

FRAMEWORK SCHEDULE 4

[TEMPLATE] ORDER FORM AND [TEMPLATE] CALL OFF TERMS

[GUIDANCE NOTE:

The parties' attention is drawn to the various customer guidance notes highlighted in GREEN and information/schedules to complete and square brackets highlighted in YELLOW in this document.

Before any Call Off Contract is entered, the Customer should ensure that they have read the customer guidance notes, taken any actions necessary and then delete the guidance notes from this document and the square brackets or both the square brackets and the text included in them.

The guidance is not exhaustive and has been included to assist the Customer in completing the required information with sufficient detail.

If the Customer requires the assistance of the Supplier to fill in certain sections of the Template Order Form this will be agreed between the parties.

Delete this page before signature]

PART 1A – [TEMPLATE] ORDER FORM FOR DIRECT AWARD

SECTION A

This Order Form is issued in accordance with the provisions of the Managed eMail Framework Agreement RM1085. The Supplier shall supply the Services specified below on and subject to the terms of this Order Form and the Call Off Terms (together referred to as “the Call Off Contract”).

DATE [DD/MM/YYYY]
ORDER NUMBER []
FROM [] "CUSTOMER" ¹
TO [] "SUPPLIER" ²

SECTION B

1. TERM

1.1 Call Off Commencement Date:

[dd/mm/yyyy] ³

1.2 Call Off Expiry Date:

End date of Call Off Initial Period (The Call Off Initial Period for Direct Award is three (3) years)

[dd/mm/yyyy] ⁴

End date of Call Off Extension Period

[dd/mm/yyyy] ⁵

2. CUSTOMER SERVICES REQUIREMENTS

¹ [Guidance Note: Include Customer contract reference number and contact details (including postal and email addresses- see Clause 55.6 of the Template Call Off Terms), details of Customer Representative (see Clause 19.3 of the Template Call Off Terms), and/or other Customer profile information as appropriate.]

² [Guidance Note: Include Supplier’s contact details (including postal and email addresses - see Clause 55.6 of the Template Call Off Terms), details of Supplier Representative (see Clause 19.2 of the Template Call Off Terms), Supplier’s account manager and/or other Supplier profile information as appropriate]

³ [Guidance Note: Insert the commencement date for this Call Off Contract. It is strongly advisable that the Call Off Commencement Date should coincide with the formation of the Call Off Contract in accordance with section 8 of the Order Form. For the avoidance of doubt, the Customer can request that certain Deliverables (e.g. delivery times of Services) take place on dates after the Call Off Commencement Date e.g. see Clause 8.2 of the Template Call Off Terms]

⁴ [Guidance Note: Insert the date on which the Call Off Initial Period is to expire. Note the maximum permitted duration of the Call Off Contract Period in the definition of Call Off Contract Period and see also Clause 5 (Call Off Contract Period) of the Template Call Off Terms]

⁵ [Guidance Note: Insert the date on which any Call Off Extension Period is to expire. Note the maximum permitted duration of the Call Off Contract Period in the definition of Call Off Contract Period and see also Clause 5 (Call Off Contract Period) of the Template Call Off Terms]

[Guidance Note: please note that the Framework is enabled to allow your private sector partners to avail of the Services that you are requesting from the Supplier (see section IV of the OJEU Notice).

Customers should take care when enabling access for private sector partners and seek legal advice as necessary. Access for private sector partners should not be done in a manner which could give rise to the risk of it constituting the award of unlawful state aid and the particular private sector partners' access requirements should be consistent with the existing terms of this call off. Any necessary amendments/refinements to such terms should be made in accordance Section 7 of this Order Form.

GPS recommends that appropriate agreements are put in place between the Customer and any private sector partners which clearly sets out private sector partners' obligations with when receiving the Services from the Supplier]

2.1 Service Package Reference

[Insert the Supplier's Service Package Unique Reference Number]

2.2 Location/Sites of Delivery

[]⁶

2.3 Dates for Delivery of the Services

[]⁷

2.4 Implementation Plan

The outline Implementation Plan has been provided by the Supplier as part of the Service Package. The Customer may add Milestones and Deliverables in Part A of Schedule 4 (Milestones, Customer Responsibilities and Key Personnel) that comply with any limitations declared by the Supplier in the outline Implementation Plan. The Supplier will then deliver the draft Implementation Plan in accordance with the obligations of Clause 6 (Implementation Plan).

2.5 Delay Payments

Delay Payments are not available Direct Award.

2.6 Quality Plans

Quality Plans are not available under Direct Award.

2.7 Service Levels and Service Credits

As described in Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) unless otherwise amended by the Service Package.

2.8 Critical Service Level Failure

As described in Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) unless otherwise amended by the Service Package.

2.9 Performance Monitoring

As described in Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) unless otherwise amended by the Service Package.

2.10 Business Continuity & Disaster Recovery

⁶ [Guidance Note: Include details of where the the Services must be Delivered and any related instructions]

⁷ [Guidance Note: Specify the date(s) and the time(s) or time period(s) when the Services must be Delivered taking into account the draft Implementation Plan included in the Service Package.]

BCDR is required and is set out in Clause 14 (Business Continuity & Disaster Recovery).

2.11 Records Audit Access and Open Book Data

Full Audit Transparency is not available under Direct Award

2.12 Benchmarking

A Benchmark Review will be conducted in accordance with this Call Off Contract and must be completed no earlier than 17 months from the Call Off Commencement Date and no later than 20 months from the Call Off Commencement Date.

Comparison of Price will use Average Price; and

Comparison of Service Levels will use Mean

3. SUPPLIER'S INFORMATION

3.1 Supplier's inspection of Sites, Customer System, Customer Property and Customer Assets

[In Clause 45.5 of the Template Call Off Terms and Call Off Schedule 11 (Exit Management)]⁸

3.2 Commercially Sensitive Information

[]⁹

3.3 Termination on Customer Cause for Failure to Pay an undisputed sum

[In Clause 42.1.1]¹⁰

4. CUSTOMER RESPONSIBILITIES

4.1 Customer Responsibilities

[In Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel)] / []¹¹

5. CALL OFF CONTRACT CHARGES AND PAYMENT

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

⁸ [Guidance Note: See Clauses 2, 29 and 30 of the Template Call Off Terms. Consider if inspection of the Sites by the Supplier is required. Insert any issues raised by the Supplier in respect of any aspects of the Sites, Customer Assets, Customer Property or Customer System being unsuitable for the provision of the Services and any action which is to be taken in respect thereof]

