AND INSURANCE**

### **36. LIABILITY**

36.1. Neither Party excludes or limits its liability for:

36.1.1. death or personal injury; or;



- 36.1.2. bribery or Fraud by it or its employees; or
  - 36.1.3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 36.1.4. any other liability to the extent it cannot be excluded or limited by Law.
- 36.2. Where the Supplier is a company, no individual nor any service company of the Supplier employing that individual shall have any personal liability to the Customer for the Goods and/or Services supplied by that individual on behalf of the Supplier and the Customer shall not bring any claim under this Call Off Contract against that individual or such service company in respect of the Goods and/or Services save in the case of bribery, Fraud or any liability for death or personal injury.
- 36.3. Subject to Clause 36.1, the Supplier's total aggregate liability in respect of the indemnities in Clauses 8.4.5 (samples of Goods) 24.2.5 (VAT), 29.12 (Third Party IPR Claim), 30.3.9 (Protection of Customer Data), 30.4.5 (Protection of Personal Data), 30.5.10 (Confidentiality), 39.4 (Prevention Bribery and Corruption) and 42.3.2 (Prevention Fraud) (and, in each case, whether before or after the making of a demand pursuant to the indemnities therein) shall be unlimited.
- 36.4. Subject to Clauses 36.1, 36.3, 36.6 and 36.7, each Party's total aggregate liability in respect of all Losses as a result of a default howsoever arising out of or in connection with this Call Off Contract shall be limited to:
- 36.4.1. In relation to Losses suffered as a result of a default resulting in direct loss or damage to the property (including any technical infrastructure, assets or equipment but excluding any loss or damage to IPR, Customer Data or Customer Personal Data) of the other party the sum of five million pounds (£5,000,000) in each Call Off Contract Year in which the default occurred or is occurring unless otherwise stipulated by the Customer in a Further Competition Procedure; and
  - 36.4.2. in respect of all other Losses:
    - 36.4.2.1. in relation to Losses suffered as a result of a default occurred or occurring in the first Call Off Contract Year, the greater of the sum of five million pounds (£5,000,000) or a sum equal to one hundred and fifty per cent (150%) of the Estimated Year 1 Call Off Contract Charges;
    - 36.4.2.2. in relation to Losses suffered as a result of a default occurred or occurring during the remainder of the Call Off Contract Period, the greater of the sum of five million pounds (£5,000,000) or an amount equal to one hundred and fifty percent

(150%) of the Call Off Contract Charges paid, due or which would have been payable under this Call Off Contract in the 12 months immediately preceding the event giving rise to the liability; and

- 36.4.2.3. in relation to Losses suffered as a result of a default occurred or occurring after the end of the Call Off Contract Period, the greater of the sum of five million pounds (£5,000,000) or an amount equal to one hundred and fifty percent (150%) of the Call Off Contract Charges paid, due or which would have been payable under this Call Off Contract in the 12 months immediately prior to the end of the Call Off Contract Period,

unless a different aggregate limit or percentage is stipulated by the Customer in a Further Competition Procedure.

- 36.5. A Party shall not be responsible for any Loss under this Call Off Contract if and to the extent that it is caused by the default (Default on the part of the Supplier and Customer Cause on the part of the Customer) of the other.

- 36.6. Subject to Clauses 31.1, 31.3 and 31.7 in no event shall either Party be liable to the other for any:

- 36.6.1. loss of profits;

- 36.6.2. loss of business;

- 36.6.3. loss of revenue;

- 36.6.4. loss of or damage to goodwill;

- 36.6.5. loss of savings (whether anticipated or otherwise); and/or

- 36.6.6. any indirect, special or consequential loss or damage

- 36.7. The Supplier shall be liable for the following types of Loss which shall be regarded as direct and shall (without in any way, limiting other categories of Loss which may be recoverable by the Customer) be recoverable by the Customer:

- 36.7.1. the additional operational and/or administrative costs and expenses arising from any Material Breach;

- 36.7.2. the cost of procuring, implementing and operating any alternative or replacement goods and/or services to the Goods and/or Services for the remainder of the Call Off Contract Period following termination of this Call Off Contract as a result of a Default;

- 36.7.3. any regulatory losses, fines, expenses or other Losses arising from a breach by the Supplier of any Law.

- 36.8. No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by or on behalf of the Customer to any document or information provided by the Supplier in its provision of the Goods and/or Services, and no failure of the Customer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to carry out all the obligations of a professional supplier employed in a client/customer relationship.
- 36.9. Save as otherwise expressly provided, the obligations of the Customer under this Call Off Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in this Call Off Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under this Call Off Contract (howsoever arising) on the part of the Customer to the Supplier.
- 36.10. For the avoidance of doubt any liabilities which are unlimited shall not be taken into account for the purposes of establishing whether the limit in Clause 31.4 has been reached.
- 36.11. Nothing in this Clause 36 shall act to reduce or affect a Party's general duty to mitigate its loss.

### 37. INSURANCE

- 37.1. The Supplier shall effect and maintain such policy or policies of insurance 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 as the Customer may stipulate in the Further Competition Procedure.
- 37.2. The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause 32.1 above for six (6) years after the expiry or termination (for whatever reason) of this Call Off Contract.
- 37.3. The policy or policies of insurance under Clause 32.1 above shall provide as a minimum the insurance cover as set out in Clause 32.4 below and, in any event, an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Call Off Contract including death or personal injury, loss of or damage to property or any other Losses.
- 37.4. Without prejudice to the Supplier's obligation under Clauses 32.1 and 32.3 above, the Supplier shall effect and maintain as a minimum the following insurance policies:
- 37.4.1. **Public liability insurance** with a minimum limit of five million pounds sterling (£5,000,000) for each individual claim (or such higher limit as required by Law from time to time);
- 37.4.2. **Employer's liability insurance** with a minimum limit of five million pounds sterling (£5,000,000) for each individual

claim (or such higher minimum limit as required by Law from time to time); [and]

37.4.3. **Product liability insurance** with a minimum limit in respect of product liability insurance of five million pounds sterling (£5,000,000) aggregate per year (or such higher limit as required by Law from time to time); [and]

37.4.4. **[Professional indemnity insurance]** with a minimum limit of indemnity of one million pounds sterling (£1,000,000) for each individual claim (or such higher limit as required by Law from time to time);]

37.5. The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this Clause 32 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.

37.6. If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under this Clause 32, 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.

37.7. The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities 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.

37.8. 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.

## **E. TERMINATION**

### **38. TERMINATION EVENTS**

#### **38.1. Termination on Insolvency**

38.1.1. The Customer may terminate this Call Off Contract with immediate effect by giving notice in writing to the Supplier where an Insolvency Event affecting the Supplier occurs.

#### **38.2. Termination on Change of Control**

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

38.2.1.1. being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

38.2.1.2. where no notification has been made, the date that the Customer becomes aware of the Change of Control,

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

### **38.3. Termination in relation to Financial Standing**

38.3.1. The Customer may terminate this Call Off Contract by serving notice on the Supplier in writing with effect from the date specified in such notice 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:

38.3.1.1. adversely impacts on the Supplier's ability to supply the Goods and/or Services under this Call Off Contract; or

38.3.1.2. could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and/or Services under this Call off Contract.

### **38.4. Termination relating to Guarantee**

INTENTIONALLY LEFT BLANK – NOT REQUIRED

### **38.5. Termination on Default**

38.5.1. The Customer may terminate this Call Off Contract for a Supplier's Default:

38.5.1.1. by giving written notice to the Supplier that the Supplier has not remedied the Default together with any damage resulting from such a Default to the satisfaction of the Customer, as specified by the Customer in a prior written notice to the Supplier stating the Default and requesting it to be remedied within ten (10) Working Days in accordance with the Customer's instructions; or

38.5.1.2. If the Default is a Material Breach of this Call Off Contract, by giving written notice of termination to the Supplier with immediate effect or with effect from such later date as the Customer may specify in the written notice.

38.5.2. If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay including specifying the default, detailing the overdue amount, explaining why the undisputed sums are due and requiring the failure to be remedied. If the Customer fails to pay such and so notified undisputed sums within ninety (90) days from the date of receipt by the Customer of such written notice (the "Undisputed Sums Time Period"), the Supplier may terminate this Call Off Contract in writing, 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 24.3 (Recovery of Sums Due).

**38.6. Termination without cause**

38.6.1. The Customer shall have the right to terminate this Call Off Contract at any time by giving at least thirty (30) Working Days written notice to the Supplier or such other notice as the Customer may stipulate in a Further Competition Procedure.

**38.7. Termination of Framework Agreement**

38.7.1. The Customer may terminate this Call Off Contract with immediate effect by giving written notice to the Supplier if the Framework Agreement is terminated for any reason whatsoever.

**38.8. Termination In relation to Benchmarking**

38.8.1. The Customer may terminate this Call Off Contract by serving notice on the Supplier in writing with effect from the date specified in such notice if the Supplier refuses or fails to comply with its obligations as set out in paragraphs 1 and 2 of Framework Schedule 7 (Value for Money).

**38.9. Termination for continuing Force Majeure Event**

38.9.1. Either Party may, by written notice to the other, terminate this Call Off Contract if, in accordance with Clause 49 (Force Majeure), a Force Majeure Event endures for a continuous period of more than one hundred and twenty (120) days.

**38.10. Termination in relation to Variation**

38.10.1. The Customer may terminate this Call Off Contract for failure of the Parties to agree or the Supplier to implement a Variation under Clause 53.3.2.

