



Crown
Commercial
Service

Call off order form

Corporate Finance Services

**Framework agreement No.
RM3719**

**Study for UK – India
Infrastructure Fund**

Contract Reference: CCFI16A14

For

HM Treasury

FRAMEWORK SCHEDULE 4

ORDER FORM AND CALL OFF TERMS

SECTION A

Part 1: Pro Forma Letter of Appointment

PricewaterhouseCoopers LLP
REDACTED

Reference number: 00066506

Wednesday 19th October 2016

Dear Sirs,

The Call Off Contract for the provision of corporate finance Services by PricewaterhouseCoopers LLP, REDACTED as Customer pursuant to the Corporate Finance Services Framework Agreement (RM 3719) dated 06th June 2016 between the Minister for the Cabinet Office acting through Crown Commercial Service as the Authority and the Supplier.

1. This Letter of Appointment constitutes an Order for the provision of the Services (specified in Part B2 below) from the Call Off Commencement Date (specified in B1 below) on the basis of the Call Off Contract Charges (set out in Appendix 1) and, save as varied and / or supplemented pursuant to the provisions set out in Schedule 3 in accordance with the Call Off Terms.
2. This Order is placed under Lot number 6 of the Framework Agreement.
3. The Supplier's Representative with overall responsibility for the supply of the Services is REDACTED and the Key Personnel assigned to the supply of the Services are listed in the supplier's response.
4. The Customer's Representative for the purpose of this Call Off Contract is REDACTED and any disputes in relation to this Call Off Contract shall be escalated to REDACTED

SECTION B

1. CALL OFF CONTRACT PERIOD

1.1 Call Off Commencement Date:

07/11/2016

1.2 Call Off Expiry Date:

End date of Call Off

10/02/2017

2. CUSTOMER CORE SERVICES REQUIREMENTS

2.1 Lot Numbers Called-Off

Lot 6 of the Framework

2.2 Services required

Scope of Requirement

The Joint Task Force wishes to test whether a Fund could be set up to economically raise institutional capital from UK and other investors for investment in Indian infrastructure.

The Joint Task Force is seeking to make financial advisory appointment(s) to consider and report and advise on:

- (a) Lot One - The UK funding market.
- (b) Lot Two - The Indian infrastructure market.

Regarding Lot One (a) the financial adviser will be expected to review the current landscape and make specific recommendations.

The Financial Adviser will take the lead in assessing and developing the investment proposition for institutional investors and carry out the financial appraisal of the Fund. All UK government support/investment would need to comply with current and future Overseas Development Assistance rules that apply to Development Finance and be in accordance with the 2002 International Development Act. The rules applying to private sector investment institutions are in the process of being updated and the expectation is new rules will apply in 2018.

If the report confirms that a Fund could be workable and viable, the Joint Task Force will expect the Financial Adviser to also produce a draft Request For Proposal (RFP) to be used for procuring a fund manager for the Fund.

Regarding Lot Two (b) the financial adviser is expected to talk to a broad range of market players of their choice before arriving at a conclusion including private equity funds, limited partners, DFIs, local lenders and sponsors of infra projects.

Bidders may bid for one or both appointments, however separate bid submissions are required against each lot bid for, a single mixed bid submission will be considered non-compliant and not considered further.

Award will be made to the top scoring bidder within each lot when evaluated against the criteria outlined within Appendix D – Response Guidance.

If separate appointments are made the advisers will be expected to liaise closely with each other in preparing and delivering their reports and make clear how this would work.

The overall purpose of the reports is to inform the Joint Task Force as to the feasibility of setting up such a fund and assist them in coming to a decision as to whether to proceed to set up the Fund.

THE UK FUNDING MARKET

What are the requirements and the likely focus of UK-based institutional investors when it comes to infrastructure investment in India and in particular:

- What are the international fund structures that might work for them, taking into account tax and foreign exchange issues
- Judging each structure against the criteria set out in paragraph 3.2, outlining pros and cons, the amount each option could potentially raise (if different from each other) and types of investors likely to be interested; as well as the pace at which the fund could be mobilised and the eventual investments made
- Would any enhancements be required to make the fund offering an investible proposition for institutional investors in London or are there any other measures that the Indian and UK governments could provide to make this an investible proposition?
- The merits of using part of the UK/Indian government support for feasibility/technical advisory support should be considered
- If it could be secured, could a multilateral development bank or Development Finance Institution play a role in making this an investible proposition? For example, the Private Infrastructure Development Group mobilises private investment for infrastructure projects.
- How do other sub-funds under the NIIF under development (such as the Roads sector scheme, the Clean Energy Fund and the Tamil Nadu Infrastructure Fund Management Corporation (TNIFMC) under the NIIF) rate in terms of having a suitable structure and an attractive focus for UK-based institutional investors?
- If the Report confirms that a Fund could be workable and viable, the Joint Task Force will expect the Financial Adviser to also produce a draft Request For Proposal (RFP) to be used for procuring a fund manager for the Fund.

The above list is the minimum set of requirements and a non-exhaustive list, the successful provider will be required to consider and input knowledge and expertise around any and all other relevant points and issues.

THE INDIAN INFRASTRUCTURE MARKET

Review the current and future investment pipeline in different infrastructure and related (including renewables) sectors in India looking at different sectors, including greenfield versus brownfield assets, primary and secondary markets, and national versus state-specific pipelines and make specific recommendations based on likely suitability for investment by international (especially UK) institutional investors. This review should include:

- Assessing some of the perceived impediments faced by investors in investing in infrastructure such as (a) the rates of return and whether they are attractive to commercial institutional investors (b) currency effects (c) tax clarifications that they may need to seek (d) business integrity and environmental and social issues (e) the regulatory framework and its robustness to attract private capital both during construction and during operation and (f) overcoming administrative issues in project execution including permissions.
- Identifying the issues that face each sector in execution, identifying sectors that are better suited to execution than others or those where blocks that might be remedied by government intervention

- Considering projects stalled for lack of capital in each sector. It would be useful to get a view on whether banks are willing to restructure stalled projects to make them more attractive to new financiers, and
- Reviewing the quality and quantity of deal flow available for other schemes under the NIIF such as the Roads sector scheme, the Clean Energy Fund and the Tamil Nadu Infrastructure Fund Management Corporation (TNIFMC) under the NIIF and any other NIIF sub-funds that might still be launched.
- Reviewing CDC Group and Private Infrastructure Development Group (PIDG) investments in India (e.g. Green Infra Limited).

The above list is the minimum set of requirements and a non-exhaustive list, the successful provider will be required to consider and input knowledge and expertise around any and all other relevant points and issues.

2.3 Dates for Delivery of the Services

The primary deliverable for both pieces of work is a combined Report to the Joint Task Force. A well developed draft of the Report will need to be submitted by 23rd December 2016, with an interim report with indicative findings being submitted by 02nd December 2016.

Milestone	Description	Timeframe
1	Table of Contents	Week commencing 14 th November 2016
2	Interim report with indicative findings	Week commencing 28 th November 2016
3	Draft full report	Week commencing 19 th December
4	Final report and presentation of report (and RFP if applicable)	Week commencing 30 th January commencing commencing

2.4 Implementation Plan

Not applicable

2.5 Standards

Not applicable

2.6 Security

In Call Off Schedule 8

2.7 Period for providing the Rectification Plan

In Clause 28.2.1(a) of the Call Off Terms.

The number of Workings Days within which the Supplier is required to submit a draft Rectification Plan to the Customer will be applied between the parties.

3. SUPPLIER'S INFORMATION

3.1 Commercially Sensitive Information

The following will be exempt from disclosure:

- Fee rates / pricing
- Approach and methodology
- Team structure and Curricula Vitae (CVs)

4. CUSTOMER RESPONSIBILITIES

4.1 Customer Responsibilities

In Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel.

The Customer shall provide the Supplier with such information and assistance as may reasonably require to perform the Services, including access to the Customer's premises and staff.

In order for the Supplier to advise the Customer properly the Customer will make sure that (i) any information given to the Supplier by the Customer, or anyone else working with the Customer, is (a) given promptly, (b) accurate and (c) complete; and (ii) any assumptions are appropriate. The Supplier will not verify any information given to it relating to the Services.

The Supplier's performance depends on the Customer performing its obligations under the Call Off Contract. The Supplier is not liable for any loss arising from the Supplier not fulfilling its obligations.

5. CALL OFF CONTRACT CHARGES AND PAYMENT

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

In Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)

5.2 Estimated Year 1 Call Off Contract Charges

Two Hundred and Sixty Thousand pounds £260,000.00

5.3 Undisputed Sums Limit

In the event the contract is terminated the Customer shall pay the supplier for the work carried out to the point of the termination letter. The Supplier shall submit a full break down of costs to the date of the termination letter.

For the purposes of clause 32.1.1 the undisputed sums limit shall be two hundred and sixty thousand pounds £260,000

SECTION C

6. CUSTOMER OTHER CONTRACTUAL REQUIREMENTS

6.1 Protection of Customer Data

Not applicable

6.2 Limitations on Liability

In Clause 26 of the Call Off Terms

The Supplier shall be responsible for all acts and omissions of its subcontractors and those employed or engaged by the subcontractors as though they are its own.

6.3 Insurance

Clause 37 of the Call Off Terms shall apply

6.4 Termination without cause notice period

The minimum number of days for the purposes of Clause 31.5 of the Call Off Terms shall be ten 10.

7. FOR THE PURPOSES OF THE CONTRACT, THE ADDRESS OF EACH PARTY IS:

7.1 for the Customer:

REDACTED

7.2 for the Supplier:

REDACTED

8. FORMATION OF CALL OFF CONTRACT

8.1 Please return the attached duplicate of this Letter of Appointment (which may be done by electronic means) with the acknowledgement signed by the appropriate authorised Executive within your organisation.

8.2 You should be aware that by signing and returning this Letter of Appointment you will have entered into a legally binding contract with us to supply the Services (**specified in Part B2** and Call Off Schedule 2 (Services)) and represent and warrant that you have carried out a conflict check that revealed no conflicts of interest in relation to this Call Off Contract.

Yours faithfully

For and on behalf of HM TREASURY

I hereby confirm receipt of the above Letter of Appointment and the agreement of PricewaterhouseCoopers LLP to provide to HM Treasury the Services as specified in the Letter of Appointment in accordance with its terms.

9.3 In accordance with paragraph 6 of Framework Schedule 5 (Call Off Procedure), the Parties hereby acknowledge and agree that this Call Off Contract shall be formed when the Customer acknowledges (which may be done by electronic means) the receipt of the signed copy of the Letter of Appointment from the Supplier within two (2) Working Days from receipt.

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
Signature	
Date	

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PART 2 –CALL OFF TERMS

TERMS AND CONDITIONS

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

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

- 1.4 Subject to Clauses 1.4.4 and 1.6 (Definitions and Interpretation), in the event of and only to the extent of any conflict between the Letter of Appointment, the Call Off Terms and the provisions of the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.4.1 the Framework Agreement, except Framework Schedule 20 (Tender);
 - 1.4.2 the Letter of Appointment;
 - 1.4.3 the Call Off Terms;
 - 1.4.4 Framework Schedule 20 (Tender).
- 1.5 Any permitted changes by the Customer to the Template Call Off Terms and the Template Call Off Form under Clause 4 (Call Off Procedure) of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to them becoming the Call Off Terms and the Call Off Form and the Parties entering this Call Off Contract shall prevail over the Framework Agreement.
- 1.6 Where Framework Schedule 20 (Tender) contains provisions which are more favourable to the Customer in relation to this Call Off Contract, such provisions of the Tender shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in this context.

2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
 - 2.1.1 the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Call Off Contract;
 - 2.1.2 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Customer before the Call Off Commencement Date) and has entered into this Call Off Contract in reliance on its own due diligence alone; and
 - 2.1.3 it shall not be excused from the performance of any of its obligations under this Call Off Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
 - (a) misinterpretation of the requirements of the Customer in the Letter of Appointment or elsewhere in this Call Off Contract; and/or
 - (b) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3. REPRESENTATIONS AND WARRANTIES

- 3.1 Each Party represents and warranties that:
 - 3.1.1 it has full capacity and authority to enter into and to perform this Call Off Contract;

- 3.1.2 this Call Off Contract is executed by its duly authorised representative;
 - 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Call Off Contract; and
 - 3.1.4 its obligations under this Call Off Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
- 3.2 The Supplier represents and warrants that:
- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call Off Contract;
 - 3.2.3 its execution, delivery and performance of its obligations under this Call Off Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
 - 3.2.4 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract;
 - 3.2.5 as at the Call Off Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non-Compliance;
 - 3.2.6 it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Services by the Customer;
 - 3.2.7 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;

- 3.2.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Contract; and
 - 3.2.9 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
 - 3.2.10 for the Call Off Contract Period and for a period of twelve (12) months after the termination or expiry of this Call Off Contract, the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Services without Approval or the prior written consent of the Customer which shall not be unreasonably withheld. However this Clause 3.2.10 shall not preclude the Supplier's rights to: (i) make generalised searches for employees by the use of advertisements in the media (including by any recruitment agency), (ii) hire any employee of the Customer who approaches the Supplier on an unsolicited basis; or (iii) solicit for employment or hire any such employee (after their employment by the Customer has been terminated) who ceases to be employed by the Customer.
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.
 - 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
 - 3.5 For the avoidance of doubt, the fact that any provision within this Call Off Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier which constitutes a material Default.