⁹ [Guidance Note: Include any Commercially Sensitive Information of the Supplier and the duration for which it should be confidential. This may have been set out in the Supplier's tender. This will be relevant in e.g. assisting the Customer in respect of compliance with FOIA]

¹⁰ [Guidance Note: insert in Clause 42.1.1 of the Template Call Off Terms amount equivalent to one (1) month's average Call Off Contract Charges]

¹¹ [Guidance Note: See Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel) and the guidance therein. Add any other Customer Responsibilities agreed between the Parties]

[In Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)]¹²

5.2 The Customer must provide baseline spend information for calculation of savings by the Authority (such as current/last annual contract price for comparable services broken down by line item):

[]

SECTION C

6. CUSTOMER OTHER CONTRACTUAL REQUIREMENTS¹³

6.1 Call Off Guarantor

NOT APPLICABLE

6.2 Key Personnel

[In Part C of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel)]¹⁴

6.3 Staff Transfer

Clause 27.2 applies; Clause 27.1 and Clause 27.3 do not apply for Direct Award.¹⁵

7. FORMATION OF DIRECT AWARD CALL OFF CONTRACT

7.1 In accordance with paragraph 7.1 of Framework Schedule 5 (Call Off Procedure), the Call Off Contract shall be formed when the Customer signs and sends this Order Form to the Supplier. The Supplier shall acknowledge receipt of this Order Form by promptly signing and returning a copy of it to the Customer.

¹² [Guidance Note: Insert details of the Call Off Contract Charges and payment terms/profile in Annexes A and B of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing) and settle all other information in square brackets in that Call Off Schedule. The Call Off Contract Charges should be compliant with Framework Schedule 3 (Charging Structure) and Customers are also referred to Framework Schedule 5 (Call Off Procedure). If an Implementation Plan is included, consider whether Milestone Payments should be added, staged and linked to the Achievement of particular Milestones (see the guidance in Part A of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel)). Also consider with Clauses 36.2.1(a) and 36.2.2 of the Template Call Off Terms and insert sum in the definition of Estimated Year 1 Call Off Contract Charges in Call Off Schedule 1 (Definitions)]

¹³ [Guidance Note: Consider the list of further contractual requirements set out in this paragraph, as indicated in each sub-paragraph and the footnotes therein. Then populate and/or settle this paragraph 6 according to your requirements. Customers placing multiple Orders of the same nature which contain the same requirements may decide to populate/settle this information once and repeat it in respect of future Orders]

¹⁴ [See Clause 25 of the Template Call Off Terms and include any Key Personnel (and their Key Roles) in Part C of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel)]

¹⁵ [Guidance Note: If a Customer requires Staff Transfer provisions other than Clause 27.2, a Further Competition must be conducted]

For and on behalf of the Customer:

Name and Title	
Signature	
Date	

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

PART 1B – [TEMPLATE] ORDER FORM FOR FURTHER COMPETITION

SECTION A

This Order Form is issued in accordance with the provisions of the Managed eMail Framework Agreement RM1085. The Supplier shall supply the Services specified below on and subject to the terms of this Order Form and the Call Off Terms (together referred to as “the Call Off Contract”).

DATE [DD/MM/YYYY]
ORDER NUMBER []
FROM [] "CUSTOMER" ¹⁶
TO [] "SUPPLIER" ¹⁷

SECTION B

1. TERM

1.1 Call Off Commencement Date:

[dd/mm/yyyy] ¹⁸

1.2 Call Off Expiry Date:

End date of Call Off Initial Period

[dd/mm/yyyy] ¹⁹

End date of Call Off Extension Period

[dd/mm/yyyy] ²⁰

¹⁶ [Guidance Note: Include Customer contract reference number and contact details (including postal and email addresses- see Clause 55.6 of the Template Call Off Terms), details of Customer Representative (see Clause 19.3 of the Template Call Off Terms), and/or other Customer profile information as appropriate.] In accordance with Procurement Policy Note 01/14, if the Customer is a Crown Body add the text “acting as part of the Crown” after “CUSTOMER”

¹⁷ [Guidance Note: Include Supplier’s contact details (including postal and email addresses - see Clause 55.6 of the Template Call Off Terms), details of Supplier Representative (see Clause 19.2 of the Template Call Off Terms), Supplier’s account manager and/or other Supplier profile information as appropriate]

¹⁸ [Guidance Note: Insert the commencement date for this Call Off Contract. It is strongly advisable that the Call Off Commencement Date should coincide with the formation of the Call Off Contract in accordance with section 8 of the Order Form. For the avoidance of doubt, the Customer can request that certain Deliverables (e.g. delivery times of Services) take place on dates after the Call Off Commencement Date e.g. see Clause 8.2 of the Template Call Off Terms]

¹⁹ [Guidance Note: Insert the date on which the Call Off Initial Period is to expire. Note the maximum permitted duration of the Call Off Contract Period in the definition of Call Off Contract Period and see also Clause 5 (Call Off Contract Period) of the Template Call Off Terms]

²⁰ [Guidance Note: Insert the date on which any Call Off Extension Period is to expire. Note the maximum permitted duration of the Call Off Contract Period in the definition of Call Off Contract Period and see also Clause 5 (Call Off Contract Period) of the Template Call Off Terms]

2. CUSTOMER SERVICES REQUIREMENTS

[Guidance Note: please note that the Framework is enabled to allow your private sector partners to avail of the Services that you are requesting from the Supplier (see section IV of the OJEU Notice).

Customers should take care when enabling access for private sector partners and seek legal advice as necessary. Access for private sector partners should not be done in a manner which could give rise to the risk of it constituting the award of unlawful state aid and the particular private sector partners' access requirements should be consistent with the existing terms of this call off. Any necessary amendments/refinements to such terms should be made in accordance Section 7 of this Order Form.

GPS recommends that appropriate agreements are put in place between the Customer and any private sector partners which clearly sets out private sector partners' obligations with when receiving the Services from the Supplier]

2.1 Services required ²¹

[In Call Off Schedule 2 (Services)]

2.2 PSN Compliance ²²

[]

2.3 Location/Sites of Delivery

[] ²³

2.4 Dates for Delivery of the the Services

[] ²⁴

2.5 Implementation Plan

To be provided by Supplier pursuant to Clause 6 of the Call Off Contract]

[]	No
[]	Yes

²⁵

2.6 Time of the Essence

Is Time of the Essence in relation to clause 6.2.3

²¹ [Guidance Note: Include a description of the Services required under this Call Off Contract in Call Off Schedule 2 (Services). Details of all the Services can be found in Part A of Framework Schedule 1 (Services and Key Performance Indicators).]

