

OFFICIAL - SENSITIVE - COMMERCIAL

PCSS Call-Off Terms

Primary Care Support Services Call-Off Terms

OFFICIAL - SENSITIVE - COMMERCIAL

PCSS Call-Off Terms

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SECTION A - PRELIMINARIES

1. Definitions and Interpretation

- 1.1 In this Call-Off Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Call-Off Agreement, unless the context otherwise requires:
- 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 a reference to a gender includes the other gender and the neuter;
 - 1.2.3 a reference to a person includes an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - 1.2.4 a reference to a Law includes a reference to that Law as modified, amended, extended, consolidated or re-enacted from time to time before or after the date of this Call-Off Agreement and any prior or subsequent legislation under it;
 - 1.2.5 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";
 - 1.2.6 references to "writing" include typing, printing, lithography, photography, electronic and facsimile transmission and expressions referring to writing shall be construed accordingly;
 - 1.2.7 the headings are for ease of reference only and shall not affect the interpretation or construction of this Call-Off Agreement;
 - 1.2.8 references to this Call-Off Agreement are references to this Call-Off Agreement as amended from time to time;
 - 1.2.9 references to Clauses and Schedules are references to the clauses and schedules of this Call-Off Agreement, and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear;
 - 1.2.10 a reference to a document (including this Call-Off Agreement) is to that document as varied, amended, novated, ratified or replaced from time to time; and
 - 1.2.11 any monetary sums set out in this Call-Off Agreement shall (unless expressly stated otherwise) be in pounds sterling.
- 1.3 Where a standard, policy or document is referred to in this Call-Off Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant

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standard, policy or document, the Supplier shall notify the Customer and the Parties shall update this Call-Off Agreement with a reference to the replacement hyperlink.

1.4 If there is any conflict between the Call-Off Order Form, the Clauses and the Schedules and/or any Annexes to the Schedules and/or any other documents referred to in this Call-Off Agreement, the conflict shall be resolved in accordance with the following order of precedence:

1.4.1 the Call-Off Order Form;

1.4.2 the Clauses;

1.4.3 Schedule 1 (Definitions);

1.4.4 any other Schedules to this Call-Off Agreement and their Annexes and appendices (subject to the principles of precedence as between Schedule 2.1 (Service Description) and Schedule 3.1 (Supplier Solution) set out at Clause 8.2 below);

1.4.5 Clauses and/or Schedules to the Framework Agreement incorporated into this Call-Off Agreement; and

1.4.6 any Contract Controlled Documents.

1.5 The Parties agree that the Customer, on its own behalf and as agent for each of the Service Recipients, shall:

1.5.1 have conduct of all claims and Disputes;

1.5.2 have the right to enforce the terms, conditions, undertakings, representations, warranties and other provisions of this Call-Off Agreement;

1.5.3 recover loss suffered by any of the Service Recipients as if such loss were suffered or incurred by the Customer; and/or

1.5.4 be liable for all acts and omissions of the Service Recipients in connection with this Call-Off Agreement as if they were the acts and omissions of the Customer.

1.6 Unless otherwise stated, rights granted to a Customer are also granted to any Service Recipients as applicable.

2. Conditions Precedent

2.1 Save for Clauses 1 (Definitions and Interpretation), 2 (Conditions Precedent), 28 (Confidentiality), 29 (Freedom of Information), 30 (Protection of Personal Data), 31 (Publicity and Branding) 34.2 (Warranties, Representations and Undertakings), 39 (Limitations of Liability), 46 (Term), 52 (Waiver and Cumulative Remedies), 53 (Relationships of the Parties), 56 (Severance), 58 (Entire Agreement), 59 (Third Party Rights), 60 (Notices), 61 (Disputes) and 62 (Governing Law and Jurisdiction), this Call-Off Agreement is conditional upon the Supplier's fulfilment of each of the Conditions Precedent in the Call-Off Order Form. The

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Customer may in its sole discretion at any time agree to waive compliance with any one or all of the Conditions Precedent by giving the Supplier written notice.

2.2 The Supplier shall satisfy, or procure the satisfaction of, the Conditions Precedent as soon as possible. In the event that one or all of the Conditions Precedent is/are not satisfied within twenty (20) Working Days after the date of this Call-Off Agreement then, unless the Conditions Precedent are waived by the Customer in accordance with Clause 2.1:

2.2.1 this Call-Off Agreement shall automatically cease and shall not come into effect; and

2.2.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

2.3 The Supplier shall consult with the Customer in relation to the steps it takes to satisfy the Conditions Precedent and shall keep the Customer fully informed of its progress in satisfying the condition(s) and of any circumstances which are likely to result in the condition(s) not being satisfied by the date set out in Clause 2.2.

3. Due Diligence

3.1 The Supplier acknowledges that, subject to the Allowable Assumptions:

3.1.1 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 Agreement;

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

3.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Customer before the Call-Off Effective Date) of all relevant details relating to:

3.1.3.1 the Services;

3.1.3.2 the operating processes and procedures and the working methods of the Customer;

3.1.3.3 the Customer Requirements;

3.1.3.4 the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Call-Off Effective Date) future Operating Environment;

3.1.3.5 the ownership, functionality, capacity, condition and suitability for use in the Services of the Customer Equipment; and

3.1.3.6 the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment)

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referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Call-Off Agreement and/or which the Supplier will require the benefit of for the provision of the Services.

- 3.2 The Supplier shall not be excused from the performance of any of its obligations under this Call-Off Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges arising as a result of:
- 3.2.1 any misinterpretation of the Services; and/or
 - 3.2.2 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
 - 3.2.3 any assumptions made by the Supplier in respect of the Services other than the Allowable Assumptions.
- 3.3 The Parties shall comply with the provisions of Paragraph 9 of Schedule 4.1 (Charges and Invoicing) of the Call-Off Terms in relation to the verification of any Allowable Assumptions.

SECTION B - Quality Plans, Transition and Testing

4. Quality Plans

- 4.1 The Supplier shall develop, within three (3) months of the Service Commencement Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001:2008 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**"). The Supplier shall obtain the Customer Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Customer's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Call-Off Agreement.
- 4.2 Following the approval by the Customer of the Quality Plans:
- 4.2.1 the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
 - 4.2.2 any Changes to the Quality Plans shall be agreed in accordance with Schedule 5.2 (Change Control Procedure).

5. Transition

- 5.1 The Parties shall comply with the provisions of Schedule 2.6 (Transition Plan) in relation to the agreement and maintenance of the Transition Plan.
- 5.2 The Supplier shall:
- 5.2.1 comply with the Transition Plan; and

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- 5.2.2 ensure that each Milestone set out in the Transition Plan is Achieved on or before its Milestone Date.
- 5.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay in respect of the Transition Plan:
 - 5.3.1 it shall:
 - 5.3.1.1 notify the Customer in accordance with Clause 41.1.1 (Rectification Plan Process); and
 - 5.3.1.2 comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - 5.3.1.3 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - 5.3.2 if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 43 (Delay Payments) shall apply.

6. Transformation

- 6.1 The Parties shall comply with the provisions of Schedule 2.7 (Transformation Plan) in relation to the agreement and maintenance of the Detailed Transformation Plan.
- 6.2 The Supplier shall:
 - 6.2.1 comply with the Transformation Plan; and
 - 6.2.2 ensure that each Milestone set out in the Transformation Plan is Achieved on or before its Milestone Date.
- 6.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay in respect of the Transformation Plan:
 - 6.3.1 it shall:
 - 6.3.1.1 notify the Customer in accordance with Clause 41.1 (Rectification Plan Process); and
 - 6.3.1.2 comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - 6.3.1.3 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - 6.3.2 if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 43 (Delay Payments) shall apply.

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7. Testing

The Parties shall comply with the testing provisions of any Transition Plan and/or Transformation Plan agreed between the Customer and Supplier pursuant to Clauses 5.1 and 6.1 above to determine whether a Milestone (to the extent that it is agreed to be subject to Testing) has been Achieved, in accordance with the Testing process set out in Schedule 2.8 (Testing) to these Call-Off Terms.

SECTION C – CALL-OFF SERVICES

8. Services

8.1 The Supplier shall provide the Services from the relevant Service Commencement Date until expiry of the Term (or any earlier Service End Date) and shall ensure that (subject to the principles of precedence set out in Clause 8.2 below):

8.1.1 the Day 1 Services comply in all respects with the description of those Day 1 Services in Schedule 2.1 (Call-Off Service Description) and the provisions of this Call-Off Agreement; and

8.1.2 the Transformed Services comply in all respects with the Schedule 3.1 (Supplier Solution) and the provisions of this Call-Off Agreement.

8.2 As at the Service Commencement Date, the Day 1 Services described in Schedule 2.1 (Service Description) shall take precedence over Schedule 3.1 (Supplier Solution). The parties acknowledge that the precedence of Schedule 2.1 (Service Description) and Schedule 3.1 (Supplier Solution) shall reverse during the Term of this Call-Off Agreement, in respect of any given Service. This is to reflect the transformation of Services from Day 1 Services to Transformed Services, by reference to the Supplier's Achievement of Milestones (from the Milestone described as SAC6), such transition being further described in the Service Migration Plan set out in the Transformation Plan and in any event such transition to be completed by the applicable governance gate date described as SAC8 in the Transformation Plan. Following the Achievement of the Transformation Completion Milestone, Schedule 3.1 (Supplier Solution) shall take precedence over Schedule 2.1 (Service Description).

8.3 The Supplier shall:

8.3.1 perform its obligations under this Call-Off Agreement, including in relation to the supply of the Services, in accordance with:

8.3.1.1 all applicable Law;

8.3.1.2 Good Industry Practice;

8.3.1.3 the Standards;

8.3.1.4 the Target Service Levels specified in Schedule 2.2 (Service Levels) to the Call-Off Agreement;

8.3.1.5 the Quality Plans; and

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- 8.3.1.6 the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 8.3.1.1 to 8.3.1.5; and
- 8.3.2 deliver the Services using efficient business processes and ways of working having regard to the Customer's obligation to ensure value for money.
- 8.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 8.3.1.1 to 8.3.1.5 the Supplier shall immediately notify the Customer Representative in writing of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier Covenants

- 8.5 The Supplier shall:
 - 8.5.1 at all times allocate sufficient resources with the appropriate technical expertise to provide the Services in accordance with this Call-Off Agreement;
 - 8.5.2 obtain, and maintain throughout the duration of this Call-Off Agreement, 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;
 - 8.5.3 ensure that:
 - 8.5.3.1 it shall continue to have all necessary rights in and to all 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 Agreement and/or the receipt of the Services by the Customer and/or Service Recipients;
 - 8.5.3.2 all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - 8.5.3.3 the Supplier System and any equipment used by the Supplier or any Key Sub-contractor in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Customer);
 - 8.5.4 minimise any disruption to the Services, the IT Environment and/or the Customer's operations when carrying out its obligations under this Call-Off Agreement;
 - 8.5.5 ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;

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- 8.5.6 co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Call-Off Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Customer and/or to any Replacement Supplier;
- 8.5.7 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 the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
- 8.5.8 unless it is unable to do so, assign to the Customer on the Customer's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 8.5.7;
- 8.5.9 provide the Customer with such assistance as the Customer may reasonably require during the Term in respect of the supply of the Services;
- 8.5.10 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 Agreement;
- 8.5.11 notify the Customer in writing within ten (10) Working Days of any Change of Control of the Supplier or any Key Sub-contractor taking place;
- 8.5.12 notify the Customer in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any Key Sub-contractor that might affect its ability to perform its obligations under this Call-Off Agreement; and
- 8.5.13 ensure that neither it, nor any of its Sub-contractors or Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call-Off Agreement.
- 8.6 In addition to where these Call-Off Terms expressly require the Supplier to comply with certain provisions of the Framework Agreement, the Supplier shall comply with its obligations in Clause 11 (Change in Law), 13 (Supply Chain Rights), 17.1 (Supplier's Obligations), 20 (Guarantee), 24 (Insurance), and 32 (Prevention of Fraud and Bribery) of the Framework Agreement and Schedule 3.2 (Insurance Requirements) to the Framework Agreement.
- 8.7 An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

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Continuing Obligation to provide the Services

8.8 The Supplier shall continue to perform all of its obligations under this Call-Off Agreement and shall not suspend the supply of the Services, notwithstanding:

8.8.1 the existence of an unresolved Dispute; and/or

8.8.2 any failure by the Customer to pay any Charges,

unless the Supplier is entitled to terminate this Call-Off Agreement under Clause 47.3.1 (Termination by the Supplier) for failure to pay undisputed Charges.