**39. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION**

- 39.1. Where the Customer has the right to terminate this Call Off Contract, the Customer is entitled to terminate or suspend all or part of this Call Off Contract pursuant to this Clause 39.1 provided always that 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.
- 39.2. Any suspension under Clause 39.1 shall be for such suspension period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

**40. CONSEQUENCES OF EXPIRY OR TERMINATION**

**40.1. Consequences of termination under Clauses 38.3 (Financial Standing), 38.5 (Termination on Default) and 38.8 (Benchmarking)**

- 40.1.1. Where the Customer terminates this Call Off Contract under Clauses 38.3 (Financial Standing), 38.5 (Termination on Default), or 38.8 (Benchmarking), and then makes other arrangements for the supply of the Goods and/or 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. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where this Call Off Contract is terminated under Clauses 38.3, 38.5 or 38.8, 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.

**40.2. Consequences of termination under Clause 38.6 (Termination without Cause)**

- 40.2.1. Where the Customer terminates this Call Off Contract under Clause 38.6 (Termination without Cause), or elects to partially terminate or suspend or partially suspend this Call Off Contract without cause under Clauses 38.6 and 39, 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. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. 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 38.6 (Termination without Cause).

40.2.2. The Customer shall not be liable under Clause 40.2.1 to pay any sum which:

- 40.2.2.1. 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
- 40.2.2.2. 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 prior to the expiry of the Call Off Contract Period.

**40.3. Consequences of expiry or termination of the Call Off Contract for any reason**

40.3.1. At the end of the Call Off Contract Period (howsoever arising), the Supplier shall:

- 40.3.1.1. immediately return to the Customer all Customer Data;
- 40.3.1.2. cease to use the Customer Data and, at the direction of the Customer, provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Supplier;
- 40.3.1.3. except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or twelve (12) Months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.
- 40.3.1.4. immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under Clause 13 (Property). Such Property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);
- 40.3.1.5. assist and co-operate with the Customer to ensure an orderly transition of the provision of the Goods and/or Services to the Replacement Supplier and/or the completion of any work in progress in accordance with the Exit Plan, or if no Exit Plan



has been agreed, provide such assistance and co-operation as the Customer may require;

- 40.3.1.6. transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the contracts listed in the Exit Plan (if any) as are notified to the Supplier and/or by the Customer in return for payment of the costs (if any) set out in the Exit Plan in respect of such contracts;
  - 40.3.1.7. return to the Customer any sums prepaid in respect of the Goods and/or Services not provided by the date of expiry or termination (howsoever arising); and
  - 40.3.1.8. promptly provide all information concerning the provision of the Goods and/or Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods and/or Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence; and
  - 40.3.1.9. use reasonable endeavours to procure that the benefit of manufacturer's warranty in respect of the Goods is assigned, or otherwise transferred to the Customer.
- 40.3.2. If the Supplier fails to comply with Clauses 40.3.1.1 to 40.3.1.4, the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its servants, consultants, agents or Sub-Contractors where any such items may be held.
- 40.3.3. Where the end of the Call Off Contract Period arises due to termination of this Call Off Contract by reason of a Supplier's Default under Clause 38.5 (Termination on Default), the Supplier shall provide all assistance under Clauses 40.3.1.5 to 40.3.1.9 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.
- 40.3.4. At the end of the Call Off Contract Period (howsoever arising) the licence granted pursuant to Clause 12.2.1 (Licence to occupy Premises) shall automatically terminate without the need to serve notice.
- 40.3.5. Save as otherwise expressly provided in this Call Off Contract:
- 40.3.5.1. 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

- 40.3.5.2. termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 24.2 (Payment and VAT), 24.3 (Recovery of Sums Due), 29 (Intellectual Property Rights), 31 (Protection of Personal Data), 32 (Confidentiality), 33 (Official Secrets Acts 1911 to 1989), 34 (Freedom of Information), 36 (Liability), 40 (Consequences of Expiry or Termination), 44 (Prevention of Bribery and Corruption), 45 (Records and Audit Access), 47 (Prevention of Fraud), 51 (Cumulative Remedies), 57 (Conflicts of Interest), 59 (The Contracts (Rights of Third Parties) Act 1999) and 62 (Governing Law and Jurisdiction) 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 termination or expiry of this Call Off Contract.

## **F. CONTROL OF THE CALL OFF CONTRACT**

### **41. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

- 41.1. The Supplier shall not make any press announcements or publicise this Call Off Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, Sub-Contractors, suppliers, professional advisors and consultants comply with this Clause 41. Any such press announcements or publicity proposed under this Clause 41.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.
- 41.2. Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise this Call Off Contract in accordance with any legal obligation upon the Customer, including any examination of this Call Off Contract by the Auditor(s).
- 41.3. The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute. The Customer may terminate this Call Off Contract for Material Breach, in the event that, in the sole opinion of the Customer, the Supplier causes, permits, contributes or is in any way connected to material adverse publicity relating to or affecting the Customer and/or this Call Off Contract.

**42. HEALTH AND SAFETY**

- 42.1. Throughout the Call Off Contract Period the Supplier shall not, in the performance of its obligations under this Call Off Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.
- 42.2. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under this Call Off Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under this Call Off Contract.
- 42.3. While on the Customer's Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there and any instructions from the Customer on any necessary associated safety measures.
- 42.4. The Customer may refuse admission to the Premises and/or direct the Supplier to end the involvement in the performance of this Call Off Contract of any of the Staff whom the Customer believes represents a security risk or does not have the required levels of training and expertise or where the Customer has other grounds for doing so. The decision of the Customer shall be final and it shall not be obliged to provide any reasons.
- 42.5. The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under this Call Off Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 42.6. The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

**43. ENVIRONMENTAL REQUIREMENTS**

- 43.1. The Supplier shall, when working on the Premises, perform its obligations under this Call Off Contract in accordance with the Customer's environmental policy which is 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.
- 43.2. The Customer shall provide a copy of its written environmental policy (if any) to the Supplier upon the Supplier's written request.

**44. PREVENTION OF BRIBERY AND CORRUPTION**

- 44.1. The Supplier shall not commit and shall procure that all Staff or any person acting on the Supplier's behalf shall not commit, in connection with this Call Off Contract, any Prohibited Act.

44.2. The Supplier shall:

44.2.1. in relation to this Call Off Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;

44.2.2. immediately notify the Customer and the Authority if it suspects or becomes aware of any breach of this Clause 44;

44.2.3. respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 44 and the Supplier shall co-operate with any investigation and allow the Customer to audit the Supplier's books, records and any other relevant documentation in connection with the breach;

44.2.4. 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 Goods and/or Services in connection with this Call Off Contract compliance with this Clause 44. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request;

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

44.3. If the Supplier, the Staff or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches this Clause 44 the Customer shall be entitled to terminate this Call Off Contract for Material Breach.

44.4. Without prejudice to its other rights and remedies under this Clause 44, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer (whether before or after the making of a demand pursuant to the indemnity hereunder) in full from and against:

44.4.1. the amount of value of any such gift, consideration or commission; and

44.4.2. any other Loss sustained by the Customer in consequence of any breach of this Clause 44.

**45. RECORDS AND AUDIT ACCESS**

45.1. The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date or date of termination of this Call Off Contract (whichever is the earlier) (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the

operation of this Call Off Contract including the Goods and/or Services provided under it, Purchase Orders, any Sub-Contracts and the amounts paid by the Customer.

- 45.2. The Supplier shall keep the records and accounts referred to in Clause 45.1 above in accordance with Good Industry Practice and generally accepted accounting principles.
- 45.3. The Supplier shall afford the Customer and/or the Customer's representatives and/or the National Audit Office and/or an auditor appointed by the Audit Commission (each of whom shall for the purposes of this Clause 45 be an "**Auditor**") access to the records and accounts referred to in Clause 45.1 at the Supplier's premises and/or provide copies of such records and accounts (including copies of the Supplier's published accounts), as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 45.1, in order that the Auditor(s) may carry out an inspection including for the following purposes:
  - 45.3.1. to verify the accuracy of the Call Off Contract Charges (and proposed or actual variations to them in accordance with this Call Off Contract), and/or the costs of all Supplier (including Sub-Contractors) of the Goods and/or Services;
  - 45.3.2. to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;
  - 45.3.3. to review the Supplier's compliance with the Data Protection Legislation in accordance with this Call Off Contract and any other Laws;
  - 45.3.4. to review the Supplier's compliance with its continuous improvement and benchmarking obligations set out in Framework Schedule 7 (Value for Money) and Clause 19 (Continuous Improvement) of this Call Off Contract;
  - 45.3.5. to review the Supplier's compliance with its security obligations set out in Clause 30 (Security and Protection of Information);
  - 45.3.6. to review any books of account kept by the Supplier in connection with the provision of the Goods and/or Services;
  - 45.3.7. 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;
  - 45.3.8. to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or

45.3.9. to ensure that the Supplier is complying with its obligations under this Call Off Contract.

45.4. The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or 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.

45.5. 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:

45.5.1. all reasonable information requested by the Customer within the scope of the audit;

45.5.2. reasonable access to sites controlled by the Supplier and to any Equipment used in the provision of the Goods and/or Services ; and

45.5.3. access to the Staff.

45.6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 45, unless the audit reveals a Material Breach by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

45.7. Where requested by the Customer, the Supplier shall supply the Management Information to the Customer in the form set out in the Management Information Framework Schedule 8 (Management Information) (as amended from time to time) and on such date or dates during the Call Off Contract Period as the Customer may specify.