²² [Guidance Note: Customer to detail the extent in terms of scope and timing to which the services are to be PSN compliant]

²³ [Guidance Note: Include details of where the the Services must be Delivered and any related instructions]

²⁴ [Specify the date(s) and the time(s) or time period(s) when the the Services must be Delivered. See also Clause 6.2.3 of the Template Call Off Terms in relation to time of Delivery. Consider if you should make 'time of the essence" in respect of any delivery dates]

²⁵ [Guidance Note: See Part A of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel) and the guidance set out therein. Consider if you need an Implementation Plan. If so, and if you include Delay Payments in the Implementation Plan, see also Clause 6.4.1(b)(ii) and settle the time period stated in square brackets therein. Please also consider whether the Implementation Plan should contain testing provisions and if so whether the Supplier should supply a draft Test Strategy Plan as part of the Implementation Plan or use Call Off Schedule 5 (Testing)]

<input type="checkbox"/>	No
<input type="checkbox"/>	Yes

Please tick appropriate box.²⁶

2.7 Standards

[In Call Off Schedule 7 (Standards)]²⁷

2.8 Service Levels and Service Credits

[In Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)]²⁸

2.9 Critical Service Level Failure

[In Annex 2 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)]²⁹

2.10 Performance Monitoring

[In Annex 1 to Part B (Additional Performance Monitoring Requirements) of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)]³⁰

2.11 Period for providing the Rectification Plan

[In Clause 38.2.1(a) of the Template Call Off Terms]³¹

2.12 Exit Management

[]³²

²⁶ [Indicate for the purposes of Milestone Dates as to whether time is of the essence]

²⁷ [See Clause 10 of the Template Call Off Terms and the definition of Standards. Consider whether you need any additional standards. If necessary, set them out in Call Off Schedule 7 (Standards).]

²⁸ [Guidance Note: Key Performance Indicators are included in Framework Schedule 1 (Services and Key Performance Indicators) and are for the Authority to monitor performance of the Framework Agreement. These are not the same as Service Levels which are a performance management tool for Customers at call off stage and are linked to payment. See Clause 12 of the Template Call Off terms and Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) for further information. If Service Credits are required, populate the Service Levels/Service Credits table in Annex 1 of Part A of that Call Off Schedule and the definition of Service Credit Cap in Call Off Schedule 1 (Definitions).]

²⁹ [Guidance Note: See Clause 13 and Annex 2 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) of the Template Call Off Terms. If you require specific instances of Critical Service Level Failures (i.e. limb “b” of the definitions), define them in Annex 2 to Part A of that Call Off Schedule]

³⁰ [Guidance Note: See Clause 18.3 (Performance Monitoring) and Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring). If you have specified any additional or alternative monitoring requirements during a Further Competition Procedure, include them in Annex 1 of Part B of that Call Off Schedule]

³¹ [Guidance Note: See Clause 38.2.1(a) of the Template Call Off Terms and settle the period within which the Supplier should provide a Rectification Plan when the Customer elects to follow the Rectification Plan Process]

2.13 Quality Plan

[In Clause 10.2 of the Template Call Off Terms]³³

2.14 Supplier Software, Customer Software and Third Party Software

[In Call Off Schedule 9 (Supplier Software, Customer Software and Third Party Software)]³⁴

3. SUPPLIER'S INFORMATION

3.1 Supplier's inspection of Sites, Customer System, Customer Property and Customer Assets

[In Clause 45.5 of the Template Call Off Terms and Call Off Schedule 11 (Exit Management)]³⁵

3.2 Commercially Sensitive Information

[]³⁶

3.3 Termination on Customer Cause for Failure to Pay an undisputed sum

[In Clause 42.1.1]³⁷

3.4 Maximum Price Provisions for Further Competitions

[Supplier to identify Service Package where the provisions apply, or provide explanation of why no Service Package meets the requirement]³⁸

4. CUSTOMER RESPONSIBILITIES

4.1 Customer Responsibilities

[In Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel) / []³⁹

³² [Guidance Note: See Clause 45.5 of the Template Call Off Terms and Call Off Schedule 11 (Exit Management). In accordance with the guidance set out in Call Off Schedule 11 (Exit Management), consider refining and/or deleting the Call Off Schedule as per your requirements]

³³ [Guidance Note: See Clause 10.2 of the Template Call Off Terms and populate the period time for Supplier to produce a Quality Plan]

³⁴ [Guidance Note: See the definitions of the Supplier Software, Customer Software and Third Party Software and consider Clause 33. If necessary, insert details of any specific software packages that the Supplier will use to provide the Services in Call Off Schedule 9 (Supplier Software, Customer Software and Third Party Software)]

³⁵ [Guidance Note: See Clauses 2, 29 and 30 of the Template Call Off Terms. Consider if inspection of the Sites by the Supplier is required. Insert any issues raised by the Supplier in respect of any aspects of the Sites, Customer Assets, Customer Property or Customer System being unsuitable for the provision of the Services and any action which is to be taken in respect thereof]

³⁶ [Guidance Note: Include any Commercially Sensitive Information of the Supplier and the duration for which it should be confidential. This may have been set out in the Supplier's tender. This will be relevant in e.g. assisting the Customer in respect of compliance with FOIA]

³⁷ [Guidance Note: Guidance Note: insert in Clause 42.1.1 of the Template Call Off Terms amount equivalent to one (1) month's average Call Off Contract Charges]

³⁸ [Guidance Note: The Supplier must provide information pursuant to the obligations described in paragraph 2 (Maximum Price Provision for Further Competitions) in Framework Schedule 3 (Framework Prices)]

³⁹ [Guidance Note: See Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel) and the guidance therein. Add any other Customer Responsibilities agreed between the Parties]

5. CALL OFF CONTRACT CHARGES AND PAYMENT

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

[In Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)]⁴⁰

5.2 The Customer must provide baseline spend information for calculation of savings by the Authority AT POINT OF AWARD ONLY (such as current/last annual contract price for comparable services broken down by line item):

[]

SECTION C

6. CUSTOMER OTHER CONTRACTUAL REQUIREMENTS⁴¹

6.1 Call Off Guarantor

[]⁴²

6.2 Key Personnel

[In Part C of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel)]⁴³

6.3 Staff Transfer

[In Clause 27 of the Template Call Off Terms and Call Off Schedule 12 (Staff Transfer)]⁴⁴