Service Recipients

8.9 The Supplier shall make available the Services (or the applicable part of the Services) to such Service Recipients as may be indicated in the Call-Off Order Form or otherwise notified to the Supplier, in accordance with, and subject to, the terms of this Call-Off Agreement.

8.10 In respect of the Service Recipients:

8.10.1 such Service Recipients shall be third party beneficiaries under the Call-Off Contract (meaning that Service Recipients shall be entitled to benefit from the fulfilment of the Services to the extent set out in Schedule 2.1 (Call-Off Service Description));

8.10.2 an indemnity in favour of the Customer, or any limitation or exclusion of liability in favour of the Customer, is intended by the parties to be a right or benefit of such Service Recipients, as if such Service Recipients had been parties to the Call-Off Agreement;

8.10.3 the Customer shall ensure that such Service Recipients comply with the Customer's obligations under the Call-Off Agreement that are relevant to the Service Recipients;

8.10.4 the Customer shall ensure that such Service Recipients shall comply with the Dispute Resolution Procedure in respect of any disputes regarding the fulfilment of the Services. In respect of such Disputes, the Customer may participate in and manage the Dispute Resolution Procedure on the applicable Service Recipient's behalf and the Supplier agrees that such Disputes may be so managed by the Customer;

8.10.5 if there is a Default by the Supplier, any liability of the Supplier as a result of such Default shall be dealt with as between the Supplier and the Customer under the terms of this Call-Off Agreement, provided that if any Service Recipient suffers or incurs any losses and/or damages as a direct result of any such Default or is entitled to make a claim pursuant to any indemnity in accordance with Clause 8.10.2, such losses and/or damages shall be recoverable from the Supplier and such claim shall be made against the Supplier, under this Call-Off Agreement by the Customer (and not by the Service Recipient) and shall be subject to Clause 39 (Limitations on Liability);

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- 8.10.6 the limits of liability set out in Clause 39 (Limitations on Liability) shall apply as an overall limitation on liabilities under this Call-Off Agreement, whether relating to loss or damage suffered by the Service Recipients or the Customer; and
 - 8.10.7 the Supplier shall not be liable under this Call-Off Agreement in respect of any loss or damage suffered by the Customer or a Service Recipient to the extent that the Customer and/or any other Service Recipient has already been compensated for the same loss or damage under this Call-Off Agreement; and
 - 8.10.8 the parties agree that no consent from such Service Recipient is required for the parties to vary or terminate the Call-Off Agreement (whether or not in a way that varies or extinguishes rights or benefits in favour of such Service Recipients).
- 8.11 During the Term, the Customer shall be entitled to remove any Service Recipients from the scope of the Call-Off Agreement in accordance with the Change Control Procedure.

9. Service Improvement

- 9.1 The Supplier shall have an on-going obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 9. As part of this obligation the Supplier shall identify and report as required by the Customer once every twelve (12) months on:
- 9.1.1 the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Supplier and the Customer which the Parties may wish to adopt;
 - 9.1.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
 - 9.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Customer which might result in efficiency or productivity gains or in reduction of operational risk;
 - 9.1.4 changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Customer;
 - 9.1.5 changes to business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services; and/or
 - 9.1.6 the suggestions made by the Service Management Board, Stakeholder Forum and User Groups identified in Schedule 5.1 (Call-Off Governance) and the impact of implementing such suggestions.
- 9.2 The Supplier shall ensure that the information that it provides to the Customer shall be sufficient for the Customer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Customer requests.

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9.3 If the Customer wishes to incorporate any improvement identified by the Supplier, the Customer shall send the Supplier a Change Request in accordance with Schedule 5.2 (Change Control Procedure).

10. Equipment and Maintenance

Equipment

10.1 The Supplier undertakes the safe custody of and due return of all Customer Equipment and shall be responsible for all loss or damage to the Customer Equipment (except to the extent such loss or damage is caused by the Customer's Default) and shall indemnify the Customer against such loss and damage.

10.2 Subject to Clause 10.1, title and risk in the Customer Equipment shall remain with the Customer at all times.

10.3 The Supplier shall permit the Customer and each Service Recipient access at all reasonable times (including out of hours access where agreed between the parties, such agreement not to be unreasonably withheld) to the Customer Equipment at Supplier premises, as the Customer and/or Service Recipient (as applicable) may reasonably require.

10.4 The provisions of Schedule 2.9 (Assets) shall apply in respect of any Customer Transferring Assets identified in the Call-Off Order Form.

11. Service Levels

The Parties shall comply with the provisions of Schedule 2.2 (Service Levels).

SECTION D – FINANCIAL AND TAXATION MATTERS

12. Charging and Invoicing

12.1 In consideration of the Supplier carrying out its obligations, including the provision of the Services under this Call-Off Agreement, the Customer shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 4.1 (Charges and Invoicing).

12.2 If the Customer fails to pay any undisputed Charges properly invoiced under this Call-Off Agreement, 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.

12.3 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 7 (Testing), 18 (Records, Reports, Audits and Open Book Data), 29 (Freedom of Information), 30 (Protection of Personal Data) and, to the extent specified therein, Clause 42 (Remedial Adviser).

12.4 For the avoidance of doubt, the Charges represent all of the charges that can be levied by the Supplier in respect of the provision of the Services in accordance with this Call-Off

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Agreement, and the Supplier shall, at no additional cost to the Customer, be responsible for providing any services, functions and responsibilities that are both necessary for and incidental to the proper performance by the Supplier of the Services, unless there is an express right for the Supplier to vary or levy additional charges.

13. Value For Money

The parties shall comply with their respective obligations set out in Schedule 4.5 (Value for Money Provisions) to this Call-Off Agreement.

14. VAT

14.1 The 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 VAT invoice issued in accordance with the invoicing procedure specified in Schedule 4.1 (Charges and Invoicing).

14.2 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 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 Agreement. Any amounts due under this Clause 14.2 shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

15. Set-Off and Withholding

15.1 The Customer may set off any amount owed by the Supplier to the Customer against any amount due to the Supplier under this Call-Off Agreement or under any other agreement between the Supplier and the Customer.

15.2 If the Customer wishes to set off any amount owed by the Supplier to the Customer or any part of the Customer against any amount due to the Supplier pursuant to Clause 12 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for withholding or retaining the relevant Charges.

16. Promoting Tax Compliance

16.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

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

16.1.2 promptly provide to the Customer:

16.1.2.1 details of the steps which 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

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

SECTION E - CONTRACT GOVERNANCE

17. Governance

The Parties shall comply with the provisions of Schedule 5.1 (Call-Off Governance) to the Call-Off Agreement.

18. Records, Reports, Audits and Open Book Data

18.1 The Supplier shall comply with the provisions of:

18.1.1 Schedule 5.3 (Records Provisions) of the Framework Agreement and Schedule 5.6 (Records Management) of the Call-Off Agreement in relation to the maintenance and retention of records; and

18.1.2 Part A of Schedule 4.4 (Financial Reports and Audit Rights) of the Call-Off Agreement in relation to the maintenance of Open Book Data.

18.2 The Parties shall comply with the provisions of:

18.2.1 Part B of Schedule 4.4 (Financial Reports and Audit Rights) of the Call-Off Agreement in relation to the provision of the Financial Reports.

18.2.2 Part C of Schedule 4.4 (Financial Reports and Audit Rights) of the Call-Off Agreement in relation to the exercise of Audit Rights by the Customer or any Audit Agents.

18.3 The Supplier shall provide the Customer with reporting as required by Schedule 2.4 (Service Reports) to the Call-Off Terms.

19. Change

Change Control Procedure

19.1 All proposed changes to this Call-Off Agreement shall be processed by the Parties in accordance with Schedule 5.2 (Change Control Procedure).

Change in Law

19.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with this Call-Off Agreement nor be entitled to an increase in the Charges as the result of:

19.2.1 a General Change in Law;

19.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Call-Off Effective Date; or

19.2.3 any Specific Change in Law to the extent that either:

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19.2.3.1 the change can be made in the ordinary course of the Supplier's business without affecting the Supplier's cost base; or

19.2.3.2 

19.3 If a Specific Change in Law (other than a Specific Change in Law as referred to in Clause 19.2.2 and/or 19.2.3) occurs or will occur during the Term, the Supplier shall:

19.3.1 notify the Customer as soon as reasonably practicable of the likely effects of the change including:

19.3.1.1 whether any Contract Change is required to the Call-Off Agreement; and

19.3.1.2 whether any relief from compliance with the Supplier's obligations under this Call-Off Agreement is required; and

19.3.2 provide the Customer with evidence:

19.3.2.1 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;

19.3.2.2 as to how the Specific Change in Law has affected the cost of providing the Services; and

19.3.2.3 demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges; and

19.3.3 subject to provision of the information listed in Clauses 19.3.1 and 19.3.2, be entitled to relief from its obligations and/or variation in the Charges under this Call-Off Agreement to the extent impacted by the relevant Specific Change in Law.

19.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 19.2.2) shall be implemented in accordance with Clause 19.1.

19.5 Each Party will promptly inform the other Party in writing upon becoming aware of any Specific Change in Law.

Change in Standards

19.6 The Supplier shall comply with the provisions of Schedule 2.3 (Standards).

19.7 The Supplier shall not be relieved of its obligations under this Call-Off Agreement or entitled to an increase in the Charges as the result of:

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- 19.7.1 any change in an Industry Standard ("**Industry Standard Change**"); or
- 19.7.2 any change in a Public Sector Standard ("**Public Sector Standard Change**"), where the effect of that Public Sector Standard Change is known, or is reasonably foreseeable, at the Call-Off Effective Date.
- 19.8 If a Public Sector Standard Change occurs during the Term of this Call-Off Agreement (other than a change referred to in Clause 19.7.2), the Supplier shall notify the Customer of the likely effects of that change, including:
 - 19.8.1 whether any Contract Change is required; and
 - 19.8.2 whether any relief from compliance with the Supplier's obligations is required under this Call-Off Agreement.
- 19.9 The Supplier shall only be entitled to increase the Charges where it demonstrates to the Customer's reasonable satisfaction that compliance with the Public Sector Standard Change will have a material and unavoidable cost implication on the provision of any of the Services.
- 19.10 Any change to this Call-Off Agreement resulting from an Industry Standard Change or a Public Sector Standard Change shall be implemented in accordance with Schedule 5.2 (Change Control Procedure).