#### **46. DISCRIMINATION**

46.1. The Supplier shall not unlawfully discriminate within the meaning and scope of any Law relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

46.2. The Supplier shall take all reasonable steps to secure the observance of Clause 46.1 by all Staff engaged or employed in the execution of this Call Off Contract.

46.3. The Supplier shall notify the Customer immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by any Staff on the grounds of discrimination arising in connection with the provision of the Goods and/or Services under this Call Off Contract.

#### **47. PREVENTION OF FRAUD**

47.1. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier (including its

shareholders, members and directors) and any Staff in connection with the receipt of monies from the Customer.

47.2. The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Supplier or the Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

47.3. If the Supplier or the Staff commits any Fraud, the Customer may:

47.3.1. terminate this Call Off Contract for Material Breach; and/or

47.3.2. recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full for any Loss sustained by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in consequence of any breach of this Clause 47 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period.

## **48. TRANSFER AND SUB-CONTRACTING**

### **48.1. Transfer rights**

48.1.1. Subject to Clauses 48.1.2 and 48.2.1, the Supplier shall not assign, novate, Sub-Contract or in any other way dispose of this Call Off Contract or any part of it without Approval. The Customer has consented to the engagement of the Sub-Contractors listed in Framework Schedule 2 (Sub-Contractors).

48.1.2. The Supplier may assign to a third party ("the Assignee") the right to receive payment of the Call Off Contract Charges or any part thereof due to the Supplier under this Call Off Contract (including any interest which the Customer incurs under Clause 24.2.8). Any assignment under this Clause shall be subject to:

48.1.2.1. reduction of any sums in respect of which the Customer exercises its right of recovery under Clause 24.3 (Recovery of Sums Due);

48.1.2.2. all related rights of the Customer under this Call Off Contract in relation to the recovery of sums due but unpaid; and

48.1.2.3. the Customer receiving notification under both Clauses 48.1.3 and 48.1.4.

- 48.1.3. In the event that the Supplier assigns the right to receive the Call Off Contract Charges under Clause 48.1.2, the Supplier or the Assignee shall notify the Customer in writing of the assignment and, including a reasonable notice period, of the date upon which the assignment becomes effective.
- 48.1.4. The Supplier shall ensure that the Assignee notifies the Customer of the Assignee's contact information and bank account details to which the Customer shall make payment.
- 48.1.5. The provisions of Clause 24.2 shall continue to apply in all other respects after the assignment and shall not be amended.
- 48.1.6. Subject to Clause 48.1.8, the Customer may assign, novate or otherwise dispose of its rights and obligations under this Call Off Contract or any part thereof to:
- 48.1.6.1. any other Contracting Body; or
  - 48.1.6.2. 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
  - 48.1.6.3. any private sector body which substantially performs the functions of the Customer,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Call Off Contract.
- 48.1.7. Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 48.1.8, affect the validity of this Call Off Contract. In such circumstances, this Call Off Contract shall bind and continue to take effect to the benefit of any successor body to the Customer.
- 48.1.8. If the rights and obligations under this Call Off Contract are assigned, novated or otherwise disposed of pursuant to Clause 48.1.6 to a body which is not a Contracting Body or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Body (in the remainder of this Clause both such bodies being referred to as "the Transferee"):
- 48.1.8.1. the rights of termination of the Customer in Clauses 38.1 (Termination on Insolvency), 38.2 (Termination on Change of Control) and 38.5 (Termination on Default) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and



48.1.8.2. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Call Off Contract or any part thereof with the previous consent in writing of the Supplier.

48.1.9. The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this Call Off Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information of the Supplier only for purposes relating to the performance of the Supplier's obligations under this Call Off Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

48.1.10. For the purposes of Clause 48.1.8 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Call Off Contract.

#### **48.2. Sub-contracting**

48.2.1. The Supplier shall not substitute or remove a Sub-Contractor or appoint an additional sub-contractor without the Approval of the Authority. Notwithstanding any permitted Sub-Contract in accordance with this Clause 48.2, 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. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that the Staff also do, or refrain from doing, such act or thing.

48.2.2. The performance of any part of this Call Off Contract by a Sub-Contractor shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Call Off Contract. The Supplier shall supply such information about proposed Sub-Contractors as the Customer may reasonably require in order to enable the Customer to consider whether to grant Approval.

48.2.3. Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.

48.2.4. The Customer may, at its sole discretion, require the Supplier to ensure that each Sub-Contract shall include:

- 48.2.4.1. a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that Sub-Contract as if it were the Supplier;
  - 48.2.4.2. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Customer;
  - 48.2.4.3. a provision requiring the Sub-Contractor to enter into a direct confidentiality agreement with the Customer on the same terms as set out in Clause 32 (Confidentiality);
  - 48.2.4.4. a provision requiring the Sub-Contractor to comply with protection of data requirements pursuant to Clauses 30.3 (Customer Data) and 31 (Protection of Personal Data);
  - 48.2.4.5. a provision requiring the Sub-Contractor to comply with the anti-corruption and anti-bribery requirements pursuant to Clause 44 (Prevention of Bribery and Corruption);
  - 48.2.4.6. a provision requiring the Supplier to pay any undisputed sum due to the relevant Sub-Contractor within a specified period that does not exceed thirty (30) days from the date the Supplier receives the Sub-Contractor's invoice;
  - 48.2.4.7. a provision restricting the ability of the Sub-Contractor to further Sub-Contract elements of the service provided to the Supplier without first seeking the prior written consent of the Customer and the Authority; and
  - 48.2.4.8. a provision restricting the ability of the Sub-Contractor to effect the removal or replacement of any Key Personnel during the Call Off Contract Period without Approval.
- 48.2.5. The Customer may require the Supplier to terminate a Sub-contract where it considers that:
- 48.2.5.1. the Sub-contractor may prejudice the supply of the Goods and/or Services or may be acting contrary to the interests of the Customer; or
  - 48.2.5.2. the Sub-contractor employs unfit persons;
- provided that such right shall not be exercised unreasonably, frivolously or vexatiously.

48.2.6. If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier in the supply of the Goods and/or Services, then the Customer may 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.

48.2.7. If the Customer exercises the option pursuant to Clause 48.2.5, then the Call Off Contract Charges shall be reduced by an amount that is agreed subject to the Variation Procedure.

#### **49. FORCE MAJEURE**

49.1. Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Call Off Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure Event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Call Off Contract for the duration of such Force Majeure Event. However, if such Force Majeure Event prevents either Party from performing its material obligations under this Call Off Contract for a period in excess of one hundred and twenty (120) days, either Party may terminate this Call Off Contract with immediate effect by notice in writing to the other Party.

49.2. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from any 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, as in the case of an Affected Party, by a Force Majeure Event from complying with an obligation to the Supplier.

49.3. If either Party becomes aware of a Force Majeure Event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 49.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

49.4. If a Force Majeure Event affects the Goods and/or Services, the Customer may direct the Supplier to procure those Goods and/or Services from a third party in which case the Supplier will be liable for payment for the provision of those Goods and/or Services for as long as the delay in performance continues.

49.5. The Supplier shall not have the right to any payment from the Customer under this Call Off Contract where the Supplier is unable to provide the Goods and/or Services because of a Force Majeure Event. However if the Customer directs the Supplier to use a replacement supplier pursuant to Clause 49.4, then the Customer will pay the Supplier (a) the Call Off Contract Charges; and (b) the difference between the Call Off

Contract Charges and the new supplier's costs if, in respect of the Goods and/or Services that are subject to a Force Majeure Event, the new provider's costs are greater than the Call Off Contract Charges.

**50. WAIVER**

- 50.1. The failure of either Party to insist upon strict performance of any provision of this Call Off Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Call Off Contract.
- 50.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 60 (Notices). Such waiver shall only be operative with regard to the specific circumstances referred to.
- 50.3. A waiver by either Party of any right or remedy arising from a breach of this Call Off Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Call Off Contract.

**51. CUMULATIVE REMEDIES**

- 51.1. Except as otherwise expressly provided by this Call Off Contract, all remedies available to either Party for breach of this Call Off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**52. FURTHER ASSURANCES**

- 52.1. 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.

**53. VARIATION**

- 53.1. Subject to the provisions of this Clause 53, the Customer may (which can also result from a suggestion of the Supplier to the Customer) request a variation to this Call Off Contract provided that such variation does not amount to a material change within the meaning of the Regulations and the Law. Such a change is hereinafter called a "**Variation**".
- 53.2. The Customer may request a Variation by completing and sending the Variation Form set out in Call Off Schedule 1 ("the Variation Form") to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order or Purchase Order.
- 53.3. In the event that the Supplier is unable to provide the Variation including where the Parties are unable to agree a change to the Call Off Contract Charges, the Customer may:

53.3.1. agree to continue to perform their obligations under this Call Off Contract without the Variation; or

53.3.2. terminate this Call Off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Order or Purchase Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order or Purchase Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

53.4. If the Parties agree the Variation and any variation in the Call Off Contract Charges, 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.

#### **54. SEVERABILITY**

54.1. If any provision of this Call Off Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Call Off Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

54.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

#### **55. MISTAKES IN INFORMATION**

55.1. The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Goods and/or Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

#### **56. SUPPLIER'S STATUS**

56.1. At all times during the Call Off Contract Period the Supplier shall be an independent contractor and nothing in this Call Off Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Call Off Contract.