⁴⁰ [Guidance Note: Insert details of the Call Off Contract Charges and payment terms/profile in Annexes A and B of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing) and settle all other information in square brackets in that Call Off Schedule. The Call Off Contract Charges should be compliant with Framework Schedule 3 (Charging Structure) and Customers are also referred to Framework Schedule 5 (Call Off Procedure). If an Implementation Plan is included, consider whether Milestone Payments should be added, staged and linked to the Achievement of particular Milestones (see the guidance in Part A of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel)). Also consider with Clauses 36.2.1(a) and 36.2.2 of the Template Call Off Terms and insert sum in the definition of Estimated Year 1 Call Off Contract Charges in Call Off Schedule 1 (Definitions)]

⁴¹ [Guidance Note: Consider the list of further contractual requirements set out in this paragraph, as indicated in each sub-paragraph and the footnotes therein. Then populate and/or settle this paragraph 6 according to your requirements. Customers placing multiple Orders of the same nature which contain the same requirements may decide to populate/settle this information once and repeat it in respect of future Orders]

⁴² [Guidance Note: See Clause 4, Clause 41.1 and Clause 45.1 of the Template Call Off Terms. Consider whether the Supplier should provide a Call Off Guarantee on or before the Call Off Commencement Date. If so, set out the details of the Call Off Guarantor]

⁴³ [See Clause 25 of the Template Call Off Terms and include any Key Personnel (and their Key Roles) in Part C of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel)]

⁴⁴ [Guidance Note: Clause 27 of the Template Call Off Terms and Call Off Schedule 12 (Staff Transfer) relates to the transfer of any employees to the Supplier (incoming and outgoing) in respect of the provision of Services. If the Employment Regulations apply on the Call Off Commencement Date: the Customer should "switch on" Clause 27.1 and delete Clauses 27.2 and 27.3. The Customer should also select whether Part A (where the Customer's own staff are to transfer) and/ or Part B (where the Customer's incumbent supplier's staff are to transfer) of Call Off Schedule 12 (Staff Transfer) apply. If the Employment Regulations do not apply on the Call Off Commencement Date the Customer should switch on Clause 27.2 and delete Clauses 27.1 and 27.3. If the position is unclear the Customer should switch on Clause 27.3 and keep Clauses 27.1 and 27.2 in square brackets. The Customer will have to make an assessment on the Employment Regulations position after the Call

6.4 Relevant Convictions

[]⁴⁵

6.5 Maintenance of the ICT Environment

[]⁴⁶

6.6 Protection of Customer Data

[]⁴⁷

6.7 Limitations on Liability

[In Clause 36 of Template Call Off Terms]⁴⁸

6.8 [Insurance]

[]⁴⁹

6.9 Termination without cause notice period

[In Clause 41.6 of the Template Call Off Terms]⁵⁰

6.10 BCDR Plans

Does Schedule 10 Business Continuity and Disaster Recovery apply (Y/N)

<input type="checkbox"/>	No
<input type="checkbox"/>	Yes – Provide BCDR Requirements below

Please tick appropriate box.

BCDR Requirements:

[In Clause 14.1 of the Template Call Off Terms]⁵¹

Off Contract has been formed.. Similarly, the Customer to refine Call Off Schedule 12 (Staff Transfer) in this respect as well, deleting those parts that are not applicable. Part D will always be applicable.]

⁴⁵ [Guidance Note: Consider if Clause 26.2 of the Template Call Off Terms should apply. See the definition of Relevant Convictions in Call Off Schedule 1 (Definitions) and, if required, set out specific Relevant Convictions. Include in a separate Call Off Schedule if necessary and cross refer to it here. Delete definitions of Conviction and Relevant Conviction from Call Off Schedule 1 (Definitions) if Clause 26.2 of the Template Call Off Terms is not used]

⁴⁶ [Guidance Note: See Clause 32 of the Template Call Off Terms and consider if required. If so, specify the details relevant details. For example, the period within which the Supplier should submit a draft Maintenance Schedule for Approval and any other relevant instructions to the Supplier. Delete the definitions of Maintenance Schedule, Permitted Maintenance and Emergency Maintenance from Call Off Schedule 1 (Definitions) if Clause 32 of the Template Call Off Terms is not used]

⁴⁷ [Guidance Note: See Clause 34.3.3 of the Template Call Off Terms. If required from the outset, specify here the format for the Supplier to supply the Customer Data to the Customer when needed; or make provision in Call Off Schedule 8 (Security Management) and cross refer to it here]

⁴⁸ [Guidance Note: See Clause 36 of the Template Call Off Terms and consider if the default financial limits of liability set therein are appropriate in respect of your requirements. See also Clauses 36.2.1(a) and 36.2.2 of the Template Call Off Terms]

⁴⁹ [Guidance Note: See Clause 37 of the Template Call Off Terms. If stipulated during a Further Competition Procedure, include your requirements to the Supplier to effect and maintain insurance and any specific minimum insurance policies here or set out in a separate Call Off Schedule if necessary and cross refer to it here]

⁵⁰ [Guidance Note: See Clause 41.6 of the Template Call Off Terms. Consider if you require a different notice period in respect of termination without cause]

6.11 Records Audit Access and Open Book Data⁵²

Full Audit Transparency required (Y/N)

<input type="checkbox"/>	No
<input type="checkbox"/>	Yes

Please tick appropriate box.

6.12 Benchmarking⁵³

The Customer requires the right to Benchmark (Y/N)

<input type="checkbox"/>	No
<input type="checkbox"/>	Yes

Please tick appropriate box.

If Yes

Benchmarker Name:	<input type="checkbox"/>
Benchmarker Address:	<input type="checkbox"/>

Comparison of price will be made by:

<input type="checkbox"/>	Average Price
<input type="checkbox"/>	Upper Quartile

Please tick appropriate box.

Comparison of Service Levels will be made by:

<input type="checkbox"/>	Mean
<input type="checkbox"/>	Median

⁵¹ Guidance Note: See 14.1 of the Template Call Off Terms. If the Customer has BCDR requirements they will be required to provide the information necessary to enable the BCDR plan to be generated by the Supplier so as to populate the schedule.

⁵² Guidance Note: Clause 20 Records, Audit Access and Open Book Data sets out the provisions as to what Audit Access will be granted to verify the Call Off Agreement. If Customers require Full Audit Transparency the appropriate check box should be selected.

⁵³ Guidance Note: Schedule 17 (Benchmarking) sets out the provisions should Customers wish to elect to undertake Benchmarking during their Call Off Agreement. The requirements in this form need to be settled if Benchmarking is to be applied.

Please tick appropriate box.