SECTION F - PERSONNEL

20. Supplier Personnel

- 20.1 The Supplier shall:
 - 20.1.1 ensure that all Supplier Personnel:
 - 20.1.1.1 are appropriately qualified, trained and experienced to provide Services with all reasonable, skill, care and diligence;
 - 20.1.1.2 are vetted in accordance with the Customer's specified vetting procedures, as set out in the Information Governance Operational Protocol and, where applicable comply with the security requirements set out in the Call-Off Order Form; and
 - 20.1.1.3 comply with the security requirements as set out in Schedule 2.5 (Security Management) to the Call-Off Agreement;
 - 20.1.2 subject to Schedule 6.1 (Staff Transfer) of the Call-Off Agreement , 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;
 - 20.1.3 be liable at all times for all acts and omissions of Supplier Personnel, so that any act or omission of Supplier Personnel which results in a Default under this Call-Off Agreement shall be a Default by the Supplier;

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- 20.1.4 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- 20.1.5 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; and
- 20.1.6 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel.

Key Personnel

- 20.2 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 6.2 (Key Personnel) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Service Commencement Date.
- 20.3 The Customer may, acting reasonably, 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.
- 20.4 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
 - 20.4.1 requested to do so by the Customer;
 - 20.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 20.4.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - 20.4.4 the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 20.5 The Supplier shall:
 - 20.5.1 notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 20.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 20.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;
 - 20.5.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to

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transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and

- 20.5.5 ensure that any replacement for a Key Role:
 - 20.5.5.1 has a level of qualifications and experience appropriate to the relevant Key Role; and
 - 20.5.5.2 is fully competent to carry out the tasks

Employment Indemnity

- 20.6 The Parties agree that:
 - 20.6.1 the Supplier shall both during and after the Term 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; and
 - 20.6.2 the Customer shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Customer or any of the Customer's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

- 20.7 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 Agreement, the Supplier shall:
 - 20.7.1 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
 - 20.7.2 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 in connection with the provision of the Services by the Supplier or any Supplier Personnel.

21. Supply Chain Rights

Sub-contracting

- 21.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that it is able to:
 - 21.1.1 manage any Sub-contractors in accordance with Good Industry Practice; and

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- 21.1.2 comply with its obligations under this Call-Off Agreement.
 - 21.2 Prior to sub-contracting any of its obligations under this Call-Off Agreement, the Supplier shall notify the Customer in writing of:
 - 21.2.1 the proposed Sub-contractor's name, registered office and company registration number;
 - 21.2.2 the scope of any Services to be provided by the proposed Sub-contractor; and
 - 21.2.3 where the proposed Sub-contractor is an Affiliate of the Supplier, provide evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-contract has been agreed conferring terms at least as beneficial to the Customer as they would have obtained on an arm's-length negotiation.
 - 21.3 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 21.2, the Supplier shall also provide:
 - 21.3.1 a copy of the proposed Sub-contract; and
 - 21.3.2 any further information reasonably requested by the Customer.
 - 21.4 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 21.2 (or, if later, receipt of any further information requested pursuant to Clause 21.3), object to the appointment of the relevant Sub-contractor if it considers that:
 - 21.4.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Customer;
 - 21.4.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
 - 21.4.3 the proposed Sub-contractor employs unfit persons;
 - 21.4.4 the economic or financial standing of the proposed Sub-contractor is such that it would permit the Framework Authority by Regulation 57 of the Public Contracts Regulations 2015 to treat as ineligible or not select the Sub-contractor to participate in a procurement process which would lead to the award of a public contract; and/or
 - 21.4.5 the technical or professional ability of the Sub-contractor is such that it will be unable to meet any requirements of this Call-Off Agreement, but only where and to the extent that those requirements are applicable to the performance by the proposed Sub-contractor of its obligations under the proposed Sub-contract.
- in which case, the Supplier shall not proceed with the proposed appointment.
- 21.5 If:

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- 21.5.1 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:
 - 21.5.1.1 the Supplier's notice issued pursuant to Clause 21.2; and
 - 21.5.1.2 any further information requested by the Customer pursuant to Clause 21.3; and
- 21.5.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Customer in accordance with Clause 21.6 (Appointment of Key Sub-contractors)),

the Supplier may proceed with the proposed appointment. For the avoidance of doubt, the Customer shall be deemed to have already approved the appointment of the Sub-contractors set out in Schedule 3.3 (Sub-contractors).

Appointment of Key Sub-contractors

- 21.6 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed. For these purposes, the Customer may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
 - 21.6.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Customer;
 - 21.6.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
 - 21.6.3 the proposed Key Sub-contractor employs unfit persons;
 - 21.6.4 the economic or financial standing of the proposed Sub-contractor is such that it would permit the Framework Authority by Regulation 57 of the Public Contracts Regulations 2015 to treat as ineligible or not select the Sub-contractor to participate in a procurement process which would lead to the award of a public contract; and/or
 - 21.6.5 the technical or professional ability of the Sub-contractor is such that it will be unable to meet any requirements of this Call-Off Agreement, but only where and to the extent that those requirements are applicable to the performance by the proposed Sub-contractor of its obligations under the proposed Sub-contract.
- 21.7 The Customer consents to the appointment of the Key Sub-contractors listed in Schedule 3.3 (Sub-contractors).
- 21.8 Except where the Customer has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
 - 21.8.1 provisions which will enable the Supplier to discharge its obligations under this Call-Off Agreement;

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- 21.8.2 a right under CRTPA for the Customer to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Customer;
- 21.8.3 a provision enabling the Customer to enforce the Key Sub-contract as if it were the Supplier;
- 21.8.4 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 without restriction;
- 21.8.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Call-Off Agreement in respect of:
- 21.8.6 FOIA requirements set out in Clause 29 (Freedom of Information);
- 21.8.7 the obligation not to embarrass the Customer or otherwise bring Customer into disrepute by engaging in an act or omission which is reasonably likely to diminish the trust that the public places in the Customer, whether or not such act or omission is related to the Supplier's obligations under this Call-Off Agreement;
- 21.8.8 the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data;
- 21.8.9 the conduct of Audits set out in Part D of Schedule 4.4 (Financial Reports and Audit Rights);
- 21.8.10 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 47.1 to 47.2 of the Call-Off Terms (Termination by the Customer) and Clause 49 (Payments Made on Termination) of the Call-Off Terms and Schedule 4.2 (Payments on Termination) of this Call-Off Agreement;
- 21.8.11 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Customer;
- 21.8.12 a provision enabling the Supplier or the Customer to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 42 (Remedial Adviser);
- 21.8.13 a provision requiring the Key Sub-contractor to participate in, and if required by the Customer in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure;
- 21.8.14 a provision requiring the Key Sub-contractor to notify the Supplier and the Customer in writing as soon as possible of any of the following of which it is, or ought to be, aware:
 - 21.8.14.1 the occurrence of a Financial Distress Event in relation to the Key Sub-contractor;

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21.8.14.2 any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor;

and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such; and

21.8.15 co-operate with the Supplier, Framework Authority and/or the Customer in order to give full effect to the provisions of Schedule 4.1 (Financial Distress) of the Framework Agreement and Clause 45 (Step-In), including meeting with the Supplier, the Customer and/or the Framework Authority to discuss and review the effect of the Financial Distress Event or Step-In Trigger Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.

21.9 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Customer's prior written consent, which shall not be unreasonably withheld or delayed.

Supply chain protection

21.10 The Supplier shall ensure that all Sub-contracts contain a provision:

21.10.1 requiring the Supplier to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice; and

21.10.2 a right for the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

21.11 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within 30 days from the receipt of a valid invoice.

21.12 Notwithstanding any provision of Clauses 28 (Confidentiality) and 31 (Publicity and Branding) if the Supplier notifies the Customer that the Supplier has failed to pay a Sub-contractor's undisputed 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).

Competitive Terms

21.13 If the Customer is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then:

21.13.1 the Customer may require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or

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- 21.13.2 any Customer may enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 21.14 If the Customer exercises either of its options pursuant to Clause 21.13, then the Charges shall be reduced by an amount that is agreed in accordance with Schedule 5.2 (Change Control Procedure) of the Call-Off Agreement.
- 21.15 A Customer's right to enter into a direct agreement for the supply of the relevant items is subject to:
- 21.15.1 the Customer making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
- 21.15.2 any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

- 21.16 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 21, 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.

22. Staff Transfer

- 22.1 The Parties agree that:
- 22.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 6.1 (Staff Transfer) of the Call-Off Terms shall apply as follows:
- 22.1.1.1 where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Schedule 6.1 (Staff Transfer) of the Call-Off Terms shall apply;
- 22.1.1.2 where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 6.1 (Staff Transfer) of the Call-Off Terms shall apply;
- 22.1.1.3 where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 6.1 (Staff Transfer) of the Call-Off Terms shall apply; and
- 22.1.1.4 where any of Clauses 22.1.1.1 - 22.1.1.3 apply, Part C of Schedule 6.1 (Staff Transfer) of the Call-Off Terms shall not apply;
- 22.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 6.1 (Staff Transfer) of

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the Call-Off Terms shall apply and Parts A and B of Schedule 6.1 (Staff Transfer) shall not apply; and

- 22.1.3 Part D of Schedule 6.1 (Staff Transfer) of the Call-Off Terms shall apply on the expiry or termination of the Services or any part of the Services.

SECTION G - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

23. Intellectual Property Rights

23.1 Except as expressly set out in this Call-Off Agreement:

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

23.1.1.1 the Supplier Software;

23.1.1.2 the Third Party Software;

23.1.1.3 the Third Party IPRs; and

23.1.1.4 the Supplier Background IPRs.

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

23.1.2.1 the Customer Software;

23.1.2.2 the Project Specific IPRs;

23.1.2.3 the Specially Written Software;

23.1.2.4 the Customer Data; and

23.1.2.5 the Customer Background IPRs.

23.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 23.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

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

23.4 The Software and (where relevant) Customer Software to be utilised by the Supplier in delivering the Services under this Call-Off Agreement is set out in the tables within Schedule 3.4 (Software).

24. Assignment and Licences Granted by the Supplier

Specially Written Software and Project Specific IPRs

- 24.1 The Supplier hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and the Specially Written Software or shall procure that the first owner of the Project Specific IPRs and the Specially Written Software assigns them to the Customer on the same basis.
- 24.2 The assignment under Clause 24.1 shall either take effect on the Service Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs and the Specially Written Software, as appropriate.
- 24.3 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under this Call-Off Agreement.
- 24.4 If requested to do so by the Customer, the Supplier shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under Clause 24.1 or shall procure that the owner of the Project Specific IPRs and the Specially Written Software does so on the same basis.
- 24.5 The Customer shall grant to the Supplier a licence of the Project Specific IPRs and the Specially Written Software to enable the Supplier to provide the Services.
- 24.6 Subject to Clause 24.1 and to the extent only that this is necessary to enable the Customer to obtain the full benefits of ownership of the Specially Written Software as an integrated product, the Supplier hereby grants to the Customer and shall procure that any relevant third party licensor shall grant to the Customer a perpetual (in the sense of never-ending), irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-license and/or commercially exploit any Supplier's Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of the Specially Written Software.
- 24.7 The Supplier:
- 24.7.1 shall:
 - 24.7.1.1 inform the Customer of all Specially Written Software that constitutes a modification or enhancement to Supplier Software or Third Party Software;
 - 24.7.1.2 deliver to the Customer the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Customer; and

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24.7.2 acknowledges and agrees that the ownership of the media referred to in Clause 24.7.1.2 shall vest in the Customer upon their receipt by the Customer.