#### **57. CONFLICTS OF INTEREST**

57.1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a

potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of this Call Off Contract.

- 57.2. The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 57.1 above arises or is reasonably foreseeable.
- 57.3. The Customer reserves the right to terminate this Call Off Contract for Material Breach and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of this Call Off Contract. The actions of the Customer pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

## **58. ENTIRE AGREEMENT**

- 58.1. This Call Off Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) between the Parties in relation to such matters.
- 58.2. Each of the Parties acknowledges and agrees that in entering into this Call Off Contract it does not rely on, and shall have no remedy in respect of, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as expressly set out in this Call Off Contract.
- 58.3. The Supplier acknowledges and agrees that it has:
  - 58.3.1. entered into this Call Off Contract in reliance on its own due diligence alone; and
  - 58.3.2. received sufficient information required by it in order to determine whether it is able to provide the Goods and/or Services in accordance with the terms of this Call Off Contract.
- 58.4. Nothing in Clauses 58.1 to 58.3 shall operate to exclude any liability for (or remedy in respect of) Fraud.

## **59. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 59.1. A person who is not a Party to this Call Off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. This Clause does not affect any right or remedy of any person which exists or is available otherwise than

pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

- 59.2. No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Call Off Contract or any one or more Clauses or paragraphs of it.

## 60. NOTICES

- 60.1. 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, an e-mail is accepted as being "in writing".
- 60.2. Subject to Clause 53.3, 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 Clause 60.3, 9.00am on the first Working Day after sending	Dispatched in an emailed pdf form 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
Recorded delivery or other next working day delivery 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 next Working Day	properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 60.3. Any notices from either Party relating to termination (Clause 31), partial termination, suspension or partial suspension (Clause 32), waiver (Clause 43) Default or Customer Cause and any dispute under the Dispute Resolution Procedure (Clause 56) may not be served by email.
- 60.4. For the purposes of Clause 53.2, the address and email address of each Party shall be the address and email address set out in the Order Form.
- 60.5. Either Party may change its address for service by serving a notice in accordance with this Clause 53.

- 60.6. This Clause 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.

**61. LEGISLATIVE CHANGE**

- 61.1. 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:

61.1.1. General Change in Law;

61.1.2. Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Effective Date.

- 61.2. If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than those referred to in Clause 56.1.2), the Supplier shall notify the Customer of the likely effects of that change.

- 61.3. As soon as practicable after any notification in accordance with Clause 56.2 the parties shall discuss and agree the matters referred to in that clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:

61.3.1. providing evidence 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;

61.3.2. demonstrating that a foreseeable Specific Change in Law had been taken into account by the Supplier before it occurred;

61.3.3. giving evidence as to how the Specific Change in Law has affected the cost of supplying the Goods and/or Services; and

61.3.4. demonstrating that any expenditure that has been avoided, has been taken into account in amending the Call Off Contract Charges.

- 61.4. Any increase in the Call Off Contract Charges or relief from any of the Supplier's obligations under this Call Off Contract agreed by the Parties pursuant to Clauses 56.2 and 56.3 above shall be implemented in accordance with Clause 53 (Variation).

**G. DISPUTES AND LAW**

**62. GOVERNING LAW AND JURISDICTION**

- 62.1. This Call Off Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with this Call Off Contract including, without



limitation, any dispute relating to any contractual or non-contractual obligation and the existence, validity or termination of this Call Off Contract.

**63. DISPUTE RESOLUTION**

63.1. Immediately upon either Party notifying the other of a dispute, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Call Off Contract and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in the Order Form.

63.2. Nothing in this Dispute Resolution Procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

63.3. If the dispute cannot be resolved by the Parties pursuant to Clause 63.1 within twenty (20) Working Days or such other period that the Customer may specify or Approve, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 63.5 unless:

63.3.1. the Customer considers that the dispute is not suitable for resolution by mediation; or

63.3.2. the Supplier does not agree to mediation.

63.4. Without prejudice to any other rights of the Customer under this Call Off Contract, the obligations of the Parties under this Call Off Contract shall not be suspended, cease or be delayed by the reference of a dispute submitted to mediation and the Supplier and the Staff shall comply fully with the requirements of this Call Off Contract at all times.

63.5. The procedure for mediation is as follows:

63.5.1. a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice of the Mediator to either Party that that person is unable or unwilling to act, apply to the mediation provider or to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator;

63.5.2. the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with the Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the mediation provider specified in Clause 63.5.1 to provide guidance on a suitable procedure;

- 63.5.3. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 63.5.4. if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 63.5.5. failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Call Off Contract without the prior written consent of both Parties; and
- 63.5.6. if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

## GLOSSARY TO DFFS/5080 CALL OFF FORM AND CALL OFF TERMS

In accordance with Clause 1.1 of this Call Off Contract including its recitals the following expressions shall have the following meanings:

<b>"Achieve"</b>	means in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone in accordance with the Order Form and "Achieved" and "Achievement" shall be construed accordingly;
<b>"Affected Party"</b>	means the party seeking to claim relief in respect of a Force Majeure;
<b>"Affiliates"</b>	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;
<b>"Additional Clauses"</b>	means the MoD Additional Clauses and any other additional Clauses stipulated by the Customer in a Further Competition Procedure including in paragraph 11 of Call Off Schedule 9 (SMR & SMI);
<b>"Alternative Clauses"</b>	means the alternative Clauses in Call Off Schedule 10 (Alternative Clauses) and any other alternative Clauses stipulated by the Customer in a Further Competition Procedure including in paragraph 11 of Call Off Schedule 9 (SMR & SMI);
<b>"Approval"</b>	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
<b>"Auditor"</b>	has the meaning in Clause 40;
<b>"Authority"</b>	means THE MINISTER FOR THE CABINET OFFICE (" <b>Cabinet Office</b> ") as represented by Government Procurement Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
<b>"Call Off Agreement"</b>	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Goods and/or Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Commencement Date"</b>	means the date of commencement of the Call Off Contract set out in the Order Form;
<b>"Call Off Contract"</b>	means this Call-Off Agreement 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;
<b>"Call Off Contract Charges"</b>	means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract in accordance with Framework Schedule 3 and as set out further in Call Off Schedule 8, for the full and proper performance by the Supplier of its obligations under the Call Off Contract less any Service Credits;
<b>"Call Off Contract Period"</b>	means the period from the Call Off Commencement Date until the Call Off Expiry Date or earlier completion or termination of this Call Off Contract in accordance with Clause 4;
<b>"Call Off Contract Year"</b>	means each consecutive twelve (12) Month period during the Call Off Contract Period commencing on the Call Off Effective Date;
<b>"Call Off Effective Date"</b>	means the date of formation of this Call Off Contract in accordance with the Order Form and Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Expiry Date"</b>	means the date of expiry of the Call Off Contract set out in the Order Form;
<b>"Call Off Schedules"</b>	means the schedules to this Call Off Contract;
<b>"Call Off Terms"</b>	means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Goods and/or Services, together with the Call Off Schedules hereto;
<b>"Change in Law"</b>	means any change in Law which impacts on the supply of the Goods and/or Services and performance of the Call Off Terms which comes into force after the Call Off Commencement Date;
<b>"Change of Control"</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	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;
<b>"Charging Structure"</b>	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 (Charging Structure);
<b>"Commercially Sensitive Information"</b>	means the Confidential information listed in the Order Form (if any) comprising of a 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;
<b>"Commodity Price"</b>	shall have the meaning given to it in paragraph 4 of Framework Schedule 3 (Charging Structure);
<b>"Comparable Supply"</b>	means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services;
<b>"Confidential Information"</b>	means the Customer's Confidential Information and/or the Supplier's Confidential Information;
<b>"Continuous Improvement Plan"</b>	means a plan for improving the provision of the Goods and/or Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 7 (Value for Money);
<b>"Contracting Body"</b>	means the Authority and any other bodies listed in paragraph VI.3 of the OJEU Notice;
<b>"Control"</b>	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and <b>"Controls"</b> and <b>"Controlled"</b> shall be interpreted accordingly;
<b>"Conviction"</b>	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.);
<b>"Critical Service Failure"</b>	means any critical service failure(s) specified in Annex B to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Crown"</b>	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;
<b>"Customer"</b>	means the customer(s) identified in the Order Form;

<b>"Customer Background IPRs"</b>	shall mean all Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Supplier of its obligations under the Call Off Contract and including, for the avoidance of doubt, including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, software, models and designs, technical specifications, user manuals, operating manuals, process definitions and procedures and other documentation and any modifications, amendments, updates and new releases of the same;
<b>"Customer Cause"</b>	means any breach by the Customer of its obligations under this Call Off Contract including Clause 10 (Customer Responsibilities) (unless caused or contributed to by the Supplier or as the result of any act or omission by the Customer to which the Supplier has given its prior consent);
<b>"Customer Data"</b>	means: <ul style="list-style-type: none"><li>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:</li><li>b. are supplied to the Supplier by or on behalf of the Customer; or</li><li>c. the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or</li><li>d. any Personal Data for which the Customer is the Data Controller;</li></ul>
<b>"Customer Representative"</b>	means the representative appointed by the Customer from time to time in relation to the Call Off Contract;
<b>"Customer Responsibilities"</b>	means the responsibilities of the Customer set out in the Order Form, Clause 12 and any other responsibilities of the Customer agreed in writing between the Parties from time to time;
<b>"Customer Software"</b>	means software which is owned by or licensed to the Customer, including software which is or will be used by the Supplier for the purposes of providing the Goods and/or Services but excluding the Supplier Software;
<b>"Customer's Confidential"</b>	means all Personal Data and any information, however it is conveyed, that relates to the business,