7. ADDITIONAL AND/OR ALTERNATIVE CLAUSES ⁵⁴

7.1 Supplemental requirements to the Call Off Terms

[]

7.2 Amendments to/refinements of the Call Off Terms

[]

7.3 Alternative and/or Additional Clauses (select from Call Off Schedule 15 (Alternative and/or Additional Clauses))

[]

8. FORMATION OF FURTHER COMPETITION CALL OFF CONTRACT

8.1 In accordance with paragraph 7.1 of Framework Schedule 5 (Call Off Procedure), the Call Off Contract shall be formed when the Customer signs and sends this Order Form to the Supplier. The Supplier shall acknowledge receipt of this Order Form by promptly signing and returning a copy of it to the Customer.

For and on behalf of the Customer:

Name and Title	
Signature	
Date	

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

⁵⁴ [Guidance Note: Include any other amendments and/or refinements to the Template Call Off Terms prior to those becoming the Call Off Terms. Paragraph 7.3 of the Template Call Off Form deals with those default Additional or Clauses as set out in Call Off Schedule 15 of the Template Call Off Terms (Alternative and/or Additional Clauses). Customers should state here which ones apply, if any. Paragraphs 7.1 and 7.2 of the Template Call Off Form enable Customers to insert new provisions and amend current provisions respectively. Note that any such additions and/or changes must always be in accordance with the Law and the requirements of Framework Schedule 5 (Call Off Procedure). If you place repeat Orders of the same nature which contain the same requirements, consider creating a customised set of amended and/or refined Template Call Off Terms or a Call Off Schedule containing those amendments or refinements to the existing Template Call Off Terms (including incorporating any Alternative or Additional Clauses from Call Off Schedule 15 (Alternative and/or Additional Clauses)) which you can use with every Order]

TABLE OF CONTENT

A. PRELIMINARIES 18

1. DEFINITIONS AND INTERPRETATION 18

2. DUE DILIGENCE..... 19

3. REPRESENTATIONS AND WARRANTIES 20

4. CALL OFF GUARANTEE..... 21

B. DURATION OF CALL OFF CONTRACT 21

5. CALL OFF CONTRACT PERIOD..... 21

C. CALL OFF CONTRACT PERFORMANCE 22

6. IMPLEMENTATION PLAN 22

7. SERVICES..... 23

8. NOT USED 27

9. NOT USED 27

10. STANDARDS AND QUALITY 27

11. TESTING 28

12. SERVICE LEVELS AND SERVICE CREDITS..... 28

13. CRITICAL SERVICE LEVEL FAILURE 28

14. BUSINESS CONTINUITY AND DISASTER RECOVERY 29

15. DISRUPTION..... 29

16. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE 29

17. CONTINUOUS IMPROVEMENT 30

D. CALL OFF CONTRACT GOVERNANCE 31

18. PERFORMANCE MONITORING 31

19. REPRESENTATIVES 31

20. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA 31

21. CHANGE 33

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS..... 35

22. CALL OFF CONTRACT CHARGES AND PAYMENT..... 35

23. PROMOTING TAX COMPLIANCE 37

24. BENCHMARKING 37

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS 37

25. KEY PERSONNEL 37

26. SUPPLIER PERSONNEL..... 38

27. STAFF TRANSFER..... 39

28. SUPPLY CHAIN RIGHTS AND PROTECTION 40

G. PROPERTY MATTERS 40

29. CUSTOMER PREMISES 40

	30. CUSTOMER PROPERTY	41
	31. SUPPLIER EQUIPMENT	42
	32. [MAINTENANCE OF THE ICT ENVIRONMENT].....	42
H.	INTELLECTUAL PROPERTY AND INFORMATION	43
	33. INTELLECTUAL PROPERTY RIGHTS	43
	34. SECURITY AND PROTECTION OF INFORMATION	48
	35. PUBLICITY AND BRANDING	55
I.	LIABILITY AND INSURANCE	55
	36. LIABILITY.....	55
	37. INSURANCE	57
J.	REMEDIES AND RELIEF	58
	38. CUSTOMER REMEDIES FOR DEFAULT	58
	39. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE	60
	40. FORCE MAJEURE.....	61
K.	TERMINATION AND EXIT MANAGEMENT	63
	41. CUSTOMER TERMINATION RIGHTS	63
	42. SUPPLIER TERMINATION RIGHTS	65
	43. TERMINATION BY EITHER PARTY	65
	44. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION... 66	
	45. CONSEQUENCES OF EXPIRY OR TERMINATION.....	66
L.	MISCELLANEOUS AND GOVERNING LAW	68
	46. COMPLIANCE.....	68
	47. ASSIGNMENT AND NOVATION.....	69
	48. WAIVER AND CUMULATIVE REMEDIES	69
	49. RELATIONSHIP OF THE PARTIES.....	69
	50. PREVENTION OF FRAUD AND BRIBERY.....	70
	51. SEVERANCE	71
	52. FURTHER ASSURANCES.....	71
	53. ENTIRE AGREEMENT	71
	54. THIRD PARTY RIGHTS	72
	55. NOTICES.....	72
	56. DISPUTE RESOLUTION.....	73
	57. GOVERNING LAW AND JURISDICTION	73
	CALL OFF SCHEDULE 1: DEFINITIONS	75
	CALL OFF SCHEDULE 2: SERVICES.....	103
	CALL OFF SCHEDULE 3: CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING	104

ANNEX 1: CALL OFF CONTRACT CHARGES.....	107
ANNEX 2: PAYMENT TERMS/PROFILE.....	108
CALL OFF SCHEDULE 4: MILESTONES, CUSTOMER RESPONSIBILITIES AND KEY PERSONNEL.....	109
CALL OFF SCHEDULE 5: TESTING	113
ANNEX 1: TEST ISSUES – SEVERITY LEVELS	121
ANNEX 2: TEST CERTIFICATE	122
ANNEX 3: SATISFACTION CERTIFICATE	123
CALL OFF SCHEDULE 6: SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING.....	124
ANNEX 1 TO PART A: SERVICE LEVELS AND SERVICE CREDITS TABLE ...	131
ANNEX 2 TO PART A: CRITICAL SERVICE LEVEL FAILURE	136
ANNEX 1 TO PART B: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS	139
CALL OFF SCHEDULE 7: STANDARDS	141
CALL OFF SCHEDULE 8: SECURITY.....	142
ANNEX 1: SECURITY POLICY	148
CALL OFF SCHEDULE 9: SUPPLIER SOFTWARE, CUSTOMER SOFTWARE AND THIRD PARTY SOFTWARE.....	149
CALL OFF SCHEDULE 10: BUSINESS CONTINUITY AND DISASTER RECOVERY	151
CALL OFF SCHEDULE 11: EXIT MANAGEMENT	158
CALL OFF SCHEDULE 12: STAFF TRANSFER	169
ANNEX 1: PENSIONS	194
ANNEX 2: LIST OF NOTIFIED SUB-CONTRACTORS	197
CALL OFF SCHEDULE 13: DISPUTE RESOLUTION PROCEDURE.....	198
CALL OFF SCHEDULE 14: VARIATION FORM.....	203
CALL OFF SCHEDULE 15: ALTERNATIVE AND/OR ADDITIONAL CLAUSES	204
CALL OFF SCHEDULE [16]: MOD DEFCONS AND DEFFORMS	214
CALL OFF SCHEDULE 17: BENCHMARKING	221
CALL OFF SCHEDULE 18: PSN COMPLIANCE.....	228