Supplier Software and Supplier Background IPRs

24.8 The Supplier hereby grants to the Customer:

24.8.1 subject to the provisions of Clause 49 (Payments Made on Termination), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display):

24.8.1.1 the Supplier Non-COTS Software for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's business or function ; and

24.8.1.2 the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's business or function; and

24.8.2 a licence to use the Supplier COTS Software and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 3.4 (Software) and signed by or on behalf of the Parties on or before the Service Commencement Date provided always that the Customer shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 24.11 and 24.12 in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs.

24.9 At any time during the Term or following termination or expiry of this Call-Off Agreement, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Clause 24.8.1.1 or in respect of the Supplier Non-COTS Background IPRs under Clause 24.8.1.2 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Customer or any person to whom the Customer grants a sub-licence pursuant to Clause 24.11 commits any material breach of the terms of Clause 24.8.1.1 or 24.8.1.2 or 24.11.1.2 (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.

24.10 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 24.9, the Customer shall:

24.10.1 immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);

24.10.2 at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Customer may destroy the documents and other tangible materials that

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contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case maybe); and

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

Customer's right to sub-license

24.11 The Customer may sub-license:

- 24.11.1 the rights granted under Clause 24.8.1 (Supplier Software and Supplier Background IPRs) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:

24.11.1.1 the sub-licence is on terms no broader than those granted to the Customer;

24.11.1.2 the sub-licence authorises the third party to use the rights licensed in Clause 24.8.1 (Supplier Software and Supplier Background IPRs) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's business or function; and

24.11.1.3 the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 3.4 (Software); and

- 24.11.2 the rights granted under Clause 24.8.1 (Supplier Software and Supplier Background IPRs) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPRs provided that:

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

24.11.2.2 the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 3.4 (Software) duly executed by the Approved Sub-Licensee.

Customer's right to assign/novate licences

24.12 The Customer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 24.8.1 (Supplier Software and Supplier Background IPRs) to:

- 24.12.1 a Central Government Body; or

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- 24.12.2 to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.
- 24.13 Any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 24.8 (Supplier Software and Supplier Background IPRs). If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 24.8 (Supplier Software and Supplier Background IPRs).
- 24.14 If a licence granted in Clause 24.8 (Supplier Software and Supplier Background IPRs) is novated under Clause 24.12 (Customer's right to assign/novate licences) or there is a change of the Customer's status pursuant to Clause 24.13, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Customer.

Third Party Software and Third Party IPRs

- 24.15 The Supplier shall not use in the provision of the Services any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless in each case it has:
- 24.15.1 first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Customer on a royalty-free basis to the Customer and on terms no less favourable to the Customer than those set out in Clauses 24.8.1 and 24.9 (Supplier Software and Supplier Background IPRs) and Clause 24.12 (Customer's right to assign/novate licences); or
- 24.15.2 complied with the provisions of Clause 24.16.
- 24.16 If the Supplier cannot obtain for the Customer a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 24.15.1, the Supplier shall:
- 24.16.1 notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
- 24.16.2 use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Customer has first approved in writing the terms of the licence from the relevant third party.
- 24.17 The Supplier shall:
- 24.17.1 notify the Customer in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- 24.17.2 unless instructed otherwise in writing by the Customer in any case within twenty (20) Working Days of notification pursuant to Clause 24.16.1, use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a

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direct licence to the Customer on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Termination and Replacement Suppliers

24.18 For the avoidance of doubt, the termination or expiry of this Call-Off Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 24.

24.19 The Supplier shall, if requested by the Customer in accordance with Schedule 5.3 (Exit Management) and at the Supplier's cost:

24.19.1 grant (or procure the grant) to any Replacement Supplier of:

24.19.1.1 a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Customer in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 24 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 3.4 (Software) duly executed by the Replacement Supplier;

24.19.1.2 a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or

24.19.2 use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

25. Licences Granted by the Customer

25.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Customer Software, the Customer Background IPRs and the Customer Data solely to the extent necessary for performing the Services in accordance with this Call-Off Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

25.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 28 (Confidentiality); and

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- 25.1.2 the Supplier shall not, without the Customer's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Customer.
- 25.2 In the event of the termination or expiry of this Call-Off Agreement, the licence granted pursuant to Clause 25.1 and any sub-licence granted by the Supplier in accordance with Clause 25.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
- 25.2.1 immediately cease all use of the Customer Software, the Customer Background IPRs and the Customer Data (as the case may be);
- 25.2.2 at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Software, the Customer Background IPRs and the Customer Data, provided that if the Customer has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Software, the Customer Background IPRs and the Customer Data (as the case may be); and
- 25.2.3 ensure so far as reasonably practicable, that any Customer Software, Customer Background IPRs and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Customer Software, Customer Background IPRs and/or Customer Data.
- 26. IPR Indemnity**
- 26.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Customer and each other Indemnified Person, and keep the Customer and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 26.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- 26.2.1 procure for the Customer and/or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
- 26.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
- 26.2.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
- 26.2.2.2 the replaced or modified item does not have an adverse effect on the Services or the IT Environment;

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- 26.2.2.3 there is no additional cost to the Customer and/or relevant Indemnified Person (as the case may be); and
 - 26.2.2.4 the terms and conditions of this Call-Off Agreement shall apply to the replaced or modified Services.
- 26.3 If the Supplier elects to procure a licence in accordance with Clause 26.2.1 or to modify or replace an item pursuant to Clause 26.2.2, but this has not avoided or resolved the IPRs Claim, then:
- 26.3.1 the Customer may terminate this Call-Off Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
 - 26.3.2 without prejudice to the indemnity set out in Clause 26.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.
- 27. Customer Data**
- 27.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 27.2 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 Agreement or as otherwise expressly authorised in writing by the Customer.
- 27.3 To the extent that Customer Data is held and/or processed by the Supplier:
- 27.3.1 the Supplier shall supply an uncorrupted version of that Customer Data to the Customer as requested within a reasonable period of time and at no additional cost and in the format and on the media reasonably specified by the Customer;
 - 27.3.2 the Supplier shall preserve the integrity of Customer Data and prevent the corruption or loss of Customer Data including of any copy of the Customer Data at all times that the relevant Customer Data is under its control or the control of any Sub-contractor,
- provided in each case that the Supplier shall not be considered to be in breach of this clause 27.3 to the extent that it has received Customer Data from the Customer which is incomplete and/or in a corrupted format and has not been able, through the delivery of the Services, to eliminate or mitigate such incompleteness and/or corruption (as applicable).
- 27.4 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 Schedule 2.5 (Security Management) to the Call-Off Agreement.
- 27.5 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Customer may:

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- 27.5.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Schedule 5.7 (Business Continuity and Disaster Recovery) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Customer's notice; and/or
- 27.5.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 5.7 (Business Continuity and Disaster Recovery).
- 27.6 If at any time the Supplier suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 28. Confidentiality**
- 28.1 For the purposes of this Clause 28, 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.
- 28.2 Except to the extent set out in this Clause 28 or where disclosure is expressly permitted elsewhere in this Call-Off Agreement, the Recipient shall;
- 28.2.1 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) which meets the requirement of Schedule 2.5 (Security Management) to the Call-Off Agreement;
- 28.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call-Off Agreement or without obtaining the owner's prior written consent, provided that the Customer may disclose the Supplier's Confidential Information to the Service Recipients;
- 28.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call-Off Agreement; and
- 28.2.4 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.
- 28.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party if and to the extent that:
- 28.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 29 (Freedom of Information) shall apply to disclosures required under the FOIA or the Environmental Information Regulations;

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- 28.3.2 the need for such disclosure arises out of or in connection with:
- 28.3.2.1 any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call-Off Agreement;
 - 28.3.2.2 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 Agreement; or
 - 28.3.2.3 the conduct of a Central Government Body review and/or a major projects review and/or any such similar assurance review carried out by or on behalf of HMG in respect of this Call-Off Agreement; or
- 28.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is or any of the Disclosing Party's directors, officers, employees, agents, consultants or contractors are 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.
- 28.4 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.
- 28.5 The Supplier may disclose the Confidential Information of the Customer on a confidential basis only to:
- 28.5.1 Supplier Personnel who are directly involved in the provision of the Services and who need to know the Confidential Information to enable performance of the Supplier's obligations under this Call-Off Agreement;
 - 28.5.2 its auditors; and
 - 28.5.3 its professional advisers for the purposes of obtaining advice in relation to this Call-Off Agreement.
- Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 28.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call-Off Agreement by the persons to whom disclosure has been made, including by making Sub-contractors, Auditors or other third party advisers aware of the obligations set out in this Clause 28.
- 28.6 The Customer may disclose the Confidential Information of the Supplier:
- 28.6.1 on a confidential basis to the Framework Authority;

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- 28.6.2 on a confidential basis to any other customer or service recipient under an Other Call-Off Agreement;
- 28.6.3 on a confidential basis to any Central Government Body for any proper purpose of the Customer or of the relevant Central Government Body;
- 28.6.4 to Parliament and Parliamentary committees or if required by any Parliamentary reporting requirement;
- 28.6.5 to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 28.6.6 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by the Framework Authority, any Central Government Body (including any benchmarking organisation) for any purpose relating to or connected with this Call-Off Agreement;
- 28.6.7 excluding any Commercially Sensitive Information which the Customer determines in its absolute discretion is exempt from disclosure in accordance with the provisions of FOIA, as part of the Customer's re-procurement process for the Services, on a confidential basis and subject to an appropriate confidentiality agreement to bidders for the purposes of undertaking due diligence and/or to a Replacement Supplier for the purposes of providing Replacement Services;
- 28.6.8 on a confidential basis for the purpose of the exercise of any of its rights under this Call-Off Agreement, including the Audit Rights, its rights to appoint a Remedial Adviser pursuant to Clause 42 (Remedial Adviser) and its rights under Clause 50 (Exit Management); or
- 28.6.9 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Call-Off Agreement,

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 28.

28.7 Nothing in this Clause 28 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Call-Off Agreement 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.

28.8 The provisions of this Clause 28 shall:

- 28.8.1 remain in force without limit in time in respect of Confidential Information which comprises Personal Data, sensitive Personal Data or which relates to national security.
- 28.8.2 not apply in respect of any information, other than that set out at Clause 28.2.1, which:

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- 28.8.2.1 was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- 28.8.2.2 the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- 28.8.2.3 was already generally available and in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement or a Call-Off Agreement or breach of a duty of confidentiality;
- 28.8.2.4 was independently developed without access to the Confidential Information; or
- 28.8.2.5 relates to the Supplier's performance under the Framework Agreement or a Call-Off Agreement.

Transparency

- 28.9 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 Agreement is not Confidential Information. The Customer shall determine whether any of the content of this Call-Off Agreement 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.
- 28.10 Notwithstanding any other provision of this Call-Off Agreement, the Supplier hereby gives its consent for the Customer to publish to the general public this Call-Off Agreement 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 Agreement agreed from time to time.
- 28.11 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish this Call-Off Agreement.

29. Freedom of Information

- 29.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations. The Supplier shall:
 - 29.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer, at no additional cost to the Customer, to enable the Customer to comply with its obligations under the FOIA and Environmental Information Regulations;
 - 29.1.2 transfer to the Customer all Requests for Information relating to this Call-Off Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

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- 29.1.3 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
 - 29.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 29.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations to disclose Information (including Designated 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 Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Designated Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations.