<b>"Information"</b>	affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all IPRs (including all Customer Background IPRs and Project Specific IPRs), together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
<b>"Customer's Premises"</b>	means the Customer's premises identified in the Order Form and which are to be made available by the Customer for use by the Supplier for the provision of the Goods and/or Services, including but not limited to the Customer's premises on which a tank or point of delivery is located, on the terms set out in this Call Off Contract and any other of the Customer's premises made available by the Customer from time to time for use by the Supplier in connection with this Call Off Contract;
<b>"Data Controller"</b>	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
<b>"Data Processor"</b>	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
<b>"Data Protection Legislation" or "DPA"</b>	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Data Subject"</b>	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
<b>"Default"</b>	means any breach of the obligations of the Supplier (including but not limited to Material Breach) or any other default, act, omission, negligence or negligent statement of the Supplier or the Staff 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;
<b>"Deliverables"</b>	means those deliverables listed in the Implementation Plan (if any);
<b>"Delivery"</b>	means, in respect of Goods, the time at which the Goods have been delivered and, in respect of 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 <b>"Deliver"</b>

and "**Delivered**" shall be construed accordingly;

**"Disaster"**

means the occurrence of one or more events which, either separately or cumulatively, mean that the Goods and/or Services, or a material part thereof will be unavailable for a period of 7 days or which is reasonably anticipated will mean that the Goods and/or Services or a material part thereof will be unavailable for that period

**"Delay Payment"**

means any delay payments specified by the Customer in the Order Form or elsewhere in this Call Off Contract in respect of failure by the Supplier to comply with a Milestone Date;

**"Dispute Resolution Procedure"**

means the dispute resolution procedure set out in Clause 63;

**"Duty"**

means all duty imposed on liquid fuels as set by Her Majesty Revenue and Customs (HMRC) from time to time;

**"Environmental Information Regulations"**

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;

**"Equipment"**

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

**"ERG"**

means the Cabinet Office Efficiency and Reform Group;

**"Estimated Year 1 Call Off Contract Charges"**

means the sum of £24.727M pounds estimated by the Customer to be payable to it by the Supplier as the total aggregate Call Off Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year;

**"Exit Plan"**

has the meaning set out in Clause 22;

**"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;



<b>"Force Majeure Event"</b>	<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"><li>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 the Call Off Contract;</li><li>b. riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li><li>c. acts of the Crown, local government or Regulatory Bodies;</li><li>d. fire, flood or any disaster; and</li><li>e. an industrial dispute affecting a third party for which a substitute third party is not reasonably available</li></ul> <p>but excluding:</p> <ul style="list-style-type: none"><li>a. any industrial dispute relating to the Supplier, the Staff (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain;</li><li>b. 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</li><li>c. any failure of delay caused by a lack of funds.</li></ul>
<b>"Framework Agreement"</b>	<p>means the framework agreement between the Authority and the Supplier referred to in the Order Form;</p>
<b>"Fraud"</b>	<p>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;</p>
<b>"Further Competition Procedure"</b>	<p>means the ordering procedure described in paragraph 2 of Framework Schedule 5 (Call Off Procedure);</p>
<b>"General Change in Law"</b>	<p>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</p>

relates to a Comparable Supply;

<b>"Good Industry Practice"</b>	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;
<b>"Goods"</b>	means the goods to be supplied as specified in the Order Form;
<b>"Government"</b>	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;
<b>"HMRC"</b>	means Her Majesty's Revenue and Customs;
<b>"Holding Company"</b>	shall have the meaning given to it in section 1159 of the Companies Act 2006;
<b>"Implementation Plan"</b>	means the plan referred to in the Order Form;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>"Insolvency Event"</b>	<p>means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable):</p> <ul style="list-style-type: none"><li>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</li><li>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</li><li>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</li><li>d. a receiver, administrative receiver or similar</li></ul>

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.

**"Installation Works"**

shall mean all works which the Supplier is to carry out pursuant to the Call Off Agreement;

**"Intellectual Property Rights" or "IPRs"**

means

- a. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations whether registerable or not;
- 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 whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off.

<b>"Key Performance Indicators" or "KPIs"</b>	means the performance measurements and targets set out in Part B of Framework Schedule 1 (Goods and/or Services and Key Performance Indicators);
<b>"Key Personnel"</b>	means the individuals (if any) identified as such in the Order Form;
<b>"Know-How"</b>	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the Supplier's or the Customer's possession before the Call Off Commencement Date;
<b>"Law"</b>	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;
<b>"Losses"</b>	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;
<b>"Malicious Software"</b>	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;
<b>"Management Information"</b>	or " <b>MI</b> " means the management information specified in Framework Schedule 8 (Management Information);
<b>"Material Breach"</b>	means: <ul style="list-style-type: none"><li>a. a Critical Service Failure;</li><li>b. a breach by the Supplier specified by this definition title in any of the following Clauses: Clause 5 (Warranties and Representations), Clause <b>Error! Reference source not found.</b> (Time of Delivery of Services), Clause 8.2 (Time of Delivery of Goods), Clause 8.6 (Undelivered Goods), Clause 8.8 (Delivery of Goods by Instalments), Clause 9 (Installation</li></ul>

Works), Clause 17 (Monitoring of Call Off Contract Performance), Clause 21 (Disruption), Clause 26 (Staff and Staff Security), Clause 29 (Intellectual Property Rights), Clause 31 (Protection of Personal Data), Clause 32 (Confidentiality), Clause 33 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), Clause 41 (Publicity, Media and Official Enquiries), Clause 44 (Prevention of Bribery and Corruption), Clause 47 (Prevention of Fraud) and Clause 57 (Conflicts of Interest);

- c. any material breach of this Call Off Contract under the Law; and/or
- d. a breach which prevents the Customer from discharging a statutory duty.

<b>"Milestone"</b>	means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;
<b>"Milestone Date"</b>	means the date set against the relevant Milestone in the Implementation Plan;
<b>"Ministry of Justice Guidance"</b>	means Ministry of Justice Guidance in relation to Section 9 of the Bribery Act 2010 available at <a href="http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf">http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf</a> ;
<b>"MoD Additional Clauses"</b>	means any of the Additional Clauses set out in Call Off Schedule 11 ( MOD Additional Clauses) which have been inserted in this Call Off Contract by the Ministry of Defence;
<b>"Month"</b>	means a calendar month and "Monthly" shall be interpreted accordingly;
<b>"Order"</b>	means the order for the provision of the Goods and/or Services placed by the Customer with the Supplier in accordance with the Framework Agreement, including a Purchase Order;
<b>"Order Form"</b>	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 Goods and/or Services to be supplied;
<b>"Parent Company"</b>	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;
<b>"Party"</b>	means the Customer or the Supplier and "Parties" shall mean both of them;
<b>"Personal Data"</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>"Premises"</b>	means any of the locations and/or premises where the Goods and/or Services are to be supplied as set out in the Order Form and by the Customer from time to time;
<b>"Processing"</b>	has the meaning given to "processing" under the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
<b>"Prohibited Act"</b>	means: <ul style="list-style-type: none"><li>a. to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority a financial or other advantage to;</li><li>b. induce that person to perform improperly a relevant function or activity; or</li><li>c. reward that person for improper performance of a relevant function or activity; or</li><li>d. committing any offence:</li><li>e. under the Bribery Act 2010; or</li><li>f. under legislation creating offences concerning Fraud; or</li><li>g. at common law concerning Fraud; or</li><li>h. committing or attempting or conspiring to commit Fraud;</li></ul>
<b>"Project Specific IPRs"</b>	means: <ul style="list-style-type: none"><li>a. IPRs in or arising out of the provision of the Goods and/or Services under to this Call Off Contract and all updates and amendments to the same created or arising during the Contract Period; and/or</li><li>b. any materials, data and other works of any kind whatsoever created or compiled in the course</li></ul>

of the performance of this Call Off Contract in which IPRs may subsist; and/or

- c. the IPRs in any modifications, updates and developments to the Customer Background IPRs and modifications, amendments, updates and new releases of the Supplier Background IPRs which arise specifically in the course of the provision of the Goods and/or Services and the performance of the Supplier's obligations under this Call Off Contract; and/or
- d. any personal data provided or available to the Supplier for the purposes of this Call Off Contract; and/or
- e. any 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 or other media, and which are supplied to the Supplier by or on behalf of the Customer; or the Supplier is required to receive, commission, generate, process, store or transmit pursuant to this Call Off Contract;

<b>"Property"</b>	means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with this Call Off Contract;
<b>"Purchase Order"</b>	means an Order under this Call Off Contract made in accordance with the Purchasing Procedure;
<b>"Purchasing Procedure"</b>	means the procedure for repeat purchasing of Goods and/or Services under this Call Off Contract specified by the Customer in accordance with Clause 6;
<b>"Regulations"</b>	means the Public Contracts Regulations 2006 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
<b>"Related Supplier"</b>	means any person who provides goods and/or services to the Customer which are related to the Goods and/or Services from time to time;
<b>"Relevant Conviction"</b>	means a Conviction that is relevant to the nature of the Goods and/or Services to be provided or as specified by the Customer in the Order Form or elsewhere in the Call Off Contract;
<b>"Replacement Goods and/or Services"</b>	means any goods and/or services which are substantially similar to any of the Goods and/or Services and which the Customer receives in substitution for any of the Goods and/or Services following the expiry or termination of this Call Off Contract, whether those goods and/or services are

provided by the Customer internally and/or by any third party;