B. DURATION OF CALL OFF CONTRACT

4. CALL OFF CONTRACT PERIOD

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

C. CALL OFF CONTRACT PERFORMANCE

5. IMPLEMENTATION PLAN

- 5.1 Formation of Implementation Plan
 - 5.1.1 Where the Parties agreed in the Letter of Appointment (or elsewhere in this Call Off Contract) that an Implementation Plan (or parts thereof) shall be provided in draft by the Supplier prior to the commencement of the provision of the Services, the Supplier's draft

must contain information at the level of detail necessary to manage the implementation stage effectively and as the Customer may require. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.

- 5.1.2 The Supplier shall submit the draft Implementation Plan to the Customer for Approval (such decision of the Customer to Approve or not shall not be unreasonably delayed or withheld) within such period as specified by the Customer in the Letter of Appointment (or elsewhere in this Call Off Contract).
- 5.1.3 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
- 5.1.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in this Call Off Contract and report to the Customer on such performance.

5.2 Control of Implementation Plan

- 5.2.1 Subject to Clause 5.2.2, the Supplier shall keep the Implementation Plan under review in accordance with the Customer's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Services. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 5.2.2 Changes to the Milestones (if any), Milestone Payments (if any) and Delay Payments (if any) shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- 5.2.3 Where so specified by the Customer in the Implementation Plan or elsewhere in this Call Off Contract, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

5.3 Rectification of Delay in Implementation

- 5.3.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Call Off Contract:
 - (a) it shall:
 - (i) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and

- (ii) include in its notification an explanation of the actual or anticipated impact of the Delay; and
 - (iii) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- (b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Implementation Plan, Clause 5.4 (Delay Payments) shall apply.

5.4 Delay Payments

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

- (a) the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to Achieve the corresponding Milestone;
- (b) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
 - (i) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 31 (Customer Termination Rights) except Clause 31.5 (Termination Without Cause); or
 - (ii) the delay exceeds the number of days (the "**Delay Period Limit**") specified in Part A of Call Off Schedule 4: (Implementation Plan, Customer Responsibilities and Key Personnel) for the purposes of this sub-Clause, commencing on the relevant Milestone Date;
- (c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified by the Customer in the Implementation Plan);
- (d) no payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver complies with Clause 38 (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Customer's rights to claim Delay Payments; and
- (e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 5.4.1 and Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 26 (Liability).]

6. SERVICES

6.1 Provision of the Services

- 6.1.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Call Off Contract.
- 6.1.2 The Supplier shall ensure that the Services:
- (a) comply in all respects with any description of the Services in Call Off Schedule 2 (Services) or elsewhere in this Call Off Contract; and
 - (b) are supplied in accordance with the provisions of this Call Off Contract and the Tender.
- 6.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:
- (a) all applicable Law;
 - (b) Good Industry Practice;
 - (c) the Standards;
 - (d) the Security Policy;
 - (e) the ICT Policy (if so required by the Customer); and
 - (f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 6.1.3(a) to 6.1.3(e).
- 6.1.4 The Supplier shall:
- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Call Off Contract;
 - (b) subject to Clause 15.1 (Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
 - (c) ensure that any products or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or the Services to meet the requirements of the Customer;
 - (d) ensure that the Services are fully compatible with any Customer Property described in Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel) (or elsewhere in this Call Off Contract) or otherwise used by the Supplier in connection with this Call Off Contract;
 - (e) minimise any disruption to the Sites and/or the Customer's operations when providing the Services;
 - (f) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;

- (g) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier and, on the Call Off Expiry Date for any reason, to enable the timely transition of the supply of the Services (or any of them) to the Customer and/or to any Replacement Supplier;
- (h) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
- (i) provide the Customer with such assistance as the Customer may reasonably require during the Call Off Contract Period in respect of the supply of the Services;
- (j) deliver the Services in a proportionate and efficient manner;
- (k) ensure that it does not embarrass the Customer or otherwise bring the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and
- (l) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.

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

7. SERVICES

7.1 Time of Delivery of the Services

The Supplier shall provide the Services on the date(s) specified in the Letter of Appointment (or elsewhere in this Call Off Contract) and the Milestone Dates (if any). Such provision shall include compliance with the obligation on the Supplier set out in Clause 5 (Implementation Plan).

7.2 Undelivered Services

7.2.1 In the event that any of the Services are not Delivered in accordance with Clauses 6.1 (Provision of the Services) and 7.1 (Time of Delivery of the Services) ("**Undelivered Services**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Services that were not

so Delivered until such time as the Undelivered Services are Delivered.

7.2.2 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 6.1, (Provision of the Services) and 7.1 (Time of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

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

7.3.1 Without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 7.2.2 (Undelivered Services) and 28 (Customer Remedies for Default), the Supplier shall, where practicable:

- (a) remedy any breach of its obligations in Clauses 6 and 7 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
- (b) meet all the costs of, and incidental to, the performance of such remedial work.

7.4 Continuing Obligation to Provide the Services

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

- (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Customer to pay any Call Off Contract Charges,
- (d) unless the Supplier is entitled to terminate this Call Off Contract under Clause 32.1 (Termination on Customer Cause for Failure to Pay) for failure by the Customer to pay undisputed Call Off Contract Charges.

8. STANDARDS AND QUALITY

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

8.2 Throughout the Call Off Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Customer, of the Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure. Any change to an existing Standard which is included in Framework Schedule 2 (Services and Key Performance Indicators) shall, in addition, require the written consent of the Authority.

8.3 Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential

impact on the Supplier's provision, or the Customer's receipt of the Services is explained to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.

- 8.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Call Off Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard or Standards shall require Approval (and the written consent of the Authority where the relevant Standard or Standards is/are included in Framework Schedule 2 (Services and Key Performance Indicators) and shall be implemented within an agreed timescale.
- 8.5 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
 - 8.5.1 be appropriately experienced, qualified and trained to supply the Services in accordance with this Call Off Contract;
 - 8.5.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Services; and
- 8.6 Obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Services to the reasonable satisfaction of the Customer.
- 8.7 Where a standard, policy or document is referred to in Call Off Schedule 7, (Standards) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall agree the impact of such change.

9. DISRUPTION

- 9.1 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.
- 9.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action is by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.
- 9.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Call Off Contract.
- 9.4 If the Supplier's proposals referred to in Clause 9.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.
- 9.5 If the Supplier is temporarily unable to fulfil the requirements of this Call Off Contract owing to disruption of normal business solely caused by a Customer Cause, then subject to Clause 17 (Supplier Notification of Customer Cause), an appropriate allowance by way of an extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

10. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

10.1 Without prejudice to any other obligations of the Supplier in this Call Off Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 32.1.1 (Termination on Customer Cause for Failure to Pay), the Supplier shall notify the Customer as soon as reasonably practicable (and in any event within two (2) Working Days of the Supplier becoming aware) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:

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

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

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

11. CONTINUOUS IMPROVEMENT

11.1 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Services in accordance with this Clause 11 with a view to reducing the Customer's costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Customer.

11.2 The Supplier shall comply with its internal and independently audited quality standards and such other standards as may be required by Good Industry Practice and agreed with the Customer.

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

D. CALL OFF CONTRACT GOVERNANCE

12. SOLICITATION OF BUSINESS

12.1 The Supplier shall not use any Confidential Information obtained from the Authority and any other Contracting Body for the solicitation of business from the Authority or any other Crown Body.

13. REPRESENTATIVES

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

13.2 The initial Supplier Representative shall be the person named as such in the Letter of Appointment. Any change to the Supplier Representative shall be agreed in accordance with Clause 19 (Supplier Personnel).

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

14. RECORDS AND AUDIT ACCESS

- 14.1 The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Customer.
- 14.2 The Supplier shall:
- 14.2.1 keep the records and accounts referred to in Clause 14.1 in accordance with Good Industry Practice and Law; and
 - 14.2.2 afford any Auditor access to the records and accounts referred to in Clause 14.1, as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 14.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call Off Contract Agreement including for the following purposes to:
 - (a) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - (b) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (c) verify the accuracy of the Call Off Contract Charges and any other amounts payable by the Customer under this Call Off Contract (and proposed or actual variations to them in accordance with this Call Off Contract);
 - (d) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Goods and/or Services;
 - (e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;
 - (f) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (g) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;

- (h) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
 - (i) review any records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - (j) verify the accuracy and completeness of any information delivered or required by this Call Off Contract;
 - (k) review the Supplier's quality management systems (including any quality manuals and procedures);
 - (l) review the Supplier's compliance with the Standards; and/or
 - (m) review the integrity, confidentiality and security of the Customer Data.
- 14.3 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.
- 14.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 14.4.1 all reasonable information requested by the Customer within the scope of the audit; and
 - 14.4.2 access to the Supplier Personnel.
- 14.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 14, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

15. CHANGE

15.1 Variation Procedure

- 15.1.1 Subject to the provisions of this Clause 15 and of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 15.1.2 A Party may request a Variation by completing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 15.1.3 The Customer may require the Supplier to carry out an impact assessment of the Variation on the Services (the "**Impact**").

Assessment”). The Impact Assessment shall be completed in good faith and shall include:

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

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

15.1.5 Subject to Clause 15.1.4, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Order and the proposed Variation.

15.1.6 In the event that:

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

the Customer may:

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

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

15.2 Legislative Change

- 15.2.1 The Supplier shall neither be relieved of its obligations under this Call Off Contract nor be entitled to an increase in the Call Off Contract Charges as the result of a:
- (a) General Change in Law;
 - (b) Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Call Off Commencement Date.
- 15.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 15.2.1(b)), the Supplier shall:
- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
 - (i) whether any Variation is required to the provision of the Services, the Call Off Contract Charges or this Call Off Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
 - (b) provide to the Customer with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 11 (Continuous Improvement), has been taken into account in amending the Call Off Contract Charges.
- 15.2.3 Any change in the Call Off Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 15.2.1(b)) shall be implemented in accordance with the Variation Procedure.

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

16. CALL OFF CONTRACT CHARGES AND PAYMENT

16.1 Call Off Contract Charges

- 16.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Services, the Customer shall pay the undisputed Call Off Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).
- 16.1.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its

obligations under Clauses 14 (Records and Audit Access), 24.5 (Freedom of Information), 24.6 (Protection of Personal Data).

- 16.1.3 If the Customer fails to pay any undisputed Call Off Contract Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 16.1.4 If at any time during this Call Off Contract Period the Supplier reduces its Framework Prices for any Services which are provided under the Framework Agreement (whether or not such Services are offered in a catalogue, if any, which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Call Off Contract Charges for such Services under this Call Off Contract by the same amount.

16.2 VAT

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

16.3 Retention and Set Off

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

16.4 Foreign Currency

- 16.4.1 Any requirement of Law to account for the Services in any currency other than Sterling (or to prepare for such accounting) instead of

and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.

16.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 16.4.1 by the Supplier.

16.5 Income Tax and National Insurance Contributions

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

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Personnel.

16.5.2 In the event that any one of the Supplier Personnel is a Worker who receives consideration relating to the Services, then the Supplier shall ensure that its contract with the Worker contains the following provisions:

- (a) that the Customer may, at any time during the Call Off Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements in Clause 16.5.1, or why those requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided;
- (b) that the Worker's contract may be terminated at the Customer's request if:
 - (i) the Worker fails to provide the information requested by the Customer within the time specified by the Customer; and/or
 - (ii) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with Clause 16.5.1(a) or confirms that the Worker is not complying with those requirements; and
- (c) that the Customer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

17. PROMOTING TAX COMPLIANCE

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

- 17.1.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
- 17.1.2 promptly provide to the Customer:
 - (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.
- 17.2 In the event that the Supplier fails to comply with this Clause 17 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable, then the Customer reserves the right to terminate this Call Off Contract for material Default.