30. Protection of Personal Data

- 30.1 With respect to the Parties' rights and obligations under this Call-Off Agreement, the Parties acknowledge that, to the extent that the Supplier's provision of the Services involves the processing of Personal Data, the Customer is a Data Controller and that the Supplier is a Data Processor.
- 30.2 The Supplier shall, at no additional cost to the Customer:
- 30.2.1 Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call-Off Agreement;
 - 30.2.2 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 set out in Clause 27 (Customer Data) of this Call-Off Agreement and in Schedule 2.5 (Security Management) to the Call-Off Agreement;
 - 30.2.3 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 Agreement);
 - 30.2.4 take all 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:

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- 30.2.4.1 are aware of and comply with the Supplier's duties under this Clause 30 and Clauses 28 (Confidentiality) and 27 (Customer Data) and under Schedule 2.5 (Security Management) to the Call-Off Agreement;
- 30.2.4.2 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 Agreement; and
- 30.2.4.3 have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Data Protection Legislation);
- 30.2.5 notify the Customer (within five (5) Working Days) if it receives:
 - 30.2.5.1 from a Data Subject (or third party on their behalf):
 - (a) a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) a request to rectify, block or erase any Personal Data; or
 - (c) any other request, complaint or communication relating to the Customer's obligations under the Data Protection Legislation;
 - 30.2.5.2 any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - 30.2.5.3 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;
- 30.2.6 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 in Clause 30.2.5.1(c)), including by promptly providing:
 - 30.2.6.1 the Customer with full details of the complaint, communication or request;
 - 30.2.6.2 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 Data Protection Legislation;
 - 30.2.6.3 the Customer, on request, with any Personal Data it holds in relation to a Data Subject; and

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- 30.2.7 if requested by the Customer, provide a written description of the measures that it has taken and the technical and organisational security measures that it has in place for the purpose of compliance with its obligations pursuant to this Clause 30 and provide to the Customer copies of all documentation relevant to such compliance including protocols, procedures, guidance, training and manuals.
- 30.3 The Supplier shall not Process or otherwise transfer or permit the transfer of any Personal Data in or to any country outside the United Kingdom (each an "**Offshore Location**") without the Customer's prior written consent (such consent may only be provided where all of the items set out at this Clause 30 are met to the Customer's satisfaction). If, after the Service Commencement Date, the Supplier (or any Sub-contractor) wishes to Process and/or transfer or permit the transfer of any Personal Data in or to any Offshore Location, the following provisions shall apply:
- 30.3.1 the Supplier shall submit a Change Request to the Customer which, if the Customer agrees to such Change Request, shall be dealt with in accordance with Schedule 5.2 (Change Control Procedure) of the Call-Off Terms and Clauses 30.3.2 to 30.3.3;
- 30.3.2 the Supplier shall set out in its Change Request and/or Impact Assessment details of the following:
- 30.3.2.1 the Personal Data which will be transferred to and/or Processed in or to any Offshore Location;
- 30.3.2.2 the Offshore Location(s) to which the Personal Data will be transferred and/or Processed in;
- 30.3.2.3 any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data in such Offshore Location(s);
- 30.3.2.4 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 such Offshore Location(s) so as to ensure the Customer's compliance with Data Protection Legislation; and
- 30.3.2.5 such other information as the Customer may request;
- 30.3.3 in providing and evaluating the Change Request and Impact Assessment, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data in or to any such Offshore Location(s); and
- 30.3.4 the Supplier shall comply (and shall procure that each relevant Sub-contractor complies) with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:

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30.3.4.1 incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Call-Off Agreement or a separate data processing agreement between the Parties; and

30.3.4.2 procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Offshore Location(s) 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 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 Data Protection Legislation) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

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

30.5 The Supplier shall at all times, during and after the Term, on written demand indemnify the Customer and each other Indemnified Person, and keep the Customer and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from any breach by the Supplier of its obligations under this Clause 30.

31. Publicity and Branding

31.1 The Supplier shall not:

31.1.1 use the Customer's name or brand in delivering the Services or in any promotion or marketing or announcement of orders; or

31.1.2 make any press announcements or publicise this Call-Off Agreement or its contents in any way,

without the prior written consent of the Customer, which shall not be unreasonably withheld or delayed.

31.2 Each Party acknowledges to the other that nothing in this Call-Off Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party

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(including the Services, the Supplier System and the Customer System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

- 31.3 The provisions of 31.1 and 31.2 shall be without prejudice to any obligation the Supplier has under this Call-Off Agreement to send any form of correspondence in the name of the relevant NHS body, as directed by the Customer. Where the Supplier is under such an obligation the Supplier shall agree with the Customer, in advance, a pro-forma template for such correspondence, the Customer not to unreasonably withhold its approval.

SECTION H - SUPPLIER AND CUSTOMER PROTECTIONS

32. Supplier's Obligations

- 32.1 The Supplier shall provide the Customer with such assistance as the Customer may reasonably require in connection with this Call-Off Agreement provided that such assistance does not require the Supplier to incur material additional cost.
- 32.2 In addition to where these Call-Off Terms expressly require the Supplier to comply with certain provisions of the Framework Agreement, the Supplier shall comply with its obligations in Clauses 11 (Change in Law), 13 (Supply Chain Rights), 17.1.3 (Supplier's Obligations), 19 (Warranties) 20 (Guarantee), 22 (Conduct of Indemnity Claims), 24 (Insurance) and 32 (Prevention of Fraud and Bribery) of the Framework Agreement.
- 32.3 The Supplier shall comply with Schedule 3.2 (Insurance Requirements) to the Framework Agreement.
- 32.4 An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

33. Customer Responsibilities

The Customer shall comply with the Customer Responsibilities in Schedule 4.3 (Customer Responsibilities).

34. Warranties, Representations and Undertakings

- 34.1 The Customer represents and warrants that:
- 34.1.1 it has full capacity and authority to enter into and to perform this Call-Off Agreement;
 - 34.1.2 this Call-Off Agreement is executed by its duly authorised representative;
 - 34.1.3 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 Agreement; and

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- 34.1.4 its obligations under this Call-Off Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable 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).
- 34.2 The Supplier represents and warrants that:
- 34.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 34.2.2 it has full capacity and authority to enter into and to perform this Call-Off Agreement;
- 34.2.3 this Call-Off Agreement is executed by its duly authorised representative;
- 34.2.4 it has all necessary consents and regulatory approvals to enter into this Call-Off Agreement;
- 34.2.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Call-Off Agreement;
- 34.2.6 its execution, delivery and performance of its obligations under this Call-Off Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which the Supplier is bound;
- 34.2.7 its obligations under this Call-Off Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable 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);
- 34.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the Tender relating to this Call-Off Agreement and any written correspondence in clarification or association with Tender were at the time they were made and remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call-Off Agreement or to the extent that the Supplier has otherwise disclosed to the Customer in writing prior to the date of this Call-Off Agreement;
- 34.2.9 it has notified the Customer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;

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- 34.2.10 it has all necessary rights in and to any 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 Agreement and/or the receipt of the Services by the Customer; and
- 34.2.11 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 Agreement; and
- 34.2.12 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.
- 34.3 The representations and warranties set out in Clause 34.2 shall be deemed to be repeated by the Supplier on the Service Commencement Date by reference to the facts then existing.
- 34.4 Each of the representations and warranties set out in Clauses 34.1 and 34.2 shall be construed as a separate warranty and representation and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Call-Off Agreement.
- 34.5 If at any time a Party becomes aware that a warranty or representation given by it under Clause 34.1 or 34.2 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.
- 34.6 For the avoidance of doubt, the fact that any provision within this Call-Off Agreement 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.
- 34.7 Except as expressly stated in this Call-Off Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION I - RISK PROTECTION

35. Security Requirements

The Supplier shall comply with the provisions of Schedule 2.5 (Security Management) to the Call-Off Agreement.

36. Business Continuity and Disaster Recovery

The Parties shall comply with the provisions of Schedule 5.7 (Business Continuity and Disaster Recovery) to the Call-Off Agreement.

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37. Force Majeure

- 37.1 Subject to the remaining provisions of this Clause 37, (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 5.7 (Business Continuity and Disaster Recovery) to the Call-Off Agreement a Party may claim relief under this Clause 37 from liability for failure to meet its obligations under this Call-Off Agreement 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 Agreement 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.
- 37.2 The Affected Party shall as soon as reasonably practicable following the occurrence of a Force Majeure Event 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.
- 37.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 37 to the extent that consequences of the relevant Force Majeure Event:
- 37.3.1 are capable of being mitigated by any of the Services including the Business Continuity Services and/or Disaster Recovery Services, but the Supplier has failed to do so; and/or
 - 37.3.2 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 Agreement.
- 37.4 Subject to Clause 37.5, 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.
- 37.5 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.
- 37.6 Where, as a result of a Force Majeure Event:
- 37.6.1 an Affected Party fails to perform its obligations in accordance with this Call-Off Agreement, then during the continuance of the Force Majeure Event:
 - 37.6.1.1 the other Party shall not be entitled to exercise any rights to terminate this Call-Off Agreement in whole or in part as a result of such failure other than pursuant to Clause 47.1.3 (Termination by the Customer) or Clause 47.3.2 (Termination by the Supplier); and

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- 37.6.1.2 neither Party shall be liable for any Default arising as a result of such failure;
- 37.6.2 the Supplier fails to perform its obligations in accordance with this Call-Off Agreement:
 - 37.6.2.1 the Customer shall not be entitled:
 - (a) during the continuance of the Force Majeure Event to exercise its rights under Clause 41.11 as a result of such failure;
 - (b) to receive Delay Payments pursuant to Clause 43 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event;
 - (c) to receive Service Credits to the extent that a KPI Failure has been caused by the Force Majeure Event; and
 - 37.6.2.2 the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Call-Off Agreement during the occurrence of the Force Majeure Event.
- 37.7 The Affected Party shall notify the other Party and the Framework Authority 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 Agreement.
- 37.8 Relief from liability for the Affected Party under this Clause 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 Agreement and shall not be dependent on the serving of notice under Clause 37.7.

SECTION J – INDEMNITIES AND LIABILITY

38. Conduct of Indemnity Claims

Where under this Call-Off Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 5.5 (Conduct of Claims) to the Call-Off Agreement in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

39. Limitations on Liability

Unlimited Liability

- 39.1 Neither Party limits its liability for:

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- 39.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
 - 39.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 39.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 39.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 39.2 The Supplier's liability in respect of the indemnities in Clause 14.2 (VAT), Clause 20.6 (Employment Indemnity), Clause 20.7 (Income Tax and National Insurance Contributions), Clause 26 (IPRs Indemnity), Clause 30.5 (Protection of Personal Data Indemnity), Schedule 6.1 (Staff Transfer) and the Annexes to Schedule 6.1 (Staff Transfer) shall be unlimited.
- 39.3 The Customer's liability in respect of the indemnities in Clause 20.6 (Employment Indemnity), Schedule 6.1 (Staff Transfer) and the Annexes to Schedule 6.1 (Staff Transfer) shall be unlimited.

Financial and other limits

- 39.4 Subject to Clauses 39.1 and 39.2 (Unlimited Liability) and Clauses 39.7 (Consequential losses):
- 39.4.1 the Supplier's aggregate liability in respect of loss of or damage to the Customer Premises or other property or assets of the Customer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Customer's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed the applicable amount stated in the Limitations on Liability section of the Call-Off Order Form in respect of each Call-Off Agreement;
 - 39.4.2 the Supplier's aggregate liability in respect of all:
 - 39.4.2.1 Service Credits; and
 - 39.4.2.2 Compensation for Unacceptable Performance Failure;incurred in any Service Period shall not exceed the Service Credit Cap; and

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

39.5 Without prejudice to the limitations on liability set out in Clause 39.4, the parties agree that deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 39.4.3.