<b>"Replacement Supplier"</b>	means any third party provider of Replacement Goods and/or Services appointed by the Customer from time to time or where the Customer is providing Replacement Goods and/or Services for its own account, shall also include the Customer;
<b>"Request for Information"</b>	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Goods and/or Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
<b>"Satisfaction Certificate"</b>	means the certificate materially in the form of the document contained in the Annex to Call Off Schedule 4 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;
<b>"Security Management Plan"</b>	means the Supplier's security management plan prepared pursuant to paragraph 3 of Call Off Schedule 2 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 3.2 of Call Off Schedule 2 (Security) and as updated from time to time;
<b>"Security Policy"</b>	means the Customer's security policy and procedures in force from time to time, including any specific security requirements set out in Annex A to Call Off Schedule 2 (Security);
<b>"Service Credits"</b>	means any service credits specified in Annex A to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service Failure"</b>	means an unplanned failure and interruption to the provision of the Goods and/or Services, reduction in the quality of the provision of the Goods and/or Services or event which could affect the provision of the Goods and/or Services in the future;
<b>"Service Levels"</b>	means any service levels applicable to the provision of the Goods and/or Services under this Call Off Contract specified in Annex A to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Period"</b>	shall have the meaning given to in paragraph 5.1 of Call Off Schedule 6 (Service Levels, Service Credits



	and Performance Monitoring);
<b>"Services"</b>	means the services to be supplied as referred to in the Order Form;
<b>"SI litres"</b>	means litres measured in accordance with the International System of Units or "SI";
<b>"Software"</b>	means the Supplier Software and Customer Software;
<b>"Specific Change in Law"</b>	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
<b>"Staff"</b>	means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors) used in the performance of its obligations under this Call Off Contract;
<b>"Staff Vetting Procedures"</b>	means any Customer's procedures and departmental policies for the vetting of personnel as set out by the Customer in the Order Form or elsewhere in the Call Off Contract;
<b>"Standards"</b>	means; <ul style="list-style-type: none"><li>a. any 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;</li><li>b. any standards detailed in the specification in Framework Schedule 1 (Goods and/or Services and Key Performance Indicators);</li><li>c. any standards detailed by the Customer in the Call Off Contract, Order Form or Purchase Order following a Further Competition Procedure or agreed between the Parties from time to time;</li><li>d. any relevant Government codes of practice and guidance applicable from time to time.</li></ul>
<b>"Sub-Contract"</b>	means any contract or agreement or proposed contract or agreement between the Supplier and any

third party whereby that third party agrees to provide to the Supplier the Goods and/or Services or any part thereof or facilities, services necessary for the provision of the Goods and/or Services or any part thereof or necessary for the management, direction or control of the provision of the Goods and/or Services or any part thereof;

**"Sub-Contractor"**

means the third party from the list of sub-contractors in Framework Schedule 2 (Sub-Contractors) or any third party engaged by the Supplier from time to time under a Sub-Contract permitted pursuant to the Framework Agreement and this Call Off Contractor its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;

**"Supplier"**

means the person, firm or company with whom the Customer enters into the Call Off Contract as identified in the Order Form;

**"Supplier Background IPRs"**

means any Intellectual Property Rights vested in or licensed to the Supplier prior to or independently of the performance by the Customer of its obligations under this Call Off Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, software, models and designs, technical specifications, user manuals, operating manuals, process definitions and procedures and other documentation including any general modifications, amendments, updates and new releases of the same but excluding modifications, amendments, updates and new releases of the same which arise specifically in the course of the provision of the Goods and/or Services and the performance of the Supplier's obligations under this Call Off Contract;

**"Supplier Margin"**

means those values and rates per litre of Goods supplied as submitted by the Supplier during the Further Competition Procedure and as set out in Call Off Schedule 8 (Site Addition Template);

**"Supplier Maximum Margin"**

means those maximum values and rates per litre of Goods supplied as submitted by the Supplier in the Tender in response to question AQT2 and as set out in paragraph **Error! Reference source not found.** of Framework Schedule 3 (Charging Structure);

**"Supplier Software"**

means the means any software identified as such in the Order Form together with all other software which is not listed in the Order Form but which is or will be used by the Supplier or any Sub-Contractor for the

<b>"Supplier's Call Off Solution"</b>	purposes of providing the Goods and/or 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 Goods and/or Services;
	means the Supplier's solution in response to the Customer's invitation to suppliers for formal offers to supply the Customer with the Goods and/or Services pursuant to a Further Competition Procedure, a copy of which is set out in Call Off Schedule 3 (Call Off Solution);
<b>"Supplier's Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and 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;
<b>"Template Call Off Terms"</b>	means the template terms and conditions in Part 2 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
<b>"Template Order Form"</b>	means the template form in Part 1 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
<b>"Tender"</b>	means the tender submitted by the Supplier to the Authority on 26/11/2013
<b>"Tests" and "Testing"</b>	means any tests required to be carried out pursuant to this Call Off Contract as set out in the Test Plan or elsewhere in the Call Off Contract;
<b>"Test Issue"</b>	means any variance or non-conformity of the Goods and/or Services or Deliverables from their requirements as set out in the Call Off Contract;
<b>"Test Plan"</b>	means a plan for the Testing of the or Deliverables and other agreed criteria related to the achievement of Milestones as described further in paragraph 4 of Call Off Schedule 4;
<b>"Test Strategy"</b>	means a strategy for the conduct of Testing as described further in paragraph 3 of Call Off Schedule 4;
<b>"Undelivered Goods"</b>	shall have the meaning given in Clause 8.4;
<b>"Undelivered Services"</b>	shall have the meaning given in Clause 7.3;
<b>"Undisputed Sums Time Period"</b>	has the meaning given in Clause 33.5.3;

<b>"Valid Invoice"</b>	means an invoice issued by the Supplier to the Customer that complies with Clause 24.2.1;
<b>"Variation"</b>	has the meaning given in Clause 48.1;
<b>"Variation Procedure"</b>	means the procedure set out in Clause 48;
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Warranty Period"</b>	means, in relation to any Goods, the warranty period specified in the Order Form;
<b>"Working Day"</b>	means any Day other than a Saturday or Sunday or public holiday in England, Wales, <b>Scotland and Northern Ireland.</b>

## **CALL OFF SCHEDULE 1: VARIATION FORM**

INTENTIONALLY LEFT BLANK – NOT REQUIRED

Conditions relating to Variation and Contract Amendments are provided in Condition 3.6 of Call Off Schedule 11.

## **CALL OFF SCHEDULE 2: SECURITY**

INTENTIONALLY LEFT BLANK – NOT REQUIRED.

Security requirements relating to Contractor's Personnel at Government Establishments are provided in DEFCON 76 (edn 12/06) within Call Off Schedule 11.

**CALL OFF SCHEDULE 3: SUPPLIER'S CALL OFF SOLUTION**

INTENTIONALLY LEFT BLANK – NOT REQUIRED

**CALL OFF SCHEDULE 4: TESTING**

INTENTIONALLY LEFT BLANK – NOT REQUIRED



**CALL OFF SCHEDULE 5: BUSINESS CONTINUITY AND RECOVERY**

INTENTIONALLY LEFT BLANK – NOT REQUIRED

**CALL OFF SCHEDULE 6: SERVICE LEVELS, SERVICE CREDITS AND  
PERFORMANCE MONITORING**

INTENTIONALLY LEFT BLANK – NOT REQUIRED.

Conditions relating to Service Levels and Performance Monitoring are provided in Call Off Schedule 11.

**CALL OFF SCHEDULE 7: EXIT PLANNING**

INTENTIONALLY LEFT BLANK – NOT REQUIRED

## CALL OFF SCHEDULE 8: SITE ADDITION TEMPLATE



RM1013\_FC\_Lot  
204\_MOD Ground F

**CALL OFF SCHEDULE 9: SMR AND SMI**

INTENTIONALLY LEFT BLANK – NOT REQUIRED

**CALL OFF SCHEDULE 10: ALTERNATIVE CLAUSES**

INTENTIONALLY LEFT BLANK – NOT REQUIRED

## CALL OFF SCHEDULE 11: MOD ADDITIONAL CLAUSES

### 1. INTRODUCTION

- 1.1. This Call Off Schedule 11 specifies the range of Additional Clauses requested by the Ministry of Defence as Customer that shall apply to this Call Off Contract.

### 2. IMPLEMENTATION

- 2.1. The appropriate changes have been made in this Call Off Contract to implement the MoD Additional Clauses specified in paragraph 3 and shall be deemed to be incorporated into this Call Off Contract.