PART 2 – [TEMPLATE] CALL OFF TERMS

TERMS AND CONDITIONS

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Call Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions).
- 1.2 If a capitalised expression does not have an interpretation in Call Off Schedule 1 (Definitions) or relevant Call Off Schedule, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Call Off Contract, unless the context otherwise requires:
- 1.3.1 the singular includes the plural and vice versa;
 - 1.3.2 reference to a gender includes the other gender and the neuter;
 - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
 - 1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under this Call Off Contract;
 - 1.3.8 references to "**Clauses**" and "**Call Off Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Call Off Contract and references in any Call Off Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Call Off Schedule in which these references appear; and
 - 1.3.9 the headings in this Call Off Contract are for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract.
- 1.4 Subject to Clauses 1.5 and 1.6 (Definitions and Interpretation), in the event of and only to the extent of any conflict between the Order Form, the Call Off Terms and the provisions of the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- 1.4.1 the Framework Agreement, except Framework Schedule 19 (Tender);
 - 1.4.2 the Order Form;
 - 1.4.3 the Call Off Terms;
 - 1.4.4 Supplier Call Off Solution;
 - 1.4.5 Framework Schedule 19 (Tender).
- 1.5 Any permitted changes by the Customer to the Template Call Off Terms and the Template Call Off Form under Clause 4 (Call Off Procedure) of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to them becoming the Call Off Terms and the Call Off Form and the Parties entering this Call Off Contract shall prevail over the Framework Agreement.
- 1.6 Where Framework Schedule 19 (Tender) contains provisions which are more favourable to the Customer in relation to this Call Off Contract or, following a Further Competition Procedure, the Supplier Call Off Solution contains provisions which are more favourable to the Customer in relation to the rest of this Call Off Contract, such provisions of the Tender and/or the Supplier Call Off Solution (as applicable) shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Tender and/or the Supplier Call Off Solution (as applicable) is more favourable to it in this context.

2. DUE DILIGENCE

- 2.1 Where the Customer has conducted a Further Competition Procedure, the Supplier acknowledges that:
- 2.1.1 the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Call Off Contract;
 - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Customer before the Call Off Commencement Date) of all relevant details relating to:
 - (a) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Call Off Commencement Date) future Operating Environment;
 - (b) the operating processes and procedures and the working methods of the Customer;
 - (c) the ownership, functionality, capacity, condition and suitability for use in the provision of the Services of the Customer Assets; and
 - (d) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Call Off Contract and/or which the Supplier will require the benefit of for the provision of the Services; and
 - 2.1.4 it has advised the Customer in writing of:
 - (a) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - (b) the actions needed to remedy each such unsuitable aspect; and
 - (c) a timetable for and the costs of those actions.

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

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

3. REPRESENTATIONS AND WARRANTIES

3.1 Each Party represents and warranties that:

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

3.2 The Supplier represents and warrants that:

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call Off Contract;
- 3.2.3 its execution, delivery and performance of its obligations under this Call Off Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
- 3.2.4 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to the PQQ (if applicable), its Tender, its Call Off Solution (if applicable) and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract;
- 3.2.5 as at the Call Off Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;

- 3.2.6 it has and shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Services by the Customer;
 - 3.2.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Contract; and
 - 3.2.8 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.
- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.5 For the avoidance of doubt, the fact that any provision within this Call Off Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier which constitutes a material Default.

4. CALL OFF GUARANTEE

- 4.1 Where the Customer has stipulated during a Further Competition Procedure that the award of this Call Off Contract shall be conditional upon receipt of a Call Off Guarantee, then, on or prior to the Call Off Commencement Date, the Supplier shall deliver to the Customer:
- 4.1.1 an executed Call Off Guarantee from a Call Off Guarantor; and
 - 4.1.2 a certified copy extract of the board minutes and/or resolution of the Call Off Guarantor approving the execution of the Call Off Guarantee.
- 4.2 The Customer may in its sole discretion at any time agree to waive compliance with the requirement in Clause 4.1 by giving the Supplier notice in writing.

B. DURATION OF CALL OFF CONTRACT

5. CALL OFF CONTRACT PERIOD

- 5.1 This Call Off Contract shall commence on the Call Off Commencement Date and shall expire either:
- 5.1.1 at the end of the Call Off Initial Period; or
 - 5.1.2 where the Customer elects to extend the Call Off Initial Period in accordance with Clause 5.2 below, at the end of the Call Off Extension Period,

unless it is terminated earlier in accordance with the terms of this Call Off Contract or otherwise by operation of Law.

5.2 The Customer may extend the duration of this Call Off Contract for any period or periods up to a maximum of two (2) years in total from the expiry of the Call Off Initial Period by giving the Supplier no less than three (3) Months' written notice.

C. CALL OFF CONTRACT PERFORMANCE

6. IMPLEMENTATION PLAN

6.1 Formation of Implementation Plan

- 6.1.1 Where it is required by the Order Form (or elsewhere in this Call Off Contract) that an Implementation Plan shall be provided by the Supplier, the Supplier's Implementation Plan must contain information at the level of detail necessary to manage the implementation stage effectively, and consistently with the Milestones. The Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 6.1.2 The Supplier shall submit the draft Implementation Plan to the Customer for Approval (such decision of the Customer to Approve or not shall not be unreasonably delayed or withheld) within 30 calendar days from the Commencement Date, or other such period as specified by the Customer in the Order Form.
- 6.1.3 The Supplier shall perform each of the Deliverables identified in Part A of Schedule 4 (Milestones, Customer Responsibilities and Key Personnel) by the applicable Milestone Date assigned to that Deliverable .
- 6.1.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in this Call Off Contract and report to the Customer on such performance.