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

18. KEY PERSONNEL

- 18.1 This Clause shall apply if so specified in the Letter of Appointment, or elsewhere in this Call Off Contract. Part C of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel) lists the key roles (“**Key Roles**”) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Call Off Commencement Date.
- 18.2 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Call Off Contract Period.
- 18.3 The Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 18.4 The Supplier shall not remove or replace any Key Personnel unless:
 - 18.4.1 requested to do so by the Customer;
 - 18.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 18.4.3 the person’s employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee;
 - 18.4.4 the person’s employment or contractual arrangement with the Supplier or a Sub-Contractor changes including transfer to another business division, being promoted or moved to a new role; or
 - 18.4.5 the Supplier obtains the Customer’s prior written consent (such consent not to be unreasonably withheld or delayed).
- 18.5 The Supplier shall:
 - 18.5.1 use reasonable endeavours to notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);

- 18.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
- 18.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract;
- 18.5.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and
- 18.5.5 ensure that any replacement for a Key Role:
 - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced,
- 18.5.6 procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.
- 18.6 The Customer may require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

19. SUPPLIER PERSONNEL

- 19.1 The Supplier shall:
 - 19.1.1 provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
 - 19.1.2 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards; and
 - (c) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call Off Schedule 8 (Security);
 - 19.1.3 subject to Call Off Schedule 11 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
 - 19.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Call Off Contract shall be a Default by the Supplier;

- 19.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - 19.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
 - 19.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
 - 19.1.8 procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.
- 19.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Call Off Contract, it may:
- 19.2.1 refuse admission to the relevant person(s) to the Customer Premises; and/or
 - 19.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
- 19.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

20. STAFF TRANSFER

- 20.1 The Parties acknowledge and accept that the Customer may appoint a Replacement Supplier to provide services to replace the Services or may provide such services itself on or after the termination date or following any termination or partial termination of Services pursuant to this Call Off Contract. The Parties recognise that TUPE is unlikely to apply and shall use all commercially reasonable endeavours to minimise the application of TUPE. However, the Parties accept that, unless the Supplier is re-appointed, the appointment of a Replacement Supplier or provision of such services by the Customer may result in the Relevant Transfer in accordance with TUPE.
- 20.2 The Parties agree that:
- 20.2.1 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Call Off Schedule 11 (Staff Transfer) shall apply; and
 - 20.2.2 Part D of Call Off Schedule 11 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.
- 20.3 The Supplier shall both during and after the Call Off Contract Period indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

21. SUPPLY CHAIN RIGHTS AND PROTECTION

21.1 Appointment of Sub-Contractors

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

- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this Call Off Contract in the Delivery of the Services; and
 - (c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Call Off Contract.
- 21.1.2 Prior to sub-contacting any of its obligations under this Call Off Contract, the Supplier shall provide the Customer with:
- (a) the proposed Sub-Contractor's name, registered office and company registration number;
 - (b) the scope of any Services to be provided by the proposed Sub-Contractor; and
 - (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 21.1.3 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 21.1.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-Contract; and
 - (b) any further information reasonably requested by the Customer.
- 21.1.4 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 21.1.2 (or, if later, receipt of any further information requested pursuant to Clause 21.1.3), object to the appointment of the relevant Sub-Contractor they consider that:
- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Customer under this Call Off Contract;
 - (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (c) the proposed Sub-Contractor employs unfit persons,
- in which case, the Supplier shall not proceed with the proposed appointment.
- 21.1.5 If:
- (a) the Customer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 21.1.2; and
 - (ii) any further information requested by the Customer pursuant to Clause 21.1.3; and
 - (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority and the Customer in

accordance with Clause 21.2 (Appointment of Key Sub-Contractors),

the Supplier may proceed with the proposed appointment.

21.2 Appointment of Key Sub-Contractors

21.2.1 The Authority and the Customer have consented to the engagement of the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors).

21.2.2 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Customer (the decision to consent or otherwise not to be unreasonably withheld or delayed). The Authority and/or the Customer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:

- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;
- (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-Contractor employs unfit persons.

21.2.3 Except where the Authority and the Customer have given their prior written consent under Clause 21.2.1, the Supplier shall ensure that each Key Sub-Contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Call Off Contract;
- (b) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
- (c) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Call Off Contract in respect of:
 - (i) data protection requirements set out in Clauses 24.1 (Security Requirements), 24.2 (Protection of Customer Data) and 24.6 (Protection of Personal Data);
 - (ii) FOIA requirements set out in Clause 24.5 (Freedom of Information);
 - (iii) the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in Clause 6.1.4(k) (Provision of Services);
 - (iv) the keeping of records in respect of the services being provided under the Key Sub-Contract; and
 - (v) the conduct of audits set out in Clause 14 (Records and Audit Access);

- (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 31 (Customer Termination Rights), 33 (Termination by Either Party) and 35 (Consequences of Expiry or Termination) of this Call Off Contract;
- (g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;
- (h) a provision, where a provision in Call Off Schedule 11 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be.

21.3 Supply Chain Protection

21.3.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice; and
- (b) a right for the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

21.3.2 The Supplier shall pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice.

21.3.3 Notwithstanding any provision of Clauses 24.3 (Confidentiality) and 25 (Publicity and Branding) if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

21.4 Termination of Sub-Contracts

21.4.1 The Customer may require the Supplier to terminate:

- (a) a Sub-Contract where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant any of the termination events in Clause 31 (Customer Termination Rights) except Clause 31.5 (Termination Without Cause); and/or
 - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to

the Sub-Contractor's obligations in relation to the Services or otherwise;

and/or

- (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
 - (i) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Customer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

21.5 Retention of Legal Obligations

21.5.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 21 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

G. PROPERTY MATTERS

22. CUSTOMER PREMISES

22.1 Security of Customer Premises

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

22.1.2 If requested by the Customer, the Supplier shall afford the Customer an opportunity to inspect its physical security arrangements for Supplier Personnel attending Customer Premises.

H. INTELLECTUAL PROPERTY AND INFORMATION

23. INTELLECTUAL PROPERTY RIGHTS

23.1 Allocation of title to IPR

23.1.1 All Intellectual Property Rights in the output from the Services shall vest in the Supplier who shall grant to the Customer a non-exclusive, perpetual, royalty-free, unlimited, irrevocable licence to use and exploit the same.

23.1.2 Subject to Clause 23.1.1 and save as expressly granted elsewhere under the Call Off Contract, the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors and the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors.

- 23.1.3 The Supplier shall on demand fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer and or the Crown may suffer or incur as a result of any IPR Claim.
- 23.1.4 If an IPR Claim arises, the Customer shall notify the Supplier in writing of the IPR Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the IPR Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the IPR Claim provided always that the Supplier:
- (a) shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the Customer;
 - (c) shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
 - (d) shall not settle or compromise the IPR Claim without the prior Approval of the Customer (not to be unreasonably withheld or delayed).
- 23.1.5 The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without the prior Approval of the Customer.

24. SECURITY AND PROTECTION OF INFORMATION

24.1 Security Requirements

- 24.1.1 The Supplier shall comply with the Security Policy and the requirements of Call Off Schedule 8 (Security) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 24.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 24.1.3 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 Services it may propose a Variation to the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call Off Contract Charges shall then be subject to the Variation Procedure.
- 24.1.4 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 Services in accordance with its existing obligations.

24.2 Protection of Customer Data

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

24.3 Confidentiality

- 24.3.1 For the purposes of this Clause 24.3, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

24.3.2 Except to the extent set out in this Clause 24.3 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:

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

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

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 24.5 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;
 - (ii) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Services provided under this Call Off Contract; or
 - (iii) the conduct of a Central Government Body review in respect of this Call Off Contract; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

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

24.3.5 Subject to Clauses 24.3.2 and 24.3.7, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Call Off Contract; and
- (b) its professional advisers for the purposes of obtaining advice in relation to this Call Off Contract.

24.3.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 24.3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.

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

- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 24.3.7(a) for any purpose relating to or connected with this Call Off Contract;
- (d) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or
- (e) to a proposed transferee, assignee or novatee of, or successor in title to the Customer,
- (f) and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause 24.3.

24.3.8 Nothing in this Clause 24.3 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

24.3.9 In the event that the Supplier fails to comply with Clauses 24.3.2 to 24.3.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

24.4 Transparency

24.4.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Contract is not Confidential Information. The Customer shall determine whether any of the content of this Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may

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

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

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

24.5 Freedom of Information

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

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

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

24.6 Protection of Personal Data

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

24.6.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call Off Contract;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in Clauses 24.1 (Security Requirements) and 24.2 (Protection of Customer Data);
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call Off Contract)
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under this Clause 24.6.2 and Clauses 24.1 (Security Requirements), 24.2 (Protection of Customer Data) and 24.3 (Confidentiality);
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Customer within five (5) Working Days if it receives:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint, communication or request made (as referred to at Clause 24.6.2(e)), including by promptly providing:
 - (i) the Customer with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the

Data Subject Access Request within the relevant timescales set out in the DPA; and

- (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 24.6.2 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

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

- (a) the Supplier shall propose a Variation to the Customer which, if it is agreed by the Customer, shall be dealt with in accordance with the Variation Procedure and Clauses 24.6.3(b) to 24.6.3(c);
- (b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
 - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed;
 - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries; and
 - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer’s compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with the current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and

- (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (A) a direct data processing agreement with the Customer on such terms as may be required by the Customer; or
 - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-Contractor relating to the relevant Personal Data transfer, and
- (iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

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

25. PUBLICITY AND BRANDING

25.1 The Supplier shall not:

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

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

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

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

I. LIABILITY AND INSURANCE

26. LIABILITY

26.1 Unlimited Liability

26.1.1 Neither Party excludes or limits its liability for:

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

- (b) bribery or Fraud by it or its employees;
- (c) section 2 of the Supply of Goods and Services Act 1982;
- (d) any liability in respect of a breach of duty or obligation under the Financial Services & Markets Act 2000 (as amended from time to time); or
- (e) any liability to the extent it cannot be excluded or limited by Law.

26.1.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clauses 23.1.3 (IPR) and 20.3 (Staff Transfer) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

26.2 Financial Limits

26.2.1 Subject to Clause 26.1 (Unlimited Liability), the Supplier's total aggregate liability:

26.2.2 in respect of all other Losses incurred by the Customer under or in connection with this Call Off Contract shall in no event exceed

- (i) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, the higher of Two Hundred and Sixty Thousand pounds £260,000.00 of the Estimated Year 1 Call Off Contract Charges;

26.2.3 Subject to Clauses 26.1 (Unlimited Liability) and 26.2 (Financial Limits) and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to

- (a) in relation to any Customer Causes occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, a sum equal to the Estimated Year 1 Call Off Contract Charges;
- (b) in relation to any Customer Causes occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
- (c) in relation to any Customer Causes occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.

26.3 Non-recoverable Losses

26.3.1 Subject to Clause 26.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:

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

26.4 Recoverable Losses

26.4.1 Subject to Clause 26.2 (Financial Limits), and notwithstanding Clause 26.2.3(a) (Non-recoverable Losses), the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

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

26.5 Miscellaneous

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

26.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 26.2 (Financial Limits).

27. INSURANCE

27.1 This Clause 27 will only apply where specified in the Letter of Appointment or elsewhere in this Call Off Contract.

27.2 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 28 (Insurance) of the Framework Agreement, the Supplier shall effect and maintain such further policy or policies of insurance including if applicable self-insurance policies or extensions to such existing policy or policies of insurance procured under the Framework Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract.

27.3 Without limitation to the generality of Clause 27.2 the Supplier shall ensure that it maintains the policy or policies of insurance as are stipulated in the Letter of Appointment or elsewhere in this Call Off Contract.

27.4 The Supplier shall effect and maintain the policy or policies of insurance referred to in this Clause 27 for six (6) years after the Call Off Expiry Date unless otherwise agreed in writing by the Customer.

27.5 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this Clause 27 or insurance certificates 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.

- 27.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under this Clause 27 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.
- 27.7 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 27.8 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.

J. REMEDIES AND RELIEF

28. CUSTOMER REMEDIES FOR DEFAULT

28.1 Remedies

28.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising [and subject to the exclusive financial remedy provisions in Clause 5.4.1(b) (Delay Payments)], if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:

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

- (ii) suspend this Call Off Contract (whereupon the relevant provisions of Clause 34 (Partial Termination, Suspension and Partial Suspension) shall apply).

28.2 Rectification Plan Process

28.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 28.1.1(c)(i):

- (a) the Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within the number of Working Days specified in the Letter of Appointment or elsewhere in this Call Off Contract (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.
- (b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a root cause analysis;
 - (ii) the actual or anticipated effect of the Default; and
 - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

28.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of Call Off Schedule 12 (Dispute Resolution Procedure).

28.2.3 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Default; and/or
- (d) will rectify the Default but in a manner which is unacceptable to the Customer.

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

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

29. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

29.1 If the Supplier has failed to:

29.1.1 Achieve a Milestone by its Milestone Date;

29.1.2 provide the Services;

29.1.3 comply with its obligations under this Call Off Contract,

(each a “**Supplier Non-Performance**”),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 10 (Supplier Notification of Customer Cause)):

(a) the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;

(b) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 31 (Customer Termination Rights) except Clause 31.5 (Termination Without Cause);

(c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:

(i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;

(ii) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;

29.2 if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause, In order to claim any of the rights and/or relief referred to in Clause 29.1, the Supplier shall:

29.2.1 comply with its obligations under Clause 10 (Notification of Customer Cause); and

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

(a) the Supplier Non-Performance;

(b) the Customer Cause and its effect on the Supplier’s ability to meet its obligations under this Call Off Contract; and

(c) the relief claimed by the Supplier.