### 3. MOD ADDITIONAL CLAUSES

#### 3.1. Definitions

- 3.1.1. The following definitions shall be added to the Glossary to the Call Off Terms:

MoD Terms and Conditions	means the contractual terms and conditions listed in Call Off Schedule 11 which form part of the Call Off Terms
Quality Assurance Representative	means the person named in Box 7 of DEFFORM 111
Delivery Areas	means the specific area(s) set aside at the Customer's Premises for the delivery of such Goods as detailed in the Order Form or a Purchase Order Form
Authorised Demanders	means any person nominated by the Customer to place an Order, including a Purchase Order, under this Call Off Contract
Unit Identification Number or "UIN"	means the unique number that enables identification of units, sub-units and organisations
Unique Customer Account Number	means the unique number that enables identification of units, sub-units and organisations and which is a further derivation of the UIN
Supplier's Delivery Representative	means the Supplier's delivery driver or co-driver who enters the Customer's Premises
Customer's Receiving Officer	means the Officer in Charge who is authorised to receive the Goods delivered by the Supplier under this Call Off Contract
Purchase Order Form	means the Customer's form for placing a Purchase Order under the Purchasing Procedure

Delivery Receipt (DR)	means the document produced by the Supplier and signed by the Customer's Receiving Officer to confirm delivery of the goods as ordered on the Order Form or Purchase Order Form
Site Access POC	means a member of the Customer's Military Guard Service or other Authorising Officer at any Customer's establishment who grants to persons and vehicles access to the Customer's Premises
Bulk Fuel Carrying Vehicle or "BFCV"	means a vehicle specifically designed and manufactured to carry large amounts of liquid fuel in as reasonably safe manner as possible
Site Control Point/Guard Office	means the Customer's Guard Officer usually found at the entrance to the Customer's premises who grants to persons and vehicles access to Customer's Premises
Purchase to Payment or "P2P"	Means an electronic system used by the Customer to pay Suppliers undisputed Call Off Contract Charges
Order Acknowledgement	means a Supplier's document agreed between the Supplier and the Customer to be used by the Supplier to convey to the Customer that it has received a Purchase Order Message from the Customer
Purchase Order Message	means a document supplied to the Supplier by the Customer detailing to the Supplier the information needed for the Supplier to submit an invoice and request payment by the Customer through P2P
Unique Order Identifiers	shall have the meaning given to it in DEFCON 5J
Special Handling Equipment	means any equipment that is needed for the safe unloading and handling of the Goods that is supplied by the Customer to Supplier under this Call Off Contract
Customer's Project Manager	Means the assigned Customer's project manager as detailed in Box 2 of DEFFORM 111
Reporting Date	Means the 7 <sup>th</sup> day of each Month or such other date as may be agreed between the Parties
Contractor	for the purpose of the MoD Additional Clauses shall mean the Supplier and these two terms may be used interchangeably

### 3.2. **MoD DEFCONs, DEFFORMs and DEFSTANs**

3.2.1. The Following Defence Conditions of Contract ("**DEFCONs**"), Defence Forms ("**DEFFORMs**") and



Defence Standards (“**DEFSTANs**”) shall form part of the MoD Terms and Conditions:

### **DEFCONs**

DEFCON No	Version	Description
5J	03/15	Unique Identifiers
68	06/15	Supply of Data for Hazardous Articles, Materials and Substances
76	12/06	Contractor's Personnel At Government Establishments
113	10/04	Diversions Orders
129J	07/08	The Use of Electronic Business Delivery Form
503	12/14	Formal Amendments to Contract
521	04/12	Subcontracting To Supported Businesses
522J	05/03	Payment Under P2P
522AJ	04/09	Payment Under P2P (Matching the Invoice And order (Two-way Match))
524	10/98	Rejection
525	10/98	Acceptance
627	12/10	Requirement for Certificate of Conformity

### **DEFFORMs**

DEFFORM No	Version	Description
30	10/13	The Electronic Transaction Agreement
68	06/15	Hazardous Articles, Materials or Substances Statement by the Contractor
129J	07/08	The Use of the Electronic Business Delivery Form
111	10 /13	Annex – Addresses and other Information

### **DEFSTANs**

DEFSTAN No	Version	Description
01-05 Pages 194 - 196	Issue 17, Publication date 31/03/11	Fuels, Lubricants and Associate Products
05-61	Issue 5, Publication date	Quality Assurance Procedural Requirements Part 1

	02/08/10	
JSP317	Issue 5 Publication date 03/01/2015	Segregation, handling and quality assurance of petroleum fuels, lubricants and associated products
2130 (AQAP)	Edition 3	NATO Quality Requirements for Inspection and Test

The above documents can be found at [www.aof.mod.uk](http://www.aof.mod.uk) and at [www.dstan.mod.uk](http://www.dstan.mod.uk)

### 3.3. Due Diligence

- 3.3.1. The following sub-clauses are added to Clause 2 (Due Diligence):
- 3.3.2. The Supplier confirms that it has had the opportunity to review the MoD Additional Clauses and has raised all due diligence questions in relation to any related documents with the Customer prior to the Call Off Commencement Date.
- 3.3.3. Where required by the Customer, the Supplier shall take such actions as are necessary to ensure that the MoD Additional Clauses constitute legal, valid, binding *and enforceable obligations on the Supplier*.

### 3.4. Delivery and Provision of the Goods

- 3.4.1. The following additional requirements in relation to delivery and provision of the Goods shall apply:

#### **Supplier's Delivery Representative**

- 3.4.2. The Supplier shall submit a list of intended or potential Delivery Representatives with the following detail:
- Full names;
  - Any/All background security checks that have been undertaken on that person by the Supplier;
  - Record of training/competence in line with industry standards to complete the required deliveries and associated actions; and
  - Record of training/competence in line with industry standards to deal with associated emergencies that may occur.
- 3.4.3. If this information is not submitted as above or is deemed unsatisfactory by the Customer to ascertain with confidence that the intended Supplier's Delivery Representative is suitably qualified to undertake the role and actions requested, the Customer reserves the right for the Supplier to use such individuals to complete the obligations of the Supplier at the Customer's Premises.

- 3.4.4. The entry of any Supplier's Delivery Representative onto the Customer's Premises is at the sole discretion of the Customer. The Customer will not be responsible for any loss or inability to deliver the Goods if the entry of the Supplier's Delivery Representative is refused; however, such Approval will not be unreasonably withheld.

#### **Entry and Approval Procedure**

- 3.4.5. The Supplier is responsible for ensuring confirmation in writing of entry permissions from the Site's POC before any delivery times can be confirmed
- 3.4.6. The Customer reserves the right to refuse such requests for delivery time slots, but will not unreasonably withhold Approval and will endeavour to support the Supplier's requests where viably possible.
- 3.4.7. Clause 10.3 of the Call Off Terms shall not apply and the Customer will not be responsible for refusing a Supplier's Delivery Representative onto any Customer's Premises if the Supplier has not mutually agreed with the Site Access POC the delivery time no later than 24 hours in advance of any requested delivery of Goods by the Customer. In these circumstances, the Customer will not be responsible for any costs incurred by the Supplier for re-delivery of the Goods.
- 3.4.8. Subject to compliance with the prevailing site security conditions and confirmation of entry to any Customer's Premises, the Supplier shall have safe right of access to those parts of the Customer's Premises for the purpose of delivering the Goods.
- 3.4.9. The Supplier shall not be afforded any right or opportunity to inspect any of the Customer's physical security arrangements at any of the Customer's Premises. The Supplier will comply with the Customer's Security Policy and any other security procedure(s) as dictated by the Customer in relation but not limited to the Customer's Premises at all times.

#### **On Site Procedures**

- 3.4.10. Unless otherwise agreed prior to delivery of the Goods, a representative of the Customer, known as the 'Customer's Receiving Officer' shall attend all deliveries.
- 3.4.11. The Supplier will ensure that any Bulk Fuel Carrying Vehicle (BFCV) used to deliver the Goods to the Customer's Premises is correctly and suitably marked for the product being carried in accordance with industry regulations and standards.

- 3.4.12. Immediately on entering the Customer's Premises, the Supplier's Delivery Representative is to report to the Site Control Point/Guard Office for the relevant instructions in:
- emergency procedures;
  - loading operations; and
  - traffic control systems.
- 3.4.13. It is the Supplier's Delivery Representative's responsibility to carry out the following actions:
- Ensure the BFCV is positioned so it is able to exit the installation without reversing or carrying out a complicated manoeuvre in the event of an emergency;
  - Ensure that the BFCV is task worthy with the correct equipment to complete the delivery in a safe and suitable manner;
  - Earth and bond the BFCV to the installation;
  - Ensure that the BFCV master switch is off once the vehicle is parked in the relevant position (unless required to drive pump);
  - Ensure BFCV fire extinguishers are to be placed 5 m upwind and the relevant hazard warning signs are displayed upon the approach to the vehicle location; and
  - Act in a responsible and safe manner at all times and undertake due care and attention to the access to and use of the Customer's Property and Premises.

### **Delivery**

- 3.4.14. The Supplier shall be responsible for transporting the Goods supplied under the Call Off Contract from the point of origin to the consignee. The Supplier shall also be responsible for all unloading of the Goods upon arrival at the Premises including, where necessary, the provision of special handling equipment.
- 3.4.15. Before any delivery can commence the Supplier's Delivery Representative should confirm the quality, volume and grade of the Goods being transferred into the Customer's tank is that as specified in the Purchase Order Form as sent by the Authorised Demander.
- 3.4.16. Quantity of the Goods shall be measured in litres by dipstick, loading bar or other approved measuring device and taken before and after delivery in the presence of the Customer's Receiving Officer who shall be at liberty to compare such readings.
- 3.4.17. Due to the danger of tank pressurising, blocked vents and a spill leakage into the soil, fuel deliveries to underground tanks where the hose is fixed to a fill pipe are prohibited. However deliveries to underground tanks

are permissible if the fuel can be discharged by means of gravity.