39.6 Subject to Clauses 39.1 and 39.3 (Unlimited Liability) and Clause 39.7 (Consequential Losses) and without prejudice to the Customer's obligation to pay the Charges as and when they fall due for payment:

39.6.1 the Customer's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Call-Off Agreement as a result of early termination of this Call-Off Agreement by the Customer pursuant to Clause 47.1.1 (Termination by the Customer) or by the Supplier pursuant to Clause 47.3.1 (Termination by the Supplier) shall in no event exceed the maximum payments on termination set out in Annex 1 to Schedule 4.2 (Payments on Termination); and:

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- 39.6.2 the Customer's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Call-Off Agreement as a result of Defaults of the Customer shall in no event exceed:
- 39.6.2.1 the applicable amount stated in the Limitations on Liability section of the Call-Off Order Form in respect of each Call-Off Agreement in relation to any Defaults occurring during the Initial Term;
 - 39.6.2.2 the applicable amount stated in the Limitations on Liability section of the Call-Off Order Form in respect of each Call-Off Agreement in relation to any Defaults occurring during any Extension Period; and
 - 39.6.2.3 the applicable amount stated in the Limitations on Liability section of the Call-Off Order Form in respect of each Call-Off Agreement in relation to any Defaults occurring after the end of the Term.

Consequential Losses

- 39.7 Subject to Clauses 39.1, 39.2 and 39.3 (Unlimited Liability) and Clause 39.8, neither Party shall be liable to the other Party for:
- 39.7.1 any indirect, special or consequential Loss; or
 - 39.7.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect, and without prejudice to any Compensation Payment receivable by the Supplier in accordance with Clause 49).
- 39.8 Notwithstanding Clause 39.7 but subject to Clause 39.4, 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:
- 39.8.1 any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
 - 39.8.2 any wasted expenditure or charges;
 - 39.8.3 the additional one-off cost of procuring Replacement Services;
 - 39.8.4 any compensation or interest paid to a third party (including, without limitation, any Service Recipient) by the Customer; and
 - 39.8.5 any fine or penalty incurred by the Customer pursuant to Law and any costs incurred by the Customer in defending any proceedings which result in such fine or penalty.

SECTION K - REMEDIES AND RELIEF

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40. Fix First

40.1 Notwithstanding any other provision in this Call-Off Agreement (save for Clause 44), in the event of a Default by the Supplier (or an anticipated Default by the Supplier), the Supplier shall:

40.1.1 (if the Default occurs) remedy the Default as soon as possible; and

40.1.2 use all reasonable endeavours to eliminate or mitigate the consequences or delay of any such Default or anticipated Default on the Framework Authority, the Customer and all customers and service recipients under Other Call-Off Agreements at no cost to the Customer.

41. Rectification Plan Process

41.1 In the event that:

41.1.1 there is, or is reasonably likely to be, a Delay;

41.1.2 in any Service Period there has been a Material Performance Failure;

41.1.3 the Supplier commits 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);

41.1.4 the Supplier becomes aware of any breach of its obligations pursuant to Clauses 27 (Customer Data), 28 (Confidentiality), 29 (Freedom of Information), 30 (Protection of Personal Data) and/or 35 (Security Requirements);

(each a “**Notifiable Default**”), the Supplier shall notify the Customer of the Notifiable Default as soon as practicable but in any event within three (3) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Customer may not terminate this Call-Off Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

41.2 If:

41.2.1 the Supplier notifies the Customer pursuant to Clause 41.1 that a Notifiable Default has occurred; or

41.2.2 the Customer notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify);

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then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Customer serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

- 41.3 The “**Rectification Plan Process**” shall be as set out in Clauses 41.4 to 41.11 (inclusive).

Submission of the draft Rectification Plan

- 41.4 The Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 41.2 (Notification). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

- 41.5 The draft Rectification Plan shall set out:

- 41.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;
- 41.5.2 the actual or anticipated effect of the Notifiable Default; and
- 41.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

- 41.6 In preparing a draft Rectification Plan, the Supplier shall take account of, and ensure that the draft Rectification Plan is compliant with, all policies and procedures applicable to the rectification of the relevant Notifiable Default(s).

- 41.7 The Supplier shall promptly provide to the Customer any further documentation that the Customer reasonably 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 6 of Schedule 5.4 (Dispute Resolution Procedure).

Agreement of the Rectification Plan

- 41.8 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:

- 41.8.1 is insufficiently detailed to be capable of proper evaluation;
- 41.8.2 will take too long to complete;
- 41.8.3 will not prevent reoccurrence of the Notifiable Default; and/or
- 41.8.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Customer.

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- 41.9 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.
- 41.10 If the Customer consents to the Rectification Plan:
- 41.10.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
 - 41.10.2 the Customer may no longer terminate this Call-Off Agreement in whole or in part on the grounds of the relevant Notifiable Default.
- 41.11 The Supplier acknowledges, that in deciding whether to accept or reject a draft Rectification Plan, the Customer may need to consult with one or more other Central Government Bodies, and the Customer shall be acting reasonably in taking the views of such other Central Government Bodies into account in making its decision.

42. Remedial Adviser

- 42.1 If:
- 42.1.1 any of the Intervention Trigger Events occur; or
 - 42.1.2 the Customer reasonably believes that any of the Intervention Trigger Events are likely to occur;
- (each an "**Intervention Cause**"), the Customer may give notice to the Supplier (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:
- 42.1.2.1 a meeting between the Customer Representative and the Supplier Representative to discuss the Intervention Cause; and/or
 - 42.1.2.2 the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 41.11.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Customer has no obligation to exercise its rights under this Clause 42.1 prior to or instead of exercising its right to terminate this Call-Off Agreement.

- 42.2 If the Customer gives notice that it requires the appointment of a Remedial Adviser:
- 42.2.1 the Remedial Adviser shall be:
 - 42.2.1.1 a person selected by the Supplier and approved by the Customer; or

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- 42.2.1.2 if none of the persons selected by the Supplier have been approved by the Customer (or no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by the Customer;
 - 42.2.2 the terms of engagement, which shall include confidentiality provisions substantially similar to those imposed on the Supplier in Clause 28 (Confidentiality), and start date agreed with the Remedial Adviser must be approved by the Customer; and
 - 42.2.3 any right of the Customer to terminate this Call-Off Agreement pursuant to Clause 47.1.4 (Termination by the Customer) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the "**Intervention Period**").
- 42.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Call-Off Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:
 - 42.3.1 observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
 - 42.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
 - 42.3.3 write reports and provide information to the Customer in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
 - 42.3.4 make recommendations to the Customer and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
 - 42.3.5 take any other steps that the Customer and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.
- 42.4 The Supplier shall:
 - 42.4.1 work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
 - 42.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
 - 42.4.3 submit to such monitoring as the Customer and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;

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- 42.4.4 implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Customer within the timescales given by the Remedial Adviser; and
- 42.4.5 not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Customer (such consent not to be unreasonably withheld).
- 42.5 The Supplier shall be responsible for:
 - 42.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
 - 42.5.2 its own costs in connection with any action required by the Customer and/or the Remedial Adviser pursuant to this Clause 41.11.
- 42.6 If the Supplier:
 - 42.6.1 fails to perform any of the steps required by the Customer in an Intervention Notice; and/or
 - 42.6.2 is in Default of any of its obligations under Clause 42.4; and/or
 - 42.6.3 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period;

(each a “**Remedial Adviser Failure**”), the Customer shall be entitled to terminate this Call-Off Agreement pursuant to Clause 47.1.4 (Termination by the Customer).

43. Delay Payments

Where any Transition Plan and/or Transformation Plan agreed between the Customer and Supplier in respect of this Call-Off Agreement in accordance with Clauses 5 and 6 above identifies that Delay Payments shall be applicable to any Key Milestones set out in that Transition Plan and/or Transformation Plan the Supplier shall pay such Delay Payments to the Customer on demand in the event of a Delay. Unless agreed otherwise, Delay Payments shall accrue for each day of delay from and including the relevant date set out in the Transition Plan and/or Transformation Plan until and including the date on which the relevant Key Milestone/service commencement has been Achieved.

44. Customer Cause

- 44.1 Notwithstanding any other provision of this Call-Off Agreement, if the Supplier has failed to:
 - 44.1.1 Achieve a Milestone by its Milestone Date;
 - 44.1.2 provide the Services in accordance with the Target Service Levels set out in Schedule 2.2 (Service Levels); and/or
 - 44.1.3 comply with its obligations under this Call-Off Agreement,

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(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 this Clause 44 and Clause 43):

- 44.1.4 the Supplier shall not be treated as being in breach of this Call-Off Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- 44.1.5 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 Agreement pursuant to Clause 47.1.4 (Termination by the Customer);
- 44.1.6 where the Supplier Non-Performance constitutes the failure to Achieve a Milestone set out in the Transition Plan and/or the Transformation Plan by its Milestone Date:
 - 44.1.6.1 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;
 - 44.1.6.2 if the Customer, acting reasonably, considers it appropriate, the Transition Plan and/or Transformation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;
 - 44.1.6.3 if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and
 - 44.1.6.4 the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 10 of Schedule 4.1 (Charges and Invoicing);
- 44.2 In order to claim any of the rights and/or relief referred to in Clause 44.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that a Customer Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Customer notice (a "**Relief Notice**") setting out details of:
 - 44.2.1 the Supplier Non-Performance;
 - 44.2.2 the Customer Cause and its effect or likely effect on the Supplier's ability to meet its obligations under this Call-Off Agreement;
 - 44.2.3 any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause;
 - 44.2.4 the relief and/or compensation claimed by the Supplier;
 - 44.2.5 where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date, and to the extent that the Supplier is unable to eliminate or mitigate the consequences of the relevant Customer Cause itself, in accordance with its obligations under clause 44.4, those further steps which it

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reasonably believes could be taken (including without limitation the deployment of additional Supplier resource) in order to eliminate or reduce the consequences and impact of the relevant Customer Cause on any subsequent Milestone Dates, for the Customer's consideration; and

- 44.2.6 where applicable, the steps taken by the Supplier to implement any relevant part of the Mitigation Strategy.
- 44.3 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 Customer Cause as to the effect of the relevant Customer Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.
- 44.4 The Supplier shall, in addition to its obligation to comply with the Mitigation Strategy (where applicable), 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.
- 44.5 If a Dispute arises as to:
 - 44.5.1 whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or
 - 44.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier,either Party may refer the Dispute to the dispute resolution procedure in Schedule 5.4 (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.
- 44.6 Any Change that is required to the Transition Plan and/or Transformation Plan or to the Charges or to any other part of this Call-Off Agreement pursuant to this Clause 44 shall be implemented in accordance with Schedule 5.2 (Change Control Procedure).