29.3 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance

and the alleged Customer Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief, consulting with the Supplier where necessary.

- 29.4 Without prejudice to Clauses 7.4 (Continuing obligation to provide the Services), if a Dispute arises as to:
- 29.4.1 whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or
 - 29.4.2 the nature and/or extent of the relief claimed by the Supplier,
- either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 29.5 Any Variation that is required to the Implementation Plan or to the Call Off Contract Charges pursuant to this Clause 29 shall be implemented in accordance with the Variation Procedure.

30. FORCE MAJEURE

- 30.1 Subject to the remainder of this Clause 30, a Party may claim relief under this Clause 30 from liability for failure to meet its obligations under this Call Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 30.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 30.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 30 to the extent that consequences of the relevant Force Majeure Event:
- 30.3.1 are capable of being mitigated by any of the provision of any Services, but the Supplier has failed to do so; and/or
 - 30.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Call Off Contract.
- 30.4 Subject to Clause 30.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 30.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry

Practice to overcome or minimise the consequences of the Force Majeure Event.

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

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

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

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

- (a) the Customer shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise its rights under Clause 28.1.1(c) (Customer Remedies for Default) as a result of such failure; and
 - (ii) to receive Delay Payments pursuant to Clause 5.4 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event],
- (b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.

30.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract.

30.8 Relief from liability for the Affected Party under this Clause 30 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract and shall not be dependent on the serving of notice under Clause 30.7.

K. TERMINATION AND EXIT MANAGEMENT

31. CUSTOMER TERMINATION RIGHTS

31.1 Termination for Breach of Regulations

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

31.2 Termination on Material Default

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

- (a) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable;
- (b) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clauses 3.2.5 and 26.2.2 (Liability);
- (c) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: 5.2.3 (Implementation Plan), 7.2.2 (Services), , 9.4 (Disruption), 14.5 (Records and Audit Access), 17 (Promoting Tax Compliance), 24.3.9 (Confidentiality), 40.6.2 (Prevention of Fraud and Bribery), Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Call Off Schedule 11 (Staff Transfer);
- (d) the Supplier ceases to be an authorised person for the purposes of the Financial Services and Markets Act 2000 or equivalent Laws in relation to all regulated activities comprised in the Services;
- (e) the Supplier fails to comply with any provision of the Value Added Tax Act 1994 and or any other Laws relating to direct or indirect taxation;
- (f) the Customer, acting reasonably, believes that there is a risk that the Customer security requirements will not be or have not been complied with in any material respect;
- (g) the Supplier causes reputational damage to the Customer or the ability of the Customer to carry on its business and provide its usual services is materially adversely affected by any act or omission of the Supplier; or
- (h) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Customer, capable of remedy; and/or
- (i) the Supplier commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer in accordance with the Rectification Plan Process;

31.2.2 For the purpose of Clause 31.2.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

31.3 Termination on Insolvency

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

31.4 Termination on Change of Control

31.4.1 The Supplier shall notify the Customer immediately if the Supplier undergoes or is intending to undergo a Change of Control and provided this does not contravene any Law shall notify the Customer in writing as soon as it is aware of any circumstances suggesting that a Change of Control is planned or in active contemplation or has taken place. The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier within six (6) Months of:

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

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

31.5 Termination Without Cause

31.5.1 The Customer shall have the right to terminate this Call Off Contract at any time and without any obligation to pay compensation, at any time by issuing a Termination Notice to the Supplier giving written notice of at least the number of days stipulated, for the purposes of this Clause 31.5.1, in the Letter of Appointment or elsewhere in this Call Off Contract.

31.6 Termination in Relation to Framework Agreement

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

31.7 Termination In Relation to Conflict of Interest

31.7.1 The Customer may terminate this Call Off Contract at any time and without any obligation to pay compensation by issuing a Termination Notice to the Supplier under Clause 46.6 (Conflict of Interest).

31.8 Termination in Relation to Variation

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

32. SUPPLIER TERMINATION RIGHTS

32.1 Termination on Customer Cause for Failure to Pay

32.1.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call Off Contract if the Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract

which in aggregate exceeds the amount stipulated in the Letter of Appointment or elsewhere in this Call Off Contract for the purposes of this Clause 32.1.1 (the “**Undisputed Sums Limit**”), and the said undisputed sum due remains outstanding for forty (40) Working Days (the “**Undisputed Sums Time Period**”) after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

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

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

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

33. TERMINATION BY EITHER PARTY

33.1 Termination for Continuing Force Majeure Event

Either Party may by issuing a Termination Notice to the other Party terminate this Call Off Contract if, in accordance with Clause 30.6.1(a) (Force Majeure) a Force Majeure event continues for a period of more than ninety (90) days.

34. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

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

34.2 Any suspension of this Call Off Contract under Clause 34.1 shall be for such period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

34.3 Where the Customer suspends all or part of this Call Off Contract pursuant to Clause 44.1, the Contract Charges (or any due and proper proportion of the Contract Charges where this Call Off Contract is partially suspended) which have not fallen due prior to the date of such suspension or partial suspension shall neither accrue nor be or become payable in respect of the suspended Services for the entire Suspension Period.

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

34.4.1 an increase in the Call Off Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 31 (Customer Termination Rights) except Clause 31.5 (Termination Without Cause); and

34.4.2 reject the Variation.

35. CONSEQUENCES OF EXPIRY OR TERMINATION

35.1 Consequences of termination under Clauses 31.1 (Termination of Breach of Regulations), 31.2 (Termination on Material Default), 31.6 (Termination in Relation to Framework Agreement), 31.7 (Termination in Relation to Conflict of Interest), and 31.8 (Termination in Relation to Variation)

35.1.1 Where the Customer:

(a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 35.1; and

(b) then makes other arrangements for the supply of the Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period provided that Customer shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

35.2 Consequences of termination under Clauses 31.5 (Termination without Cause) 32.1 (Termination on Customer Cause for Failure to Pay)

35.2.1 Where:

(a) the Customer terminates (in whole or in part) this Call Off Contract under Clause 31.5 (Termination without Cause); or

(b) the Supplier terminates this Call Off Contract pursuant to Clause 32.1 (Termination on Customer Cause for Failure to Pay),

the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 31.5 (Termination without Cause).

35.2.2 The Customer shall not be liable under Clause 35.2.1 to pay any sum which:

- (a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Supplier under this Call Off Contract, exceeds the total sum that would have been payable to the Supplier if this Call Off Contract had not been terminated.

35.3 Consequences of termination under Clause 33.1 (Termination for Continuing Force Majeure Event)

35.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Call Off Contract for a continuing Force Majeure Event pursuant to Clause 33.1 (Termination for Continuing Force Majeure Event).

35.4 Consequences of Termination for Any Reason

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

- (a) termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 14 (Records and Audit Access), 23 (Intellectual Property Rights), 24.3 (Confidentiality), 24.5 (Freedom of Information), 24.6 (Protection of Personal Data), 26 (Liability), 35 (Consequences of Expiry or Termination), 41 (Severance), 43 (Entire Agreement), 44 (Third Party Rights), 59 (Additional Services), 46 (Dispute Resolution) and 47 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), Call Off Schedule 11 (Staff Transfer), Call Off Schedule 12 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

L. MISCELLANEOUS AND GOVERNING LAW

36. COMPLIANCE

36.1 Health and Safety

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

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

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

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

36.2 Equality and Diversity

36.2.1 The Supplier shall:

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

36.3 The Commissioners for Revenue and Customs Act 2005, Official Secrets Act, Finance Act and Financial Services and Markets Act 2000

36.3.1 The Supplier undertakes to comply with, and ensure that Sub-Contractors and Supplier Personnel comply with, the provisions of:

- (a) the Commissioners for Revenue and Customs Act 2005;
- (b) the Official Secrets Acts 1911 to 1989;
- (c) section 182 of the Finance Act 1989; and
- (d) the Financial Services and Markets Act 2000 on disclosure of regulatory information; and
- (e) statutory requirements on market abuse and insider dealings.

36.4 Environmental Requirements

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

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

36.5 Conflict of Interest

36.5.1 The Supplier shall maintain and operate effective organisational and administrative arrangements to ensure that neither the Supplier nor any Supplier Personnel are placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Supplier Personnel and the duties owed to the Customer and Contracting Bodies.

36.5.2 The Supplier shall not accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Call Off Contract Services without the Approval of the Customer and Contracting Bodies;

36.5.3 The Supplier shall not knowingly act at any time during the term of this Call Off Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Customer and/or the Contracting Bodies shall thereby exist in relation to the Services provided under this Call Off Contract

36.5.4 If arrangements made by the Supplier to manage conflicts of interest in accordance with Clause 46.5.1 above are not sufficient to protect the interests of the Customer, the Supplier shall immediately:

- (a) 35.5.2.1 notify the Customer; and
- (b) 35.5.2.2 provide full particulars of the conflict; or
- (c) 35.5.2.3 where full particulars cannot be provided owing to confidentiality obligations to third parties, the Supplier agrees to:
 - (i) clearly disclose the general nature and/or sources of conflicts of interest to the Customer;
 - (ii) include sufficient detail to enable the Customer to take an informed decision with respect to the Services in the context of which the conflict of interest arises; and
 - (iii) provide all such further information and assistance as may be reasonably required by the Customer in forming its determination in accordance with 46.5.2.3(b) above,

for the avoidance of doubt, the obligations to notify contained in this Clause 46.5 are continuing obligations and the Supplier agrees to notify the Customer on each occasion when a situation referred to in this Clause 46.5.2 arises.

36.6 The Customer reserves the right to terminate this Call Off Contract immediately by giving notice in writing to the Supplier 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 action 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.

37. ASSIGNMENT AND NOVATION

- 37.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Call Off Contract or any part of it without the Approval.
- 37.2 The Customer may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Call Off Contract or any part thereof to:
- 37.2.1 any other Contracting Body; or
 - 37.2.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
 - 37.2.3 any private sector body which substantially performs the functions of the Customer,
- and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 37.2.
- 37.3 A change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 37.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.
- 37.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a body which is not a Contracting Body or if a body which is not a Contracting Body succeeds the Customer (both "**Transferee**" in the rest of this Clause) the right of termination of the Customer in Clause 31.3 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in Clause 31.3 (Termination on Insolvency) and to Supplier in the definition of Insolvency Event were references to the Transferee).

38. WAIVER AND CUMULATIVE REMEDIES

- 38.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 45 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Call Off Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.
- 38.2 Unless otherwise provided in this Call Off Contract, rights and remedies under this Call Off Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

39. RELATIONSHIP OF THE PARTIES

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

40. PREVENTION OF FRAUD AND BRIBERY

- 40.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Call Off Commencement Date:
- 40.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 40.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 40.2 The Supplier shall not during the Call Off Contract Period:
- 40.2.1 commit a Prohibited Act; and/or
 - 40.2.2 do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 40.3 The Supplier shall during the Call Off Contract Period:
- 40.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 40.3.2 keep appropriate records of its compliance with its obligations under Clause 40.3.1 and make such records available to the Customer on request;
 - 40.3.3 if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Call Off Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
 - 40.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 40.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 40.1, or has reason to believe that it has or any of the Supplier Personnel have:
- 40.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 40.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 40.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call

Off Contract or otherwise suspects that any person or Party directly or indirectly connected with this Call Off Contract has committed or attempted to commit a Prohibited Act.

- 40.5 If the Supplier makes a notification to the Customer pursuant to Clause 40.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with Clause 14 (Records and Audit Access).
- 40.6 If the Supplier breaches Clause 40.3, the Customer may by notice:
 - 40.6.1 require the Supplier to remove from performance of this Call Off Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
 - 40.6.2 immediately terminate this Call Off Contract for material Default.
- 40.7 Any notice served by the Customer under Clause 40.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).

41. SEVERANCE

- 41.1 If any provision of this Call Off Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Call Off Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call Off Contract shall not be affected.
- 41.2 In the event that any deemed deletion under Clause 41.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract or materially alters the balance of risks and rewards in this Call Off Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.
- 41.3 If the Parties are unable to resolve the Dispute arising under this Clause 41 within twenty (20) Working Days of the date of the notice given pursuant to Clause 41.2, this Call Off Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Contract is terminated pursuant to this Clause 41.

42. FURTHER ASSURANCES

- 42.1 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.

43. ENTIRE AGREEMENT

- 43.1 This Call Off Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 43.2 Neither Party has been given, nor entered into this Call Off Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call Off Contract.
- 43.3 Nothing in this Clause 43 shall exclude any liability in respect of misrepresentations made fraudulently.