- 3.4.18. Accidents to the Supplier's Delivery Representative which must be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Customer's Receiving Officer.
- 3.4.19. On completion of delivery, the Supplier's Delivery Representative must ensure that the Customer's Receiving Officer for the fuel has satisfactorily completed the Delivery Receipt (DR) appertaining to the delivery and received, thereby confirming the volume of the Goods delivered.
- 3.4.20. No terms or conditions endorsed upon, delivered with or contained in the Supplier's Delivery Receipt or any other similar document shall form part of this Call Off Contract.

#### **Temperature and Volume**

- 3.4.21. The quantity of the Goods to be paid for shall be the volume that the material would occupy at the temperature of 15 degrees Celsius.

#### **Spillages and Contamination**

- 3.4.22. Without prejudice to the Supplier's obligations under Clause 8.5 of the Call Off Terms, in the event of spillage and contamination the Supplier must:
  - Adhere to any spillage emergency plan that a particular Customer's Premise(s) will have in place; and/or
  - contact the Site Access POC or the MOD Receiving Officer with immediate effect of any such event; and
  - Inform the Project Manager as specified in Box 2 of the Appendix to Contract, DEFFORM 111.

#### **Statement of Requirement**

- 3.4.23 See Annex B to Call Off Schedule 11.

### **3.5. Payment**

- 3.5.1. The following sub-clauses are added to Clause 24:
- 3.5.2. With the exception of any DSTL sites (see 3.5.15) all other sites for the purposes of this Call Off Agreement, payment for work authorised and satisfactorily completed shall be made as follows:

- 3.5.3. For the period 1 December 2015 – 31 January 2016 payment shall be made via MOD Form 640 in accordance with DEFCON 522 and DEFFORM 522a.
- 3.5.4. From 1 February 2016 to the expiry of the Call Off Agreement payment shall be made via the Customer's Purchase to Payment (P2P) system in accordance with DEFCON 522J.
- 3.5.5. Invoices for the supply of fuel shall be sent by e-mail to DESLCS-LC-GCST-FCMO1a annotated "NOT FOR PAYMENT". The Authority will raise a Purchase Order on the P2P system for the value of product supplied. The Supplier will then be required to submit an invoice via P2P detailing the agreed value and volume for payment.
- 3.5.6. The invoice submitted to the designated point of contract, prior to input into the P2P system must clearly specify:
- Contract Number
  - Delivery date
  - Delivery location
  - Product
  - Volume in (M<sup>3</sup>)
  - Unit price
  - Total price
- 3.5.7 All invoices must be accompanied by proof of delivery documentation to confirm volume invoiced.
- 3.5.7. With the exception of any DSTL sites, commercial Invoices are not to be used for claiming payment.
- 3.5.8. The Customer shall pay only those duties, taxes and other similar charges that are non-refundable. Non-refundable duties and taxes and other similar charges are to be paid in the first instance by the Supplier but shall be charged to the account of the Customer or his representative to the extent that these are not already included in the Call Off Contract Charges. The Customer has the right to request further information on any Call Off Contract charges in order to satisfy itself that they are a legitimate charge to the account of the Customer.
- 3.5.9. The Customer shall assist the Supplier by completing any necessary documentation to enable recovery of refundable duties, taxes and other similar charges.

- 3.5.10. Valid Invoices shall clearly show the net price for the Goods delivered and precise details of all duties, taxes and other similar charges.
- 3.5.11. With the exception of any DSTL sites, the Supplier shall comply with DEFCON 522J for all payments to be made via Purchase to Payment (P2P).
- 3.5.12. With the exception of any DSTL sites, the Customer and the Supplier shall comply with the electronic transactions agreement comprised in the completed DEFFOM 30 dated 7<sup>th</sup> October 2015.
- 3.5.13. The Customer shall not hold the Supplier accountable for any delay or failure by the Customer to issue a Purchase Order Message. However, any delay or failure to issue a Purchase Order Message shall not relieve the Supplier of his obligations under the Call Off Contract.
- 3.5.14. For DSTL sites only, commercial invoices in respect of all deliveries made and accepted by DSTL shall be submitted direct to:
- DSTL Accounts Payable  
PO Box 325  
Portsdown West  
Portsdown Hill Road  
Fareham  
Hampshire  
PO14 9HL
- Invoices shall include:  
DSTL Purchase Order Number (Provided by DSTL)  
Contract Number  
Unit Name, Address and Postcode  
Total net cost per product  
Total volume by product  
Total VAT per product  
Overall total cost per product

**3.6. Variation and Waiver**

- 3.6.1. Only the Authority detailed in the DEFFORM 111, or his authorised representative, is authorised to agree to a Variation of the Call Off Contract in accordance with the Variation Procedure in Clause 48.
- 3.6.2. Any proposal from the Supplier requesting a Variation to the Call Off Contract is to be submitted in writing to the Customer for consideration, together with cost and time-scale implications. Any such Variation accepted by the Customer shall be notified to the Supplier by written amendment to the Call Off Contract, and shall not be effective until accepted in writing with original signature(s) by the Supplier.

- 3.6.3. Notwithstanding DEFCON 503, nothing said, done or written by any person nor anything omitted to be said, done or written by any person including, but without limitation, any servant or agent of the Customer shall in any way affect the rights of the Customer to modify, affect, reduce or extinguish the obligations and liabilities of the Supplier under the Call Off Contract, or be deemed to be a waiver of rights of the Customer, unless stated in writing and signed by the Customer's Commercial Branch named in DEFFORM 111 to this Call Off Contract.

3.7. **Service Levels and Key Performance Indicators**

- 3.7.1. Annex A to this Call Off Schedule 11 sets out Service Levels, the performance of which shall be measured by the Parties in each given service period, which shall be a recurrent period of one Month during the Call Off Contract Period (the "**Service Period**").
- 3.7.2. The Supplier shall monitor its performance of the provision by it of the Goods by reference to the relevant Performance Criteria for achieving the Service Levels shown at Annex A to this Call Off Schedule 11 and shall send the Customer a report detailing the level of service that was achieved in accordance with paragraph 3.8 of this Call Off Schedule 11.
- 3.7.3. The Supplier shall, at all times, provide the Goods in such a manner that the Service Levels are achieved.
- 3.7.4. If the level of performance of the Supplier of any element of the provision by it of the Goods during the Call Off Contract Period fails to achieve a Service Level, 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 under the Call Off Contract or in Law, may:
- 3.7.4.1. 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 Failure from taking place or recurring; and
- 3.7.4.2. if the action taken under paragraph 3.8.1 above has not already prevented or remedied the Service Failure, provide the Customer with a correction plan (the "**Correction Plan**") within five (5) Working Days (or such other period as the Parties agree in writing) from the day the Supplier notifies the Customer under paragraph 3.8 above. The Supplier will set out in the Correction Plan the action that it will take to prevent the Service Failure or rectify and



prevent the Service Failure from recurring. The Supplier will obtain the Customer's approval of such Correction Plan (such approval not to be unreasonably withheld or delayed) and carry out the approved Correction Plan in accordance with its terms;

3.7.4.3. if the Service Failure constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Call Off Contract pursuant to Clause 38.5.

3.7.5. Approval and implementation of any Correction Plan by the Customer shall not relieve the Supplier of any 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.

**3.8. Provision of Management Information and Performance Monitoring**

3.8.1. The Supplier shall provide the Authority with management reports on a monthly basis via email to the Authority Contract. Management reports shall be supplied to the Customer within 5 calendar days of the end of each Service Period.

3.8.2. The management information provided shall contain, as a minimum, the following information in respect of the preceding Service Period:

3.8.2.1. a list of all invoices submitted for payment during the Service Period, including: date invoice presented, date invoice paid, customers' Unit Identity Numbers (UINs), volume of product(s) delivered, unit price, total invoice value.

3.8.2.2. for each Service Level, the actual performance achieved during the relevant Service Period.

3.8.2.3. a summary of all failures to achieve Service Levels that occurred during that Service Period.

3.8.2.4. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence.

3.8.2.5. Report detailing the volumes ordered against volumes delivered for each order placed and reasons for variations.

- 3.8.2.6. such other details as the Customer may reasonably require from time to time.

### 3.9. **Performance Monitoring and Performance Review Meetings**

- 3.9.1. The Parties shall attend meetings to discuss Service Level reports (“**Performance Review Meetings**”) normally on a quarterly basis. The Performance Review Meetings shall be the forum for the review by the Supplier and the Customer of the Management Reports. The performance Review Meetings shall (unless otherwise agreed):
  - 3.9.1.1. take place every three months at such location and time as agreed between the Customer and the Supplier;
  - 3.9.1.2. be attended by the Supplier's Representative and the Customer's Representative; and
  - 3.9.1.3. be fully minuted by the Supplier. The prepared minutes shall 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 meeting. The minutes of the preceding Performance Review Meeting shall be agreed and signed by the Supplier's Representative and the Customer's Representative at each meeting.
- 3.9.2. The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 3.9.3. The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of performance of the Supplier for any specified Service Period.

## ANNEX A TO CALL OFF SCHEDULE 11

### SERVICE LEVELS AND PERFORMANCE INDICATORS

Performance Criteria	Key Indicator	Performance Measure
Accurate and timely billing of Customer	Accuracy / Timeliness	No greater than 2% of all invoices presented during the Service Period are rejected by the Customer's payment authority.
Provision of specific Goods and / or Services	Quality	No greater than 2% of all Goods supplied during the Service Period are rejected by the customer due to unacceptable quality.
Timely provision of the Goods 24 hours a day, 7 days a week.	Goods and / or Services Availability	At least 98% of all deliveries during the Service Period are completed within the delivery timescales stated by the Customer.