45. Step In

- 45.1 The Customer may take step-in action under this Clause in the following circumstances (each a "**Step-In Trigger Event**"):
 - 45.1.1 any event listed at 47.1.4 occurs;
 - 45.1.2 there is a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any part of the Services;
 - 45.1.3 there is a Delay that has or the Customer reasonably anticipates will result in the Supplier's failure to Achieve a Milestone by its Milestone Date;
 - 45.1.4 a Force Majeure Event occurs which materially prevents or materially delays the performance of the Services or any part of the Services;

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- 45.1.5 where the Supplier is not in breach of its obligations under the Call-Off Agreement but the Customer considers that the circumstances constitute an emergency;
 - 45.1.6 where a regulatory body has advised the Customer that the exercise by the Customer of its rights under this Clause is necessary;
 - 45.1.7 to discharge a statutory duty;
 - 45.1.8 a Financial Distress Event occurs in respect of the Guarantor, Supplier or any Key Sub-contractor;
 - 45.1.9 on the occurrence of an Insolvency Event in respect of the Supplier; and/or
 - 45.1.10 where the Supplier is in breach of its obligations under Schedule 5.3 (Exit Management).
- 45.2 On the occurrence of a Step-In Trigger Event, the Customer may serve notice on the Supplier ("**Step-In Notice**") that it will be taking action under this Clause 45 (Step-In), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 28 (Confidentiality)). The Step-In Notice shall set out the following:
- 45.2.1 the action the Customer wishes to take and in particular the Services that it wishes to control ("**Required Action**");
 - 45.2.2 the Step-In Trigger Event that has occurred and whether the Customer believes that the Required Action is due to the Supplier's Default;
 - 45.2.3 the date on which it wishes to commence the Required Action;
 - 45.2.4 the time period which it believes will be necessary for the Required Action;
 - 45.2.5 whether the Customer will require access to the Supplier's premises; and
 - 45.2.6 to the extent practicable, the impact that the Customer anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.
- 45.3 The Supplier shall notify the Customer in writing prior to undertaking any action which would restrict the ability of the Customer to exercise its right of step-in as set out in this Clause 45.
- 45.4 Following service of a Step-In Notice, the Customer shall:
- 45.4.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - 45.4.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;

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- 45.4.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Customer is not assuming control; and
 - 45.4.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Customer's rights under this Clause 45.
- 45.5 For so long as and to the extent that the Required Action is continuing, then:
- 45.5.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 45.5.2 the Customer shall continue to pay the Charges payable in respect of provision of the relevant Services, save that (other than in the circumstances described in Clause 45.10.2) such Charges shall be reduced commensurately to take full account of the Customer's costs of taking the Required Action.
- 45.6 If the Supplier demonstrates to the reasonable satisfaction of the Customer that the Required Action has resulted in:
- 45.6.1 the degradation of any Services not subject to the Required Action; or
 - 45.6.2 the non-Achievement of a Milestone;
- beyond that which would have been the case had the Customer not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 45.7 Before ceasing to exercise its step-in rights under this Clause 45 the Customer shall deliver a written notice to the Supplier ("**Step-Out Notice**"), specifying:
- 45.7.1 the Required Action it has actually taken; and
 - 45.7.2 the date on which the Customer plans to end the Required Action ("**Step-Out Date**") subject to the Customer being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 45.8.
- 45.8 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Customer's approval a draft plan ("**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of the relevant Call-Off Agreement(s).
- 45.9 If the Customer does not approve the draft Step-Out Plan, the Customer shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Customer for the Customer's approval. The Customer shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 45.10 The Supplier shall bear its own costs in connection with any step-in by the Customer under this Clause 45, provided that the Customer shall reimburse the Supplier's reasonable

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additional expenses incurred directly as a result of any step-in action taken by the Customer under:

- 45.10.1 Clauses 45.1.4 of the definition of a Step-In Trigger Event; or
- 45.10.2 Clauses 45.1.5, 45.1.6 or 45.1.7 of the definition of a Step-in Trigger Event (insofar as the primary cause of the Customer serving the Step-In Notice is identified as not being the result of the Supplier's Default).

SECTION L - TERM, TERMINATION AND EXIT MANAGEMENT

46. Term

46.1 This Call-Off Agreement shall:

46.1.1 come into force on the Service Commencement Date, save for Clauses 1 (Definitions and Interpretation), 34 (Warranties, Representations and Undertakings), 46 (Term), 28 (Confidentiality), 29 (Freedom of Information), 31 (Publicity and Branding), 39 (Limitations on Liability), 52 (Waiver and Cumulative Remedies), 53 (Relationship of the Parties), 56 (Severance), 58 (Entire Agreement), 59 (Third Party Rights), 60 (Notices), 61 (Disputes) and 62 (Governing Law and Jurisdiction), which shall be binding and enforceable as between the Parties from the date of signature; and

46.1.2 unless terminated at an earlier date by operation of Law or in accordance with Clause 47 (Termination Rights), terminate:

46.1.2.1 at the end of the Initial Term; or

46.1.2.2 if the Customer elects to extend the Initial Term in accordance with Clause 46.2, at the end of the Extension Period.

46.2 At the end of the Initial Term, the Customer shall have the option to extend the Term of this Call-Off Agreement, on the same terms as are in place immediately prior to expiry of the Initial Term, for one or more further periods which shall in aggregate not extend the Term beyond the date falling thirty six (36) months after the end of the Initial Term (such period or periods together being the "**Extension Period**"). If the Customer intends to exercise its option to extend the Term under this Clause 46.2, it shall give notice to such effect to the Supplier no later than ninety (90) days prior to the date upon which this Call-Off Agreement would otherwise expire and such notice shall include details of the duration of the relevant extension.

47. Termination Rights

Termination by the Customer

47.1 The Customer may terminate this Call-Off Agreement (in whole or in part) by issuing a Termination Notice to the Supplier:

47.1.1 for convenience at any time by giving:

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- 47.1.1.1 not less than twelve (12) months written notice at any time prior to the Transformation Completion Date; and
- 47.1.1.2 not less than six (6) months written notice at any time after Transformation Completion Date;
- 47.1.2 where the contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72(9) of the Public Contracts Regulations 2015;
- 47.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- 47.1.4 if any of the following events occur:
 - 47.1.4.1 the Supplier incurring two Critical Performance Failures in any rolling twelve (12) month period;
 - 47.1.4.2 the Supplier committing a material Default which is irremediable;
 - 47.1.4.3 as a result of the Supplier's Default, the Customer and/or Service Recipients incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 39.4;
 - 47.1.4.4 a Remedial Adviser Failure;
 - 47.1.4.5 any of the events described in paragraphs (a), (c), (e) or (f) of the definition of Rectification Plan Failure;
 - 47.1.4.6 where a right of termination is expressly reserved in the Framework Agreement or Call-Off Terms, including pursuant to:
 - (a) Clause 26 (IPR Indemnity) of the Call-Off Terms;
 - (b) Clause 54.6.2 (Prevention of Fraud and Bribery) of the Call-Off Terms; and/or
 - (c) Paragraph 4 of Schedule 4.1 (Financial Distress) to the Framework Agreement.
 - 47.1.4.7 the representation and warranty given by the Supplier pursuant to Clause 19.2.1 (Warranties) of the Framework Agreement being materially untrue or misleading;
 - 47.1.4.8 the Supplier committing a material Default under any of the following Clauses:
 - (a) Clause 32 (Supplier's Obligations) of the Call-Off Terms;

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- (b) Clause 30 (Protection of Personal Data) of the Call-Off Terms;
 - (c) Clause 29 (Freedom of Information) of the Call-Off Terms;
 - (d) Clause 28 (Confidentiality) of the Call-Off Terms; and/or
- in respect of any security requirements set out in Schedule 3.1 (Service Description) to the Framework Agreement, Schedule 2.1 (Call-Off Service Description) and Schedule 2.5 (Security Management) of the Call-Off Terms and the Baseline Security Requirements;
- 47.1.4.9 any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5 of Schedule 4.5 (Value for Money Provisions);
 - 47.1.4.10 an Insolvency Event occurring in respect of the Supplier or the Guarantor;
 - 47.1.4.11 the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Framework Authority with the Guarantor or with another guarantor which is acceptable to the Framework Authority);
 - 47.1.4.12 a Change of Control of the Supplier or a Guarantor unless:
 - (a) the Framework Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (b) the Customer has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the Customer was given notice of the Change of Control; or
 - (c) the Supplier has demonstrated to the Customer's reasonable satisfaction that the Change in Control is part of a bona fide reorganisation, provided that such reorganisation does not result from an Insolvency Event affecting the Supplier or Guarantor or result in a Restricted Person having Control of either the Supplier or Guarantor; or
 - 47.1.4.13 a Change of Control of a Key Sub-contractor unless, within six (6) months of being notified by the Customer that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Customer pursuant to Clause 21.6 (Appointment of Key Sub-contractors); or

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- 47.1.4.14 the Supplier is subject to one of the situations referred to in regulation 57(1), including as a result of the application of regulation 57(2), of the Public Contracts Regulations 2015; or
- 47.1.4.15 the Supplier has committed a serious infringement of the obligations under either the Treaty of the European Union or the Treaty of the Functioning of the European Union or the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 of TFEU;
- 47.1.4.16 if Restricted Person(s) at any time holds five per cent or more (or thirty percent or more in respect of Public Companies) of the total value of any Security in the Supplier, in the Supplier's Holding Company or in the Supplier's Subsidiaries (as defined in the Companies Act 2006);
- 47.1.4.17 the Supplier breaches the terms of the Direction Letter secured pursuant to Schedule 6.1 (Staff Transfer);



- 47.1.4.19 either:
 - (a) the warranty given by the Supplier pursuant to Clause 34.2.9 is materially untrue; or
 - (b) the Supplier commits a material breach of its obligation to notify the Customer of any Occasion of Tax Non-Compliance as required by Clause 16.1.1; and

in the case of (a) or (b) the supplier fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Customer, are acceptable;

and this Call-Off Agreement shall terminate on the date specified in the Termination Notice.

47.2 Where the Customer:

- 47.2.1 is terminating this Call-Off Agreement under Clause 47.1.4 due to the occurrence of either sub-clause 47.1.4.2 and/or 47.1.4.7, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- 47.2.2 has the right to terminate this Call-Off Agreement under Clause 47.1 it may, prior to or instead of terminating the whole of this Call-Off Agreement, serve a Termination Notice requiring the Partial Termination of any part of the Services.

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Termination by the Supplier

47.3 The Supplier may, by issuing a Termination Notice to the Customer, terminate:

47.3.1 this Call-Off Agreement if the Customer fails to pay an undisputed sum due to the Supplier under this Call-Off Agreement which in aggregate exceeds 150% of the average monthly charge paid during the previous twelve (12) months' and such amount remains outstanding forty (40) Working Days after the receipt by the Customer of a notice of non-payment from the Supplier; or

47.3.2 any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Call-Off Agreement or the relevant Services (as the case may be) 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). If the operation of Clause 47.3.2 would result in a Partial Termination, the provisions of Clause 47.4 (Partial Termination) shall apply.

47.4 If the Supplier notifies the Customer pursuant to Clause 47.3.2 (Termination by the Supplier) that it intends to terminate this Call-Off Agreement in part and the Customer, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Customer Requirements, then the Customer shall be entitled to terminate the remaining part of this Call-Off Agreement by serving a Termination Notice to the Supplier within (one) 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 47.4, in assessing the significance of any part of the Customer Requirements, regard shall be had not only to the proportion of that part to the Customer Requirements as a whole, but also to the importance of the relevant part to the Customer.

47.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with Schedule 5.2 (Change Control Procedure), including the effect the Partial Termination may have on any other Services and the Charges, provided that:

47.5.1 the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;

47.5.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Reporting Model and must be reasonable;



47.5.4 the Supplier shall not be entitled to reject the Change.