44. THIRD PARTY RIGHTS

- 44.1 The provisions of Clause 26.5.3 (Liability) and paragraphs 2.1 and 2.3 of Part C and paragraphs and 1.4, 2.3 and 2.8 of Part D of Call Off Schedule 11 (Staff Transfer) (together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 44.2 Subject to Clause 44.1, a person who is not a Party to this Call Off Contract has no right under the CTRPA to enforce any term of this Call Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 44.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior Approval of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.
- 44.4 Any amendments or modifications to this Call Off Contract may be made, and any rights created under Clause 44.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

45. NOTICES

- 45.1 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 45, an e-mail is accepted as being "in writing".
- 45.2 Subject to Clause 45.3, the following table sets out the method by which notices may be served under this Call Off Contract and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 45.3 and 45.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will	Properly addressed and delivered as evidenced by signature of a delivery receipt

	occur at 9.00am on the next Working Day	
Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

45.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 45.2:

45.3.1 any Termination Notice (Clause 31 (Customer Termination Rights)),

45.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 34 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 38 (Waiver and Cumulative Remedies))
- (c) Default or Customer Cause; and

45.3.3 any Dispute Notice.

45.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 45.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 45.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

45.5 This Clause 45 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

45.6 For the purposes of this Clause 45, the address and email address of each Party shall be the address and email address set out in the Letter of Appointment.

46. DISPUTE RESOLUTION

46.1 The Parties shall resolve Disputes arising out of or in connection with this Call Off Contract in accordance with the Dispute Resolution Procedure.

46.2 The Supplier shall continue to provide the Services in accordance with the terms of this Call Off Contract until a Dispute has been resolved.

47. GOVERNING LAW AND JURISDICTION

- 47.1 This Call Off Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 47.2 Subject to Clause 46 (Dispute Resolution) and Call Off Schedule 12 (Dispute Resolution Procedure) (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.

CALL OFF SCHEDULE 1: DEFINITIONS

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

"Achieve"	means in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and " Achieved ", " Achieving " and " Achievement " shall be construed accordingly;
"Acquired Rights Directive"	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Additional Clauses"	means the additional Clauses in Call Off Schedule 14 (Alternative and/or Additional Clauses) and any other additional Clauses set out in the Letter of Appointment or elsewhere in this Call Off Contract;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Alternative Clauses"	means the alternative Clauses in Call Off Schedule 14 (Alternative and/or Additional Clauses) and any other alternative Clauses set out in the Letter of Appointment or elsewhere in this Call Off Contract;
"Approval"	means the prior written consent of the Customer and " Approve " and " Approved " shall be construed accordingly;
"Approved Sub-Licensee"	means any of the following: <ul style="list-style-type: none"> a) a Central Government Body; b) any third party providing services to a Central Government Body; and/or c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;
"Auditor"	means:

	<ul style="list-style-type: none"> a) the Customer's internal and external auditors; b) the Customer's statutory or regulatory auditors; c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office d) HM Treasury or the Cabinet Office e) any party formally appointed by the Customer to carry out audit or similar review functions; and f) successors or assigns of any of the above;
"Authority"	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
"Call Off Agreement"	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
"Call Off Commencement Date"	means the date of commencement of this Call Off Contract set out in paragraph 1.1 of the Letter of Appointment;
"Call Off Contract"	means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Letter of Appointment and the Call Off Terms;
"Call Off Contract Charges"	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract, as set out in Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Call Off Contract less any Deductions;
"Call Off Contract Period"	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date, which shall in no event exceed a maximum duration of four (4) years;

"Call Off Contract Year"	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;
"Call Off Expiry Date"	means: a) the end date of the Call Off Initial Period or any Call Off Extension Period; or b) if this Call Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call Off Contract;
"Call Off Extension Period"	means the extension term of this Call Off Contract from the end date of the Call Off Initial Period to the end date of the extension period stated in the Letter of Appointment;
"Call Off Initial Period"	means the initial term of this Call Off Contract from the Call Off Commencement Date to the end date of the initial term stated in the Letter of Appointment;
"Call Off Schedule"	means a schedule to this Call Off Contract;
"Call Off Terms"	means these terms and conditions entered by the Parties (excluding the Letter of Appointment) in respect of the provision of the Services, together with the Call Off Schedules hereto;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
"Change in Law"	means any change in Law which impacts on the supply of the Services and performance of the Call Off Terms which comes into force after the Call Off Commencement Date;
"Change of Control"	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	means the charges raised under or in connection with a Call Off Agreement from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure;

"Charging Structure"	means the structure to be used in the establishment of the charging model which is applicable to each Call Off Agreement, which structure is set out in Framework Schedule 3 (Framework Prices and Charging Structure);
"Commercially Sensitive Information"	means the Confidential information listed in the Letter of Appointment (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;
"Comparable Supply"	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
"Contracting Body"	means the Authority, the Customer and any other bodies listed in paragraph VI.3 of the OJEU Notice;
"Control"	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
"Costs"	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <ul style="list-style-type: none"> a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including: <ul style="list-style-type: none"> i) base salary paid to the Supplier Personnel; ii) employer's national insurance contributions; iii) pension contributions; iv) car allowances; v) any other contractual employment benefits; vi) staff training; vii) work place accommodation;

	<p>viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and</p> <p>ix) reasonable recruitment costs, as agreed with the Customer;</p> <p>b) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services;</p> <p>c) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Call Off Contract Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism (as set out in Framework Schedule 3 (Framework Prices and Charging Structure);</p> <p>but excluding:</p> <p>a) Overhead;</p> <p>b) financing or similar costs;</p> <p>c) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Call Off Contract Period;</p> <p>d) taxation;</p> <p>e) fines and penalties;</p> <p>and</p> <p>f) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown Body"	means any department, office or executive agency of the Crown or Non-Departmental Public Body;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;

"Customer"	means the customer(s) identified in the Letter of Appointment;
"Customer Cause"	means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Customer is liable to the Supplier;
"Customer Data"	means: <ul style="list-style-type: none"> a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which: <ul style="list-style-type: none"> i) are supplied to the Supplier by or on behalf of the Customer; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or b) any Personal Data for which the Customer is the Data Controller;
"Customer Premises"	means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for provision of the Services (or any of them);
"Customer Property"	means the property, other than real property and IPR, including any equipment issued or made available to the Supplier by the Customer in connection with this Call Off Contract;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to this Call Off Contract;
"Customer Responsibilities"	means the responsibilities of the Customer set out in the Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel) and any other responsibilities of the Customer in the Letter of Appointment or agreed in writing between the Parties from time to time in connection with this Call Off Contract;
"Customer's Confidential Information"	means: <ul style="list-style-type: none"> a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property

	<p>rights, trade secrets, Know-How and IPR of the Customer;</p> <p>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Customer's attention or into the Customer's possession in connection with this Call Off Contract; and</p> <p>c) information derived from any of the above;</p>
"Data Controller"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Processor"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Protection Legislation" or "DPA"	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;
"Data Subject"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
"Deductions"	means [all Delay Payments or] any [other] deduction which the Customer is paid or is payable under this Call Off Contract;
"Default"	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;
["Delay"	<p>means:</p> <p>a) a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>b) a delay in the design, development, testing or implementation of a Deliverable by the</p>

	relevant date set out in the Implementation Plan;]
["Delay Payments"	means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;]
["Delay Period Limit"	shall be the number of days specified in Part A of Call Off Schedule 4: Implementation Plan, Customer Responsibilities and Key Personnel, for the purposes of 5.4.1(b)(ii);]
"Deliverable"	means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan (if any) or at any other stage during the performance of this Call Off Contract;
"Delivery"	means, in respect of Services, the time at which the Services have been provided or performed by the Supplier as confirmed by the issue by the Customer of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Call Off Contract and accepted by the Customer and "Deliver" and "Delivered" shall be construed accordingly;
"Disclosing Party"	has the meaning given to it in Clause 24.3.1 (Confidentiality);
"Dispute"	means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Call Off Schedule 12 (Dispute Resolution Procedure);
"Documentation"	means all documentation as: <ul style="list-style-type: none"> a) is required to be supplied by the Supplier to the Customer under this Call Off Contract; b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the

	<p>Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services;</p> <p>c) is required by the Supplier in order to provide the Services; and/or</p> <p>d) has been or shall be generated for the purpose of providing the Services;</p>
"DOTAS"	<p>means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;</p>
"Due Diligence Information"	<p>means any information supplied to the Supplier by or on behalf of the Customer prior to the Call Off Commencement Date;</p>
"Employee Liabilities"	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <p>a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</p> <p>b) unfair, wrongful or constructive dismissal compensation;</p> <p>c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</p> <p>d) compensation for less favourable treatment of part-time workers or fixed term employees;</p>

	<p>e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;</p> <p>f) claims whether in tort, contract or statute or otherwise;</p> <p>g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
"Employment Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
"Environmental Policy "	means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Customer;
"Environmental Information Regulations or EIRs"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Estimated Year 1 Call Off Contract Charges"	means the sum in pounds estimated by the Customer to be payable by it to the Supplier as the total aggregate Call Off Contract Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year stipulated in the Letter of Appointment or elsewhere in this Call Off Contract;
"Expedited Dispute Timetable"	means the timetable set out in paragraph 5 of Schedule 12 (Dispute Resolution Procedure);
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information

	Commissioner or relevant government department in relation to such legislation;
"Force Majeure"	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Call Off Contract; b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of the Crown, local government or Regulatory Bodies; d) fire, flood or any disaster; and e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;
"Force Majeure Notice"	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Former Supplier"	means a supplier supplying the services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
"Framework Agreement"	means the framework agreement between the Authority and the Supplier referred to in the Letter of Appointment;

"Framework Commencement Date"	means the date of commencement of the Framework Agreement as stated in the Call Off Schedule 1 (Definitions);
"Framework Period"	means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;
"Framework Price(s)"	means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);
"Framework Schedule"	means a schedule to the Framework Agreement;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"Further Competition Procedure"	means the award procedure described in paragraph 3 of Framework Schedule 5 (Call Off Procedure);
"General Anti-Abuse Rule"	means (a) the legislation in Part 5 of the Finance Act 2013 and; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	means Her Majesty's Revenue and Customs;

"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"ICT Policy"	means the Customer's ICT policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure.
"Impact Assessment"	has the meaning given to it in Clause 15.1.3 (Variation Procedure);
["Implementation Plan"	means the plan set out in the Letter of Appointment;]
"Information"	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
"Insolvency Event"	<p>means, in respect of the Supplier:</p> <ul style="list-style-type: none"> a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force

	<p>pursuant to Schedule A1 of the Insolvency Act 1986; or</p> <p>h) where the Supplier 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</p> <p>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>
"Intellectual Property Rights" or "IPR"	<p>means</p> <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>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</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"IPR Claim"	<p>means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of its obligations under this Call Off Contract;</p>
"Key Performance Indicators" or "KPIs"	<p>means the performance measurements and targets in respect of the Supplier's performance of the Framework Agreement set out in Part B of Framework Schedule 2 (Services and Key Performance Indicators);</p>
"Key Personnel"	<p>means the individuals (if any) identified as such in Part C of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel);</p>
"Key Role(s) "	<p>has the meaning given to it in Clause 18.1 (Key Personnel);</p>
"Key Sub-Contract"	<p>means each Sub-Contract with a Key Sub-Contractor;</p>

"Key Sub-Contractor"	<p>means any Sub-Contractor:</p> <ul style="list-style-type: none"> a) listed in Framework Schedule 7 (Key Sub-Contractors); b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;
"Know-How"	<p>means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;</p>
"Law"	<p>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;</p>
"Letter of Appointment"	<p>means the letter of appointment from the Customer to the Supplier dated [DD/MM/YYYY] (including its appendices), as completed and forming part of this Call Off Contract, which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied;</p>
"Losses"	<p>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;</p>
["Milestone"	<p>means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;]</p>

["Milestone Date"]	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;]
["Milestone Payment"]	means a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;]
"Month"	means a calendar month and " Monthly " shall be interpreted accordingly;
"Occasion of Tax Non-Compliance"	<p>means:</p> <ul style="list-style-type: none"> a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a civil penalty for fraud or evasion;
"Order"	means the order for the provision of the Services placed by the Customer with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;
"Other Supplier"	means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Overhead"	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and

	insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Customer or the Supplier and " Parties " shall mean both of them;
"Personal Data"	has the meaning given to it in the Data Protection Act 1998;
"Processing"	has the meaning given to it in 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;
"Prohibited Act"	means any of the following: <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority or other Contracting Body or any other public body a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; c) committing any offence: <ul style="list-style-type: none"> i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act) ii) under legislation or common law concerning fraudulent acts; or