6.2 Control of Implementation Plan

- 6.2.1 Subject to Clause 6.2.2, the Supplier shall keep the Implementation Plan under review in accordance with the Customer's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Services. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 6.2.2 Changes to the Milestones (if any), Milestone Payments (if any) and Delay Payments (if any) shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- 6.2.3 Where so specified by the Customer on the Order Form, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

6.3 Rectification of Delay in Implementation

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

- (a) it shall:
 - (i) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and
 - (ii) include in its notification an explanation of the actual or anticipated impact of the Delay; and
 - (iii) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- (b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Implementation Plan, Clause 6.4 (Delay Payments) shall apply.

6.4 Delay Payments

6.4.1 If Delay Payments have been included in Part A of Schedule 4 (Milestones, Customer Responsibilities and Key Personnel) and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Customer such Delay Payments (calculated as set out in the Implementation Plan) and the following provisions shall apply:

- (a) the Supplier acknowledges and agrees that any Delay Payment is a genuine estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to Achieve the corresponding Milestone;
- (b) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
 - (i) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.6 (Termination Without Cause); or
 - (ii) the delay exceeds the period of **one hundred (100)** days commencing on the relevant Milestone Date;
- (c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified in the Implementation Plan);
- (d) no payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver complies with Clause 48 (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Customer's rights to claim Delay Payments; and
- (e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 6.4.

7. SERVICES

7.1 Provision of the Services

7.1.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Call Off Contract.

7.1.2 The Supplier shall ensure that the Services:

- (a) comply in all respects with the Customer's description of the Services in Call Off Schedule 2 (Services) (or elsewhere in this Call Off Contract);
- (b) are supplied in accordance with the provisions of this Call Off Contract including the Supplier Call Off Solution (as applicable) or, in the absence of a Supplier Call Off Solution, the Tender; and
- (c) where they are PSN Services comply with Call Off Schedule 18 (PSN Compliance)

7.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:

- (a) all applicable Law;
- (b) Good Industry Practice;
- (c) the Standards;
- (d) the Security Policy;
- (e) the Quality Plans;
- (f) the ICT Policy (if so required by the Customer); and
- (g) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 7.1.3(a) to 7.1.3(f).

7.1.4 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Call Off Contract;
- (b) subject to Clause 21.1 (Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) the release of any new Supplier Software or upgrade to any Supplier Software complies with the interface requirements of the Customer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Customer three (3) Months before the release of any new Supplier Software or Upgrade;
 - (ii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (iii) any products or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Services shall

enable the Deliverables and/or Services to meet the requirements of the Customer;

- (iv) the Supplier System and Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer) and will be Euro Compliant; and
 - (v) the Services are fully compatible with such elements of the Customer Software, Customer System, Customer Property or Customer Assets that are required for the delivery of the Services as those elements are described in Part B of Call Off Schedule 4 (Milestones, Customer Responsibilities and Key Personnel) (or elsewhere in this Call Off Contract) or otherwise used by the Supplier in connection with this Call Off Contract;
- (d) minimise any disruption to the Services, the ICT Environment and/or the Customer's operations when providing the Services;
 - (e) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the Call Off Expiry Date for any reason, to enable the timely transition of the Services (or any of them) to the Customer and/or to any Replacement Supplier;
 - (g) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
 - (h) provide the Customer with such assistance as the Customer may reasonably require during the Call Off Contract Period in respect of the supply of the Services;
 - (i) deliver the Services in a proportionate and efficient manner;
 - (j) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and
 - (k) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.

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

7.2 Time of Delivery of the Services

- 7.2.1 The Supplier shall provide the Services on the date(s) specified in the Order Form (or elsewhere in this Call Off Contract) and the Milestone Dates (if any). Such provision shall include compliance with the obligation on the Supplier set out in Clause 6 (Implementation Plan).

7.3 Location and Manner of Delivery of the Services

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

7.4 Undelivered Services

- 7.4.1 In the event that any of the Services are not Delivered in accordance with Clauses 7.1 (Provision of the Services), 7.2 (Time of Delivery of the Services) and 7.3 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.
- 7.4.2 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 7.1, (Provision of the Services), 7.2 (Time of Delivery of the Services) and 7.3 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

7.5 Specially Written Software warranty

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

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

- 7.6.1 Subject to Clauses 33.9 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 7.4 (Undelivered Services) and 38 (Customer Remedies for Default), the Supplier shall, where practicable:
- (a) remedy any breach of its obligations in this Clause 7 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
 - (b) meet all the costs of, and incidental to, the performance of such remedial work.

7.7 Continuing Obligation to Provide the Services

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

- (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Customer to pay any Call Off Contract Charges,
- (d) unless the Supplier is entitled to terminate this Call Off Contract under Clause 42.1 (Termination on Customer Cause for Failure to Pay) for failure by the Customer to pay undisputed Call Off Contract Charges.

8. NOT USED

9. NOT USED

10. STANDARDS AND QUALITY

- 10.1 The Supplier shall at all times during the Call Off Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.
- 10.2 If so required by the Customer as part of their Further Competition and as such identified in the Order Form, the Supplier shall develop, within **thirty (30)** Working Days of the Call Off 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 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 10.3 The Supplier shall seek Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed) of the Quality Plans before implementing them. The Supplier acknowledges and accepts that Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Call Off Contract.
- 10.4 Following the approval by the Customer of the Quality Plans:
 - 10.4.1 the Supplier shall implement all Deliverables in accordance with the Quality Plans; and
 - 10.4.2 any Variation to the Quality Plans shall be agreed in accordance with the Variation Procedure.
- 10.5 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
 - 10.5.1 be appropriately experienced, qualified and trained to supply the Services in accordance with this Call Off Contract;
 - 10.5.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Good and/or Services; and

10.5.3 obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Services to the reasonable satisfaction of the Customer.

11. TESTING

11.1 The Parties shall comply with any provisions set out Call Off Schedule 5 (Testing).

12. SERVICE LEVELS AND SERVICE CREDITS

12.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).

12.2 The Supplier shall at all times during the Call Off Contract Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.

12.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to the rights set out in the provisions of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.

12.4 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to meet any Service Level Performance Measure.

12.5 A Service Credit shall be the Customer's exclusive financial remedy for a Service Level Failure except where:

12.5.1 the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;

12.5.2 the Service Level Failure:

- (a) breaches the relevant Service Level Threshold;
- (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and
- (c) results in:
 - (i) the corruption or loss of any Customer Data (in which case the remedies under Clause 34.3 (Protection of Customer Data) shall also be available); and/or
 - (ii) the Customer being required to make a compensation payment to one or more third parties; and/or

12.5.3 the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.6 (Termination Without Cause).