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48. Survival

- 48.1 The provisions of Clauses 1 (Definitions and Interpretation), 14.2 (VAT), 15 (Set-Off and Withholding), 23 (Intellectual Property Rights), 28 (Confidentiality), 29 (Freedom of Information), 30 (Protection of Personal Data), 49 (Publicity and Branding), 38 (Conduct of Indemnity Claims), 39 (Limitations on Liability), 49 (Payments made on Termination), 50 (Exit Management), 56 (Severance), 58 (Entire Agreement), 59 (Third Party Rights) and 62 (Governing Law and Jurisdiction), and the provisions of Schedules: 1 (Definitions), 4.1 (Charges and Invoicing), 4.2 (Payments on Termination), 5.3 (Exit Management) and 6.1 (Staff Transfer) and such other provisions which are expressly or by implication required to survive termination or expiry, shall survive the termination or expiry of this Call-Off Agreement.
- 48.2 The Parties agree that the version of the Framework Agreement specified in the Call-Off Order Form shall be deemed to apply to this Call-Off Agreement. Any subsequent variation in or substitution of that Framework Agreement shall not apply to this Call-Off Agreement unless the Parties to this Call-Off Agreement agree in writing to such variation in accordance with Clause 19.

49. Payments Made on Termination**Payments by the Customer**

- 49.1 If this Call-Off Agreement is terminated by the Customer pursuant to Clause 47.1.1 (Termination by the Customer for convenience) or by the Supplier pursuant to Clause 47.3.1 (Termination by the Supplier for Customer non-payment), the Customer shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Call-Off Agreement):

- 49.1.1 the Termination Payment; and
- 49.1.2 the Compensation Payment, if either of the following periods is less than three hundred and sixty five (365) days:
- 49.1.2.1 the period from (but excluding) the date that the Termination Notice is given by the Customer pursuant to Clause 47.1.1 (Termination by the Customer for convenience)) to (and including) the Call-Off Termination Date; or
- 49.1.2.2 the period from (and including) the date of the non-payment by the Customer referred to in Clause 47.3.1 (Termination by the Supplier for Customer non-payment) to (and including) the Call-Off Termination Date;

and the parties agree that in the event of a Partial Termination by the Customer pursuant to Clause 47.1.1 (Termination by the Customer for convenience) or by the Supplier pursuant to Clause 47.3.2 (Termination by the Supplier for Force Majeure) the Customer shall pay the Supplier the proportion of the payments set out above referable to those Services subject to that Partial Termination.

- 49.2 If this Call-Off Agreement is terminated (in part or in whole) by the Customer pursuant to:

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49.2.1 Clause 47.1.2 (Termination due to a substantial modification of this Call-Off Agreement which requires a new procurement procedure pursuant to regulation 72(9) of the Public Contracts Regulations 2015); and/or

49.2.2 Clause 47.1.3 (Termination due to a Force Majeure Event); and/or

49.2.3 Clause 47.1.4 (Termination due to Supplier events of default),

or the Term expires, the only payments that the Customer shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

49.2.4 payments in respect of any Assets or apportionments in accordance with Schedule 5.3 (Exit Management); and

49.2.5 payments in respect of unpaid Charges for Services received up until the Call-Off Termination Date.

49.3 The costs of termination incurred by the Parties shall lie where they fall if:

49.3.1 either Party terminates or partially terminates this Call-Off Agreement for a continuing Force Majeure Event pursuant to:

49.3.1.1 Clause 47.1.3 (Termination by the Customer due to a Force Majeure Event); or

49.3.1.2 Clause 47.2.2 (Partial Termination by the Customer) on the grounds of Clause 47.1.3 (Termination by the Customer due to a Force Majeure Event); or

49.3.1.3 Clause or 47.3.2 (Termination by the Supplier due to a Force Majeure Event); or

49.3.2 the Customer terminates this Call-Off Agreement pursuant to Clause 47.1.2 (Termination due to a substantial modification of this Call-Off Agreement which requires a new procurement procedure pursuant to regulation 72(9) of the Public Contracts Regulations 2015) or the Customer partially terminates this Call-Off Agreement pursuant to Clause 47.2.2 on the grounds of Clause 47.1.2

Payments by the Supplier

49.4 In the event of termination or expiry of this Call-Off Agreement, the Supplier shall repay to the Customer all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

50. Exit Management

The Parties shall comply with the provisions of Schedule 5.3 (Exit Management) and any current Exit Plan in relation to orderly transition of the Services to the Customer or a Replacement Supplier.

SECTION M - MISCELLANEOUS AND GOVERNING LAW

51. Assignment and Novation

51.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Call-Off Agreement without the prior written consent of the Customer.

51.2 The Customer may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Call-Off Agreement and/or any associated licences to:

51.2.1 any Central Government Body; or

51.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by 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 51.2.

51.3 A change in the legal status of the Customer such that it ceases to be a Central Government Body shall not (subject to Clause 51.4) affect the validity of this Call-Off Agreement and this Call-Off Agreement shall be binding on any successor body to the Customer.

51.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call-Off Agreement to a body which is not a Central Government Body, or if a body which is not a Central Government Body succeeds the Customer, (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the rights of termination of the Customer under Clause 47.1.4.10 (as if references in Clause 47.1.4.10 to the Supplier and the Guarantor and references to a Party in the definition of Insolvency Event were references to the Successor Body).

52. Waiver and Cumulative Remedies

52.1 The rights and remedies under this Call-Off Agreement may be waived only by written notice 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 Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

52.2 Unless otherwise provided in this Call-Off Agreement, rights and remedies under this Call-Off Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

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53. Relationship of the Parties

Except as expressly provided otherwise in this Call-Off Agreement, nothing in this Call-Off Agreement, nor any actions taken by the Parties pursuant to this Call-Off Agreement, 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.

54. Prevention of Fraud and Bribery

54.1 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 Service Commencement Date:

54.1.1 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

54.1.2 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.

54.2 The Supplier shall not during the term of this Call-Off Agreement:

54.2.1 commit a Prohibited Act; and/or

54.2.2 do or suffer anything to be done which would cause the Customer and/or the Service Recipient or any of the Customer's and/or Service Recipient'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.

54.3 The Supplier shall during the term of this Call-Off Agreement:

54.3.1 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; and

54.3.2 keep appropriate records of its compliance with its obligations under Clause 54.3.1 and make such records available to the Customer on request.

54.4 The Supplier shall immediately notify the Customer and the Framework Authority in writing if it becomes aware of any breach of Clause 54.1 and/or 54.2, or has reason to believe that it has or any of the Supplier Personnel have:

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

54.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for

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participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

- 54.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call-Off Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Call-Off Agreement has committed or attempted to commit a Prohibited Act.
- 54.5 If the Supplier makes a notification to the Customer and Framework Authority pursuant to Clause 54.4, the Supplier shall respond promptly to the Customer's and/or Framework Authority's enquiries, co-operate with any investigation, and allow the Customer and/or Framework Authority to Audit any books, Framework Records, Call-Off Records and/or any other relevant documentation in accordance with Clause 18 (Records, Reports, Audits and Open Book Data).
- 54.6 If the Supplier is in Default under Clauses 54.1 and/or 54.2, the Customer or Framework Authority may by notice:
 - 54.6.1 require the Supplier to remove from performance of this Call-Off Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - 54.6.2 immediately terminate this Call-Off Agreement.
- 54.7 Any notice served by the Customer or Framework Authority under Clause 54.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer or Framework Authority believes has committed the Prohibited Act and the action that the Customer or Framework Authority has elected to take (including, where relevant, the date on which this Call-Off Agreement shall terminate).

55. Conflicts of Interest

- 55.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of the Supplier Personnel are placed in a position where (in the reasonable opinion of the Customer) there is or may be an actual conflict, or potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Customer (a "**Conflict of Interest**").
- 55.2 The Supplier shall promptly notify and provide full particulars to the Customer if a Conflict of Interest arises or it is reasonably foreseeable that it will arise.
- 55.3 Following receipt of notice pursuant to Clause 55.2, the Customer may direct the Supplier as to the steps to take in respect of that Conflict of Interest and the Supplier shall comply with such directions.

56. Severance

- 56.1 If any provision of this Call-Off Agreement (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 Agreement are

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not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call-Off Agreement shall not be affected.

- 56.2 In the event that any deemed deletion under Clause 56.1 is so fundamental as to prevent the accomplishment of the purpose of this Call-Off Agreement or materially alters the balance of risks and rewards in this Call-Off Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call-Off Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call-Off Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 56.3 If the Parties are unable to agree on the revisions to this Call-Off Agreement within 5 Working Days of the date of the notice given pursuant to Clause 56.2, the matter shall be escalated for resolution in accordance with paragraph 4 (Commercial Negotiation) of Schedule 5.4 (Dispute Resolution Procedure) to the Call-Off Agreement except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Call-Off Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call-Off Agreement is terminated pursuant to this Clause 56.3.

57. Further Assurances

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 reasonably necessary to give effect to the meaning of this Call-Off Agreement.

58. Entire Agreement

- 58.1 This Call-Off Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 58.2 Neither Party has been given, nor entered into this Call-Off Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call-Off Agreement.
- 58.3 Nothing in this Clause 58 shall exclude any liability in respect of misrepresentations made fraudulently.

59. Third Party Rights

- 59.1 The provisions of Clauses 1.6, 8.5.3, 10.3, 28.2.2 and 54.2.2 (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.
- 59.2 Each Service Recipient may, through the Customer acting as its agent and trustee, enforce any term of this Call-Off Agreement in its own name as a third party beneficiary pursuant to CRTPA. No consent of any Service Recipient shall be necessary for any variation (including

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any release or compromise in whole or in part of any liability) or termination of this Call-Off Agreement or any one or more clauses of it.

- 59.3 Subject to Clauses 59.1 and 59.2, a person who is not a Party to this Call-Off Agreement has no right under the CRTPA to enforce any term of this Call-Off Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 59.4 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.
- 59.5 Any amendments or modifications to this Call-Off Agreement may be made, and any rights created under Clause 59.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

60. Notices

- 60.1 Any notices sent under this Call-Off Agreement must be in writing.
- 60.2 Subject to Clause 60.5, the following table sets out the method by which notices may be served under this Call-Off Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email	9.00am on the first Working Day after sending.	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1st 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 at 9.00am on the next Working Day (if after	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

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	5.00pm).	
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- 60.3 Notices shall be sent to the addresses provided for the Customer Notice Recipient and Supplier Notice Recipient (as applicable) identified in Section 4 of the relevant Call-Off Order Form or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Call-Off Agreement.
- 60.4 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 recorded delivery in the manner set out in the table in Clause 60.2:
- 60.4.1 any notices given under or in relation to Schedule 5.1 (Call-Off Governance) to the Call-Off Agreement;
 - 60.4.2 notices issued by the Supplier pursuant to Clause 47.3 (Termination by the Supplier);
 - 60.4.3 Force Majeure Notices;
 - 60.4.4 Termination Notices; and
 - 60.4.5 Dispute Notices.
- 60.5 Failure to send the original notice by personal delivery or recorded delivery in accordance with Clause 60.4 shall invalidate the service of any 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 recorded delivery (as set out in the table in Clause 60.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 60.6 This Clause 60 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 Schedule 5.4 (Dispute Resolution Procedure) to the Call-Off Agreement).

61. Disputes

- 61.1 The Parties shall resolve Disputes arising out of or in connection with this Call-Off Agreement in accordance with the dispute resolution procedure in Schedule 5.4 (Dispute Resolution Procedure) to the Call-Off Agreement).
- 61.2 The Supplier shall continue to provide the Services in accordance with the terms of this Call-Off Agreement until a Dispute has been resolved.

62. Governing Law and Jurisdiction

- 62.1 This Call-Off Agreement 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.

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- 62.2 Subject to Clause 61 (Disputes) and Schedule 5.4 (Dispute Resolution Procedure) to the Call-Off Agreement (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 Agreement or its subject matter or formation.