	<ul style="list-style-type: none"> iii) defrauding, attempting to defraud or conspiring to defraud the Customer; or iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
"PwC firms"	means any entity or partnership within the worldwide network of PricewaterhouseCoopers firms and entities;
"Recipient"	has the meaning given to it in Clause 24.3.1 (Confidentiality);
"Rectification Plan"	means the rectification plan pursuant to the Rectification Plan Process;
"Rectification Plan Process"	means the process set out in Clause 28.2 (Rectification Plan Process);
"Regulations"	means the Public Contracts Regulations 2015 (http://www.legislation.gov.uk/uksi/2015/102/contents/made), and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
"Reimbursable Expenses"	has the meaning given to it in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
"Related Supplier"	means any person who provides services to the Customer which are related to the Services from time to time;
"Relevant Requirements"	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Relief Notice"	has the meaning given to it in Clause 29.2.2 (Supplier Relief Due to Customer Cause);
"Replacement Services"	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the Call Off Expiry Date,

	whether those services are provided by the Customer internally and/or by any third party;
"Replacement Sub-Contractor"	means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"Replacement Supplier"	means any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;
"Request for Information"	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
"Restricted Countries"	has the meaning given to it in Clause 24.6.3 (Protection of Personal Data);
"Satisfaction Certificate"	means the certificate materially in the form of the document contained in Call Off Schedule 5 (Satisfaction Certificate) granted by the Customer when the Supplier has Achieved a Milestone;
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph 6 of Call Off Schedule 8 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 6.3.1 of Call Off Schedule 8 (Security) and as updated from time to time;
"Security Policy"	means the Customer's security policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
"Security Policy Framework"	the HMG Security Policy Framework https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf ;
"Service Failure"	means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future;
"Service Transfer"	means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;

"Service Transfer Date"	means the date of a Service Transfer;
"Services"	means the services to be provided by the Supplier to the Customer as referred to Annex A of Call Off Schedule 2 (Services);
"Sites"	means: a) any premises (including the Customer Premises, the Supplier's premises or third party premises): i) from, to or at which: (1) the Services are (or are to be) provided; or (2) the Supplier manages, organises or otherwise directs the provision or the use of the Services.
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
"Staffing Information"	has the meaning give to it in Call Off Schedule 11 (Staff Transfer);
"Standards"	means any: a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; b) standards detailed in the specification in Framework Schedule 2 (Services and Key Performance Indicators); c) standards detailed by the Customer in Call Off Schedule 7 (Standards) or agreed between the Parties from time to time; d) relevant Government codes of practice and guidance applicable from time to time.
"Sub-Contract"	means any contract or agreement (or proposed contract or agreement), other than this Call Off Contract or the Framework Agreement, pursuant to which a third party: a) provides the Services (or any part of them);

	<p>b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or</p> <p>is responsible for the management, direction or control of the provision of the Services (or any part of them);</p>
"Sub-Contractor"	means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person or any third party including any Supplier associates engaged by the Supplier from time to time under a Sub-Contract;
"Supplier"	means the person, firm or company with whom the Customer enters into this Call Off Contract as identified in the Letter of Appointment;
"Supplier Background IPR"	<p>means</p> <p>a) Intellectual Property Rights owned by the Supplier before the Call Off Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>b) Intellectual Property Rights created by the Supplier independently of this Call Off Contract,</p>
"Supplier Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Call Off Contract;
"Supplier Non-Performance"	has the meaning given to it in Clause 29.1 (Supplier Relief Due to Customer Cause);
"Supplier Profit"	means, in relation to a period or a Milestone (as the context requires), the difference between the total Call Off Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
"Supplier Profit Margin"	means, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Call Off Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;

"Supplier Representative"	means the representative appointed by the Supplier named in the Letter of Appointment;
"Supplier's Confidential Information"	means <ul style="list-style-type: none"> a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier; b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Call Off Contract; c) information derived from any of the above.
"Template Call Off Terms"	means the template terms and conditions in Annex 2 of Framework Schedule 4 (Template Letter of Appointment and Template Call Off Terms);
"Template Order Form"	means the template order form in Annex 1 of Framework Schedule 4 (Template Letter of Appointment and Template Call Off Terms);
"Tender"	means the tender submitted by the Supplier to the Authority and annexed to or referred to in Framework Schedule 20;
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Call Off Contract on a specified date and setting out the grounds for termination;
"Third Party IPR"	means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Services;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive
"Transferring Supplier Employees"	means those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

"Undelivered Services"	has the meaning given to it in Clause 7.2.1 (Services);
"Undisputed Sums Time Period"	has the meaning given to it Clause 32.1.1 (Termination of Customer Cause for Failure to Pay);
"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph 7 (Invoicing Procedure) of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
"Variation"	has the meaning given to it in Clause 15.1 (Variation Procedure);
"Variation Form"	means the form set out in Call Off Schedule 13 (Variation Form);
"Variation Procedure"	means the procedure set out in Clause 15.1 (Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Worker"	means any one of the Supplier Personnel which the Customer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 07/12 – Tax Arrangements of Public Appointees (https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees) applies in respect of the Services; and
"Working Day"	means any Day other than a Saturday or Sunday or public holiday in England and Wales.

CALL OFF SCHEDULE 2: SERVICES

1. INTRODUCTION

This Call Off Schedule specifies the Services to be provided under this Call Off Contract, in Annex 1.

ANNEX 1: THE SERVICES

Our services include the following activities under Lots 1 and 2:

Lot 1:

1. **Mobilisation** – meet with the Task Force and Lot 2 provider to:
 - a. Understand the project and requirements, including prioritisation of your objectives;
 - b. Align workplans;
 - c. Discuss investors to be interviewed and fund structures to be appraised.
2. **Fund structure review**
 - a. Review circa 5 international fund structures and appraise these against your criteria;
 - b. Engage with Lot 2 provider on the lessons learnt from their work on existing in-region vehicles including NIIF.
3. **Market testing preparation** – develop project synopsis for issue to interview participants and interview guide/questionnaire. This will be informed by activity 2 and engagement with the Lot 2 provider to understand emerging findings on historic/future project pipeline and market failures.
4. **Investor liaison** – hold meetings/calls with existing/potential institutional investors in Indian infrastructure. Around 25 interviews will be undertaken across the range of institutional investors (e.g. development finance institutions/development banks, insurance companies, pension funds).
5. **Investor requirements** – from activities 2 and 4 set out the investment principles required for them to consider Indian infrastructure investing. This will be informed by the future pipeline developed by the Lot 2 provider.
6. **Fund offerings** – triangulation of private/public sector institutional investors with the market failures identified and sector focus recommended by the Lot 2 provider will support the development of mechanisms required by, or in parallel with, the fund to achieve the Task Force objectives.
7. **Implementation plan** – assuming fund feasibility, we will discuss and agree next steps to its establishment. If relevant, this will include an indicative heads of terms for a fund manager RFP.

Lot 2:

1. **Mobilisation – meet the Task Force and Lot 1 provider to:**
 - a. Understand the project and requirements, including prioritisation of your objectives;
 - b. Align workplans of providers;
 - c. Discuss and finalise approach.
2. **Review the hurdles to infrastructure investment**

- a. Our approach would be multi-faceted:
 - i. In depth secondary study of key committee and expert reports,
 - ii. Focussed interactions with varied investors (financial investors, operators and utilities)
 - iii. Internal experience in managing/ monitoring projects.
- b. Identify and assess forthcoming interventions/ reforms to address these hurdles – discussions with public stakeholders and regulators.
- c. Leverage experience from developed countries such as the UK to recommend practical and implementable solutions; addressing investor risks and Government's concerns on cost, transparency and competitiveness.

3. Sector review

- a. Our approach to proposing target infrastructure sectors for UK institutional investors would start with understanding their appetite and preference using our relationships and experience in the UK and India;
- b. Leverage our super-specialists:
 - i. Critically review the infrastructure sectors (table below) to understand (i) risk-return profile (ii) regulatory environment (iii) contractual framework (iv) credit enhancement and (v) policies/structures/initiatives to reduce execution risk.
 - ii. Propose target sub-sector for UK investors.

4. Review investment landscape across project lifecycle

- a. Leverage our access to public agencies, public and proprietary project databases to critically analyse brownfield, greenfield and stalled projects taking into account investment pipeline, size, regulatory landscape and risk return profile in each case;
- b. Assess willingness of lenders to restructure debt to kick-start stalled projects through:
 - i. Interactions with leading banks (SBI, ICICI and PNB) and RBI
 - ii. Review of precedent cases and propose target type of investments for UK investors.

5. Case Reviews

- a. Use relationship with GOI, TN Government and investors to assess the size, number and quality of deals within the three NIIF sub-funds.
- b. Review the performance of CDC's and PSMG's investments in India using statutory filings, interactions and deal databases.

Lots 1 and 2:

1. Project management

We will ensure a regular feedback loop between the Lot providers and the Task Force through:

- All-party weekly calls between day-to-day leads;
- Bi-monthly meetings (video conference/conference calls from India);
- Ad hoc interaction between Lot providers;

- Sharing of draft deliverables/emerging findings between Lot providers and with the Task Force;
- One presentation led by both Lot providers setting out the project's findings.

CALL OFF SCHEDULE 3: CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING

1. DEFINITIONS

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

"Reimbursable Expenses"

means the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Customer's expenses policy current from time to time, but not including:

- a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Customer otherwise agrees in advance in writing; and
- b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;

"Review Adjustment Date"

has the meaning given to it in paragraph 10.1.2 of this Call Off Schedule;

"Supporting Documentation"

means sufficient information in writing to enable the Customer to reasonably to assess whether the Call Off Contract Charges, Reimbursable Expenses and other sums due from the Customer under this Call Off Contract detailed in the information are properly payable.

2. GENERAL PROVISIONS

2.1 This Call Off Schedule details:

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

3. CALL OFF CONTRACT CHARGES

- 3.1 The Call Off Contract Charges which are applicable to this Call Off Contract are set out in Annex 1 of this Call Off Schedule.
- 3.2 The Supplier acknowledges and agrees that:
 - 3.2.1 In accordance with paragraph 2 (General Provisions) of Framework Schedule 3 (Framework Prices and Charging Structure), the Call Off Contract Charges can in no event exceed the Framework Prices set out in Annex 3 to Framework Schedule 3 (Framework Prices and Charging Structure); and
 - 3.2.2 subject to paragraph 8 of this Call Off Schedule (Adjustment of Call Off Contract Charges), the Call Off Contract Charges cannot be increased during the Call Off Contract Period.

4. COSTS AND EXPENSES

- 4.1 Except as expressly set out in paragraph 5 of this Call Off Schedule (Reimbursable Expenses), the Call Off Contract Charges include all costs and expenses relating to the Services and/or the Supplier's performance of its obligations under this Call Off Contract and no further amounts shall be payable by the Customer to the Supplier in respect of such performance, including in respect of matters such as:
 - 4.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
 - 4.1.2 any amount for any services provided or costs incurred by the Supplier prior to the Call Off Commencement Date.

5. REIMBURSEABLE EXPENSES

- 5.1 The Supplier shall be entitled to be reimbursed by the Customer for Reimbursable Expenses (in addition to being paid the relevant Call Off Contract Charges under this Call Off Contract), provided that such Reimbursable Expenses are supported by Supporting Documentation. The Customer shall provide a copy of their current expenses policy to the Supplier upon request.

6. PAYMENT TERMS/PAYMENT PROFILE

- 6.1 The payment terms/profile which are applicable to this Call Off Contract are set out in Annex 2 of this Call Off Schedule.

7. INVOICING PROCEDURE

- 7.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Customer in paragraph 7.6 of this Call Off Schedule and in accordance with the provisions of this Call Off Contract.
- 7.2 The Supplier shall ensure that each invoice ((whether submitted electronically through a purchase-to-pay (P2P) automated system (or similar) or in a paper

form, as the Customer may specify ((but, in respect of paper form, subject to paragraph 7.3)):

7.2.1 contains:

- (a) all appropriate references, including the unique Order reference number supplied by HM Treasury; and
- (b) a detailed breakdown of the Delivered Services, including the Milestone(s) (if any) and Deliverable(s) within this Call Off Contract to which the Delivered Services relate, against the applicable due and payable Call Off Contract Charges; and

7.2.2 shows separately the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 16.2.1 of this Call Off Contract (VAT) and the tax point date relating to the rate of VAT shown; and

7.2.3 is exclusive of any Management Charge (and the Supplier shall not attempt to increase the Call Off Contract Charges or otherwise recover from the Customer as a surcharge the Management Charge levied on it by the Authority); and

7.2.4 it is supported by any other documentation reasonably required by the Customer to substantiate that the invoice is a Valid Invoice.

7.3 If the Customer is a Central Government Body, the Customer's right to request paper form invoicing shall be subject to procurement policy note 11/15 (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437471/PPN_e-invoicing.pdf) in respect of the Customer's obligation to accept unstructured electronic invoices from the Supplier where and as required under that procurement policy note (as amended from time to time).

7.4 The Supplier shall accept the Government Procurement Card as a means of payment for the Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.

7.5 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Call Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

7.6 The Supplier shall submit invoices directly to:

The Customer - REDACTED

8. ADJUSTMENT OF CALL OFF CONTRACT CHARGES

8.1 The Call Off Contract Charges shall only be varied:

8.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Call Off Contract Charges in accordance with Clause 15.2 of this Call Off Contract (Legislative Change);

8.1.2 in accordance with Clause 16.1.4 of this Call Off Contract (Call Off Contract Charges and Payment) where all or part of the Call Off

Contract Charges are reduced as a result of a reduction in the Framework Prices;

- 8.1.3 where all or part of the Call Off Contract Charges are reduced as a result of a review of the Call Off Contract Charges in accordance with Clause 11 of this Call Off Contract (Continuous Improvement);
 - 8.1.4 where all or part of the Call Off Contract Charges are reviewed and reduced in accordance with paragraph 9 of this Call Off Schedule; or
 - 8.1.5 where a review and increase of Call Off Contract Charges is requested by the Supplier and Approved, in accordance with the provisions of paragraph 10 of this Call Off Schedule
- 8.2 Subject to paragraphs 8.1.1 to 8.1.4 of this Call Off Schedule, the Call Off Contract Charges will remain fixed for the first two (2) Contract Years.

9. SUPPLIER PERIODIC ASSESSMENT OF CALL OFF CONTRACT CHARGES

- 9.1 Every six (6) Months during the Call Off Contract Period, the Supplier shall assess the level of the Call Off Contract Charges to consider whether it is able to reduce them.
- 9.2 Such assessments by the Supplier under paragraph 9 of this Call Off Schedule shall be carried out on [1 May] and [1 December] in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Call Off Contract Charges it shall promptly notify the Customer in writing and such reduction shall be implemented in accordance with paragraph 11.1.4 of this Call Off Schedule below.

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

- 10.1 The Supplier may request an increase in all or part of the Call Off Contract Charges in accordance with the remaining provisions of this paragraph 10 subject always to:
 - 10.1.1 paragraph 3.2 of this Call Off Schedule;
 - 10.1.2 the Supplier's request being submitted in writing at least three (3) Months before the effective date for the proposed increase in the relevant Call Off Contract Charges ("**Review Adjustment Date**") which shall be subject to paragraph 10.2 of this Call Off Schedule; and
 - 10.1.3 the Approval of the Customer which shall be granted in the Customer's sole discretion.
- 10.2 The earliest Review Adjustment Date will be the first (1st) Working Day following the second (2nd) anniversary of the Call Off Commencement Date. Thereafter any subsequent increase to any of the Call Off Contract Charges in accordance with this paragraph 10 of this Call Off Schedule shall not occur before the anniversary of the previous Review Adjustment Date during the Call Off Contract Period.
- 10.3 To make a request for an increase of some or all of the Call Off Contract Charges in accordance with this paragraph 10, the Supplier shall provide the Customer with:

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

11. IMPLEMENTATION OF ADJUSTED CALL OFF CONTRACT CHARGES

- 11.1 Variations in accordance with the provisions of this Call Off Schedule to all or part the Call Off Contract Charges (as the case may be) shall be made by the Customer to take effect:
- 11.1.1 in accordance with Clause 15.2 of this Call Off Contract (Legislative Change) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.1 of this Call Off Schedule;
 - 11.1.2 in accordance with Clause 16.1.4 of this Call Off Contract (Call Off Contract Charges and Payment) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.2 of this Call Off Schedule;
 - 11.1.3 in accordance with Clause 11 of this Call Off Contract (Continuous Improvement) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.3 of this Call Off Schedule;
 - 11.1.4 on [1 June] for assessments made on [1 May] and on [1 January] for assessments made on [1 December] where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.4 of this Call Off Schedule[.] [; or]
 - 11.1.5 on the Review Adjustment Date where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.5 of this Call Off Schedule,

and the Parties shall amend the Call Off Contract Charges shown in Annex 1 to this Call Off Schedule to reflect such variations.

ANNEX 1: CALL OFF CONTRACT CHARGES

Appendix 1: Call Off Contract Charges Lot 1 & Lot 2

PRICE MATRIX - LOT 1						
TOTAL COSTS OF PROJECT						
Required Services						
Role i.e. Director / Researcher	Amount of Days	Framework Rate (£ per day)	Rate Offered (£ per day)	Expenses	Total	Discounted Rate for Lot 1 & 2
UK						
REDACTED	REDACTED					REDACTED
India						
REDACTED	REDACTED					
Total					190,709	

PRICE MATRIX - LOT 2						
TOTAL COSTS OF PROJECT						
Required Services						
Role i.e. Director / Researcher	Amount of Days	Framework Rate (£ per day)	Rate Offered (£ per day)	Expenses	Total	Discounted Rate for Lot 1 & 2
India						
REDACTED	REDACTED					REDACTED
UK						
REDACTED						
Total					90,469	

ANNEX 2: PAYMENT TERMS/PROFILE

1. Payment can only be made following satisfactory delivery of pre-agreed certified products and deliverables.
2. Before payment can be considered, each invoice must include a detailed elemental breakdown of work completed and the associated costs.
3. Payment will be made, in accordance with the terms of engagement, on satisfactory delivery of the report and RfP (if applicable).
4. Payment will be the responsibility of HM Treasury and the reports will form an important part of the UK Government's evaluation of the investment proposition.
5. Invoices must be submitted to the following address and contain a relevant purchase order number as provided by the contracting Authority:

REDACTED

CALL OFF SCHEDULE 4: IMPLEMENTATION PLAN, CUSTOMER RESPONSIBILITIES AND KEY PERSONNEL

1. INTRODUCTION

1.1 This Call Off Schedule specifies:

- 1.1.1 In Part A, the Implementation Plan in accordance with which the Supplier shall provide the Services;
- 1.1.2 In Part B, the Customer Responsibilities in respect of facilitating the Supplier's achievement of the Implementation Plan; and
- 1.1.3 In Part C, The Key Personnel and their Key Roles assigned by the Supplier to this Call Off Contract in accordance with Clause 18.1 of this Call Off Contract (Key Personnel).

PART A: IMPLEMENTATION PLAN

Not applicable

PART B: CUSTOMER RESPONSIBILITIES

2. GENERAL

- 2.1 The Customer acknowledges that the Supplier will be relying on the information supplied by the Customer, and any other information supplied to the Supplier on the Customer's behalf or otherwise publically available to the Supplier. The Supplier shall be entitled to assume that any information furnished to it by the Customer in connection with the performance of the Services shall be properly obtained and may be properly furnished to the Supplier.
- 2.2 The Customer acknowledges that where the Supplier undertakes any analysis or valuation using information supplied to it by the Customer, or any other information supplied to the Supplier on the Customer's behalf and where the Supplier has made all reasonable enquiries to verify such information with the Customer the Supplier accepts no responsibility for the accuracy of such information
- 2.3 The Customer acknowledges that the Supplier is acting solely as a financial adviser and an independent contractor and the commercial merit, and suitability to and for it of any Services received from the Supplier are all entirely decisions for the Customer. The Services provided by the Supplier are provided solely for the benefit of the Customer and no opinion or advice given by the Supplier may be construed as a recommendation to any third party stakeholders of the Customer as to what action they should take. The Customer also acknowledges that the Supplier is not undertaking to provide any legal, accounting, regulatory, compliance, tax or other specialist or technical advice or services.

PART C: KEY PERSONNEL

3. GENERAL

REDACTED

CALL OFF SCHEDULE 5: SATISFACTION CERTIFICATE

4. MILESTONE DELIVERY

- 4.1 The Customer will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.
- 4.2 If any Milestones (or any relevant part thereof) do not satisfy necessary requirements in respect thereof then:
 - 4.2.1 the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part), provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or
 - 4.2.2 the Parties shall treat the failure as a Supplier Default.

ANNEX 1: SATISFACTION CERTIFICATE

To: [insert name of Supplier]

FROM: [insert name of Customer]

[insert Date: dd/mm/yyyy]

Dear Sirs,

SATISFACTION CERTIFICATE

Milestones:

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

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

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

[We confirm that all of the [Deliverables relating to Milestone(s)]/[Milestone(s)] [insert relevant description and/or reference numbers(s) from the Implementation Plan] have been successfully Achieved by the Supplier.

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]]

CALL OFF SCHEDULE 7: STANDARDS

Not Applicable

CALL OFF SCHEDULE 8: SECURITY

1. CUSTOMER SECURITY REQUIREMENTS

Only terms in Section H clause 24 of the terms and Conditions apply.

2. SUPPLIER SECURITY PLAN AND PROVISIONS

N/A

3. DEFINITIONS

3.1 In this Call Off Schedule 8, the following definitions shall apply:

"Breach of Security"

means the occurrence of:

- a) any unauthorised access to or use of the Services, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Call Off Contract; and/or
- b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Call Off Contract,

in either case as more particularly set out in the Security Policy;

4. INTRODUCTION

4.1 The purpose of this Call Off Schedule is to ensure a good organisational approach to security under which the specific requirements of this Call Off Contract will be met;

4.2 This Call Off Schedule covers:

- 4.2.1 principles of protective security to be applied in delivering the Services;
- 4.2.2 the creation and maintenance of the Security Management Plan; and
- 4.2.3 obligations in the event of actual or attempted Breaches of Security.

5. PRINCIPLES OF SECURITY

- 5.1 The Supplier acknowledges that the Customer places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on security.
- 5.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
 - 5.2.1 is in accordance with the Law and this Call Off Contract;
 - 5.2.2 as a minimum demonstrates Good Industry Practice;
 - 5.2.3 complies with the Security Policy;
 - 5.2.4 meets any specific security threats of immediate relevance to the Services and/or the Customer Data; and
 - 5.2.5 complies with the Customer's ICT policies.
- 5.3 Subject to Clause 24 of this Call Off Contract (Security and Protection of Information) the references to standards, guidance and policies contained or set out in paragraph 5.2 of this Call Off Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 5.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Customer's Representative of such inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

6. SECURITY MANAGEMENT PLAN

6.1 Introduction

- 6.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Call Off Schedule. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

6.2 Content of the Security Management Plan

- 6.2.1 The Security Management Plan shall:
 - (a) comply with the principles of security set out in paragraph 5 of this Call Off Schedule and any other provisions of this Call Off Contract relevant to security;
 - (b) identify the necessary delegated organisational roles defined for those responsible for ensuring it is complied with by the Supplier;
 - (c) detail the process for managing any security risks from Sub-Contractors and third parties authorised by the Customer with access to the Services, processes associated with the provision of the Services, the Customer Premises, the Sites and any ICT, Information and data (including the Customer's Confidential Information and the Customer Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;

- (d) unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the provision of the Services, including the Authority Premises, the Sites, and any ICT, Information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- (e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the provision of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Call Off Contract;
- (f) set out the plans for transiting all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Call Off Contract and the Security Policy; and
- (g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the provision of the Services and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Call Off Schedule.

6.3 Development of the Security Management Plan

- 6.3.1 Within twenty (20) Working Days after the Call Off Commencement Date (or such other period agreed by the Parties in writing) and in accordance with paragraph 6.4 (Amendment and Revision), the Supplier shall prepare and deliver to the Customer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 6.3.2 If the Security Management Plan submitted to the Customer in accordance with paragraph 6.3.1, or any subsequent revision to it in accordance with paragraph 6.4 (Amendment and Revision), is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Call Off Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for Approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
- 6.3.3 The Customer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to

paragraph 6.3.2. However a refusal by the Customer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 6.2 shall be deemed to be reasonable.

6.3.4 Approval by the Customer of the Security Management Plan pursuant to paragraph 6.3.2 of this Call Off Schedule or of any change to the Security Management Plan in accordance with paragraph 6.4 shall not relieve the Supplier of its obligations under this Call Off Schedule.

6.4 Amendment and Revision of the Security Management Plan

6.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:

- (a) emerging changes in Good Industry Practice;
- (b) any change or proposed change to the Services and/or associated processes;
- (c) any change to the Security Policy;
- (d) any new perceived or changed security threats; and
- (e) any reasonable change in requirements requested by the Customer.

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

- (a) suggested improvements to the effectiveness of the Security Management Plan;
- (b) updates to the risk assessments; and
- (c) suggested improvements in measuring the effectiveness of controls.

6.4.3 Subject to paragraph 6.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with paragraph 6.4.1, a request by the Customer or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved by the Customer.

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

7. BREACH OF SECURITY

- 7.1 Either party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan if one exists) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 7.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 7.1, the Supplier shall:
- 7.2.1 immediately take all reasonable steps(which shall include any action or changes reasonably required by the Customer) necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Customer and the provision of the Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - (c) prevent an equivalent breach in the future exploiting the same root cause failure; and
 - (d) as soon as reasonably practicable provide to the Customer, where the Customer so requests, full details (using the reporting mechanism defined by the Security Management Plan if one exists) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Customer.
- 7.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security policy or the requirements of this Call Off Schedule, then any required change to the Security Management Plan shall be at no cost to the Customer.

ANNEX 1: SECURITY POLICY

None Required

ANNEX 2: SECURITY MANAGEMENT PLAN

NONE REQUIRED

CALL OFF SCHEDULE 9: NOT USED

CALL OFF SCHEDULE 10: NOT USED

CALL OFF SCHEDULE 11: STAFF TRANSFER

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

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

Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);

“Service Transfer”

any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;

“Service Transfer Date”

the date of a Service Transfer;

“Staffing Information”

in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant

standard contracts if applied generally in respect of such employees); and

- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Supplier's Final Supplier Personnel List”

a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

“Supplier's Provisional Supplier Personnel List”

a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

“Transferring Customer Employees”

those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;

“Transferring Former Supplier Employees”

in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

“Transferring Supplier Employees”

those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

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

PART A
TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF SERVICES
[NOT USED]

PART B
TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF
SERVICES

[NOT USED]

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

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

2. INDEMNITIES

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

- 2.1.2 procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Customer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
- 2.4 The indemnities in Paragraph 2.1:
- 2.4.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Customer and, if applicable, Former Supplier within 6 months of the Call Off Commencement Date.

3. PROCUREMENT OBLIGATIONS

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

EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Call Off Contract;
 - 1.1.3 the date which is 12 months before the end of the Term; and
 - 1.1.4 receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any 6 month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Customer.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-contractor:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Customer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

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

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

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which the Services are organised, which shall include:
 - 1.6.1 the numbers of employees engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Services; and
 - 1.6.3 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
 - 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;

- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Call Off Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
 - 2.3.1 any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
 - 2.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or

- (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
 - 2.3.5 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
 - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Call Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 2.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
 - 2.7.2 such offer has been made but not accepted; or
 - 2.7.3 the situation has not otherwise been resolved
- the Customer shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
 - (a) any claim for:

- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 - in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or
 - (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Supplier and/or any Sub-contractor; and
 - 2.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee

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

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

authority relates to financial obligations arising after the Service Transfer Date;

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

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

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

ANNEX : LIST OF NOTIFIED SUB-CONTRACTORS

None Required

CALL OFF SCHEDULE 12: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this Call Off Schedule 12, the following definitions shall apply:

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Counter Notice"	has the meaning given to it in paragraph 6.2 of this Call Off Schedule;
"Expert"	the person appointed by the Parties in accordance with paragraph 5.2 of this Call Off Schedule 12; and
"Mediation Notice"	has the meaning given to it in paragraph 3.2 of this Call Off Schedule;
"Mediator"	the independent third party appointed in accordance with paragraph 4.2 of this Call Off Schedule 12.

2. INTRODUCTION

2.1 If a Dispute arises then:

- 2.1.1 the representative of the Customer and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- 2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

- 2.2.1 the material particulars of the Dispute;
- 2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- 2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this Call Off Schedule, the reason why.

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

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

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

- 2.4.2 then by mediation (as prescribed in paragraph 4 of this Call Off Schedule); and
 - 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Call Off Schedule) or litigation (in accordance with Clause 47 of this Call Off Contract (Governing Law and Jurisdiction)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Call Off Schedule) where specified under the provisions of this Call Off Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Call Off Schedule.
- 2.6 In exceptional circumstances where the use of the times in this Call Off Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- 2.7.1 in paragraph 3.2.3, ten (10) Working Days;
 - 2.7.2 in paragraph 4.2, ten (10) Working Days;
 - 2.7.3 in paragraph 5.2, five (5) Working Days; and
 - 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

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

either Party may serve a written notice to proceed to mediation (a “**Mediation Notice**”) in accordance with paragraph 4 of this Call Off Schedule.

4. MEDIATION

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

5. EXPERT DETERMINATION

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

- 5.3.5 the process shall be conducted in private and shall be confidential; and
- 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6. ARBITRATION

- 6.1 The Customer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Call Off Schedule.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 47 of this Call Off Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
 - 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Call Off Schedule shall apply;
 - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
 - 6.3.3 the Customer does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Call Off Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Call Off Schedule or commence court proceedings in the courts in accordance with Clause 47 of this Call Off Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Call Off Schedule, the Parties hereby confirm that:
 - 6.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to paragraphs 6.4.5 to 6.4.7 of this Call Off Schedule);
 - 6.4.2 the arbitration shall be administered by the LCIA;
 - 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

- 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 6.4.5 the chair of the arbitral tribunal shall be British;
- 6.4.6 the arbitration proceedings shall take place in London and in the English language; and
- 6.4.7 the seat of the arbitration shall be London.

7. URGENT RELIEF

- 7.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
 - 7.1.1 for interim or interlocutory remedies in relation to this Call Off Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or
 - 7.1.2 where compliance with paragraph 2.1 of this Call Off Schedule and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

CALL OFF SCHEDULE 13: VARIATION FORM

No of Letter of Appointment being varied:

.....

Variation Form No:

.....

BETWEEN:

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

and

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

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

[Guidance Note: Insert details of the Variation]

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

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

CALL OFF SCHEDULE 14: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION

- 1.1 This Call Off Schedule 14 specifies the range of Alternative Clauses and Additional Clauses that may be requested in the Letter of Appointment and, if requested in the Letter of Appointment, shall apply to this Call Off Contract.

2. CLAUSES SELECTED

- 2.1 The Customer may, in the Letter of Appointment, request the following Alternative Clauses:
- 2.1.1 Scots Law (see paragraph 4.1 of this Call Off Schedule);
 - 2.1.2 Northern Ireland Law (see paragraph 4.2 of this Call Off Schedule);
 - 2.1.3 Non-Crown Bodies (see paragraph 4.3 of this Call Off Schedule);
 - 2.1.4 Non-FOIA Public Bodies (see paragraph 4.4 of this Call Off Schedule);
 - 2.1.5 Financial Limits (see paragraph 4.5 of this Call Off Schedule).
- 2.2 The Customer may, in the Letter of Appointment, request the following Additional Clauses should apply:
- 2.2.1 Security Measures (see paragraph 5.1 of this Call Off Schedule);
 - 2.2.2 MOD (“Ministry of Defence”) Additional or Alternative Clauses (see paragraph **Error! Reference source not found.** of this Call Off Schedule)

3. IMPLEMENTATION

- 3.1 The appropriate changes have been made in this Call Off Contract to implement the Alternative and/or Additional Clauses specified in paragraph 2.1 of this Call Off Schedule and the Additional Clauses specified in paragraphs 2.2 and 2.2.1 of this Call Off Schedule shall be deemed to be incorporated into this Call Off Contract.

4. ALTERNATIVE CLAUSES

4.1 SCOTS LAW

4.1.1 Law and Jurisdiction (Clause 47)

- (a) References to “England and Wales” in the original Clause 47 of this Call Off Contract (Law and Jurisdiction) shall be replaced with “Scotland”.
- (b) Where legislation is expressly mentioned in this Call Off Contract the adoption of Clause 4.1.1 (a) shall have the effect of substituting the equivalent Scots legislation.

4.2 NORTHERN IRELAND LAW

4.2.1 Law and Jurisdiction (Clause 47)

- (a) References to "England and Wales" in the original Clause 47 of this Call Off Contract (Law and Jurisdiction) shall be replaced with "Northern Ireland".
- (b) Where legislation is expressly mentioned in this Call Off Contract the adoption of Clause 4.1.1(a) shall have the effect of substituting the equivalent Northern Ireland legislation.

4.2.2 Insolvency Event

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

4.3 NON-CROWN BODIES

Clause 36.3.1(b) of this Call Off Contract (Official Secrets Act and Finance Act) shall be deleted.

4.4 NON-FOIA PUBLIC BODIES

Replace Clause 24.5 of this Call Off Contract (Freedom of Information) with "The Customer has notified the Supplier that the Customer is exempt from the provisions of FOIA and EIR."

4.5 FINANCIAL LIMITS

In Clause 26.2.2(i) remove the monetary amount and the percentage stated therein and replace respectively with:

Two Hundred and Sixty Thousand Pounds £260,000.00

5. ADDITIONAL CLAUSES: GENERAL

5.1 SECURITY MEASURES

5.1.1 The following definitions to be added to Call Off Schedule 1 (Definitions) to the Call Off Form and the Call Off Terms:

"Document" includes specifications, plans, drawings, photographs and books;

"Secret Matter" means any matter connected with or arising out of the performance of this Call Off Contract which has been, or may hereafter be, by a notice in writing given by the Customer to the Supplier be designated 'top secret', 'secret', or 'confidential';

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

5.1.2 The following new Clause 58 shall apply:

58. SECURITY MEASURES

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

58.1.1. without the prior consent in writing of the Customer, disclosed to or acquired by a person who is an alien or who

- is a British subject by virtue only of a certificate of naturalisation in which his name was included;
- 58.1.2. disclosed to or acquired by a person as respects whom the Customer has given to the Supplier a notice in writing which has not been cancelled stating that the Customer requires that secret matters shall not be disclosed to that person;
 - 58.1.3. without the prior consent in writing of the Customer, disclosed to or acquired by any person who is not a servant of the Supplier; or
 - 58.1.4. disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Call Off Contract that such person shall have the information.
- 58.2. Without prejudice to the provisions of Clause 58.1, the Supplier shall, both before and after the completion or termination of this Call Off Contract, take all reasonable steps to ensure:
- 58.2.1. no such person as is mentioned in Clauses 58.1, 58.1.1 or 58.1.2 hereof shall have access to any item or document under the control of the Supplier containing information about a secret matter except with the prior consent in writing of the Customer;
 - 58.2.2. that no visitor to any premises in which there is any item to be supplied under this Call Off Contract or where Services are being supplied shall see or discuss with the Supplier or any person employed by him any secret matter unless the visitor is authorised in writing by the Customer so to do;
 - 58.2.3. that no photograph of any item to be supplied under this Call Off Contract or any portions of the Services shall be taken except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;
 - 58.2.4. that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and

- 58.2.5. that if the Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such document, model or item as is mentioned in Clause 58.2.3, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
- 58.3. The decision of the Customer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 58 shall be final and conclusive.
- 58.4. If and when directed by the Customer, the Supplier shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 58.5. If and when directed by the Customer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Call Off Contract.
- 58.6. If, at any time either before or after the expiry or termination of this Call Off Contract, it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Call Off Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Customer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.
- 58.7. The Supplier shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by Clauses 58.1 and 58.2 and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause 58 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act

or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.

58.8. The Supplier shall, if directed by the Customer, include in the Sub-Contract provisions in such terms as the Customer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Clause 58, but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:

58.8.1. give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this Clause 58 into operation in such cases and to such extent as the Customer may direct;

58.8.2. if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Clause 58, notify such breach forthwith to the Customer; and

58.8.3. if and when so required by the Customer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause 58.11.

58.9. The Supplier shall give the Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer that the obligations imposed by or under the foregoing provisions of this Clause 58 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Customer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Call Off Contract or in which there is or will be any item to be supplied under this Call Off Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Call Off Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

58.10. Nothing in this Clause 58 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

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

58.11.1. that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause 58; or

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

58.11.3. that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in 58.11.2, information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the Customer, ought not to have such information;

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

58.12. A decision of the Customer to terminate this Call Off Contract in accordance with the provisions of Clause 58.11 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Customer's decision is based.

58.13. Supplier's notice

58.13.1. The Supplier may within five (5) Working Days of the termination of this Call Off Contract in accordance with the provisions of Clause 58.11, give the Customer notice in writing requesting the Customer to state whether the event upon which the Customer's decision to terminate was based is an event mentioned in Clauses 58.11, 58.11.1 or 58.11.2 and to give particulars of that event; and

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

58.14. Matters pursuant to termination

58.14.1. The termination of this Call Off Contract pursuant to Clause 58.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;

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

58.14.3. The Customer may take over any work or thing done or made under this Call Off Contract (whether completed or

not) and not accepted at the date of such termination which the Customer may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of this Clause 58 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Customer, deliver any work or thing taken over under this Clause, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this Clause; and

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

58.15. If, after notice of termination of this Call Off Contract pursuant to the provisions of 58.11:

58.15.1. the Customer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in Clause 58.13.1; or

58.15.2. the Customer shall state in the statement and particulars detailed in Clause 58.13.2. that the event upon which the Customer's decision to terminate this Call Off Contract was based is an event mentioned in Clause 58.11.3,

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

58.15.3. the Customer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Supplier upon the termination of this Call Off Contract under the provisions of Clause 58.11 and properly provided by or supplied to the Supplier for the performance of this Call Off Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Customer, elect to retain;

58.15.4. the Supplier shall prepare and deliver to the Customer within an agreed period or in default of agreement within such period as the Customer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Customer and shall deliver such materials and items in accordance

with the directions of the Customer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;

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

58.15.6. if hardship to the Supplier should arise from the operation of this Clause 58.15 it shall be open to the Supplier to refer the circumstances to the Customer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this Clause shall be final and conclusive; and

subject to the operation of Clauses 58.15.3, 58.15.4, 58.15.5 and 58.15.6 termination of this Call Off Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.