13. CRITICAL SERVICE LEVEL FAILURE

13.1 On the occurrence of a Critical Service Level Failure:

13.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

13.1.2 the Customer shall (subject to the Service Credit Cap set out in Clause 36.2 (Financial Limits)) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Call Off Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period ("Compensation for Critical Service Level Failure"), provided that the operation of this Clause 13.1 shall be without prejudice to the right of the Customer to terminate this Call Off Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.

13.2 The Supplier:

13.2.1 agrees that the application of Clause 13.1 is commercially justifiable where a Critical Service Level Failure occurs; and

13.2.2 acknowledges that it has taken legal advice on the application of Clause 13.1 and has had the opportunity to price for that risk when calculating the Call Off Contract Charges.

14. BUSINESS CONTINUITY AND DISASTER RECOVERY

14.1 Where required by the Customer on the Order Form the Parties shall comply with the provisions of Call Off Schedule 10 (Business Continuity and Disaster Recovery).

15. DISRUPTION

15.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call Off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.

15.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.

15.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Call Off Contract.

15.4 If the Supplier's proposals referred to in Clause 15.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.

15.5 If the Supplier is temporarily unable to fulfil the requirements of this Call Off Contract owing to disruption of normal business solely caused by the Customer, an appropriate allowance by way of an extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

16. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

16.1 Without prejudice to any other obligations of the Supplier in this Call Off Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 42.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall:

16.1.1 notify the Customer as soon as reasonably practicable (and in any event within two (2) Working Days of the Supplier becoming aware) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:

- (a) the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Call Off Contract; and
- (b) any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
- (c) 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.

17. CONTINUOUS IMPROVEMENT

17.1 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Services in accordance with this Clause 17 with a view to reducing the Customer's costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Customer. As part of this obligation the Supplier shall identify and report to the Customer once every twelve (12) months regarding:

17.1.1 the emergence of new and evolving relevant technologies which could improve the ICT Environment and/or the provision of the Services, and those technological advances potentially available to the Supplier and the Customer which the Parties may wish to adopt;

17.1.2 new or potential improvements to the Services or the provision of the Services including in respect of the quality, responsiveness, procedures, benchmarking methods, ways of performing the Services and customer support services in relation to the Services;

17.1.3 changes in business processes and working practices that would enable the Services to be provided at lower cost and/or with greater benefits to the Customer;

17.1.4 changes to the ICT Environment, business processes and working practices that would enable reductions in the total energy consumed in the provision of the Services.

17.1.5 improvements which the Supplier uses or is planning to use with its other Customers;

17.1.6 proposals as to how any investment required for continuous improvement could be shared with other Customers of the Supplier; and

17.1.7 cost / benefit analysis of the potential improvements identified subject to this clause 17.1.

17.2 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.

- 17.3 If the Customer wishes to incorporate any improvement identified by the Supplier, the Customer shall request a Variation in accordance with the Variation Procedure.
- 17.4 Notwithstanding anything to the contrary in this Call Off Contract, the Parties may not change or improve the Services in any way which adversely affects or may adversely affect PSN Compliance.

D. CALL OFF CONTRACT GOVERNANCE

18. PERFORMANCE MONITORING

- 18.1 Unless otherwise Approved or notified by the Customer, the Supplier shall comply with the monitoring requirements set out in Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).
- 18.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels. The Supplier shall obtain Approval of the relevant measuring and monitoring tools and procedures prior to using the same.
- 18.3 [In the case of any additional or alternative monitoring requirements of the Customer, the provisions relating to performance monitoring of this Call Off Contract shall apply as stipulated by the Customer during a Further Competition Procedure and set out in Annex 1 to Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).]

19. REPRESENTATIVES

- 19.1 Each Party shall have a representative for the duration of this Call Off Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Call Off Contract.
- 19.2 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 26 (Supplier Personnel).
- 19.3 The Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Call Off Commencement Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.

20. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

- 20.1 The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Services provided under it, by any Sub-Contracts and the amounts paid by the Customer.
- 20.2 The Supplier shall:
 - 20.2.1 keep the records and accounts referred to in Clause 20.1 in accordance with Good Industry Practice and Law; and
 - 20.2.2 afford any Auditor access to the records and accounts referred to in Clause 20.1 at the Supplier's premises and/or provide records and accounts

(including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 20.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call Off Contract Agreement including for the following purposes to:

- (a) verify the accuracy of the Call Off Contract Charges and any other amounts payable by the Customer under this Call Off Contract (and proposed or actual variations to them in accordance with this Call Off Contract);
- (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
- (c) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- (d) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Framework Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to perform the Services;
- (f) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (g) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Call Off Contract;
- (h) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;
- (i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
- (j) review any Performance Monitoring Reports provided under Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (k) verify the accuracy and completeness of any information delivered or required by this Call Off Contract;
- (l) inspect the ICT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (m) review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (n) review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (o) review the Supplier's compliance with the Standards;

- (p) inspect the Customer Assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date; and/or
 - (q) review the integrity, confidentiality and security of the Customer Data.
- 20.2.3 Where indicated on the Customer's Order Form that the Customer requires Full Audit Transparency, Auditor access will also be afforded to verify the Open Book Data.
- 20.3 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.
- 20.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 20.4.1 all reasonable information requested by the Customer within the scope of the audit;
 - 20.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 20.4.3 access to the Supplier Personnel.
- 20.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 20, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

21. CHANGE

21.1 Variation Procedure

- 21.1.1 Subject to the provisions of this Clause 21 and of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 21.1.2 A Party may request a Variation by completing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 21.1.3 The Customer may require the Supplier to carry out an impact assessment of the Variation on the Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:
 - (a) details of the impact of the proposed Variation on the Services and the Supplier's ability to meet its other obligations under this Call Off Contract;
 - (b) details of the cost of implementing the proposed Variation;
 - (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Call Off Contract

Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

- (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
- (e) such other information as the Customer may reasonably request in (or in response to) the Variation request.

21.1.4 [Where the Customer has requested the Variation and the Supplier can show that the Impact Assessment required resources other than those ordinarily deployed in the provision of the Services the Customer shall pay any reasonable costs incurred by the Supplier in producing the Impact Assessment.]

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

21.1.6 Subject to 21.1.5, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Order and the proposed Variation.

21.1.7 In the event that:

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

the Customer may:

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

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

21.2 Legislative Change

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

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

21.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 21.2.1(b)), the Supplier shall:

- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
 - (i) whether any Variation is required to the provision of the Services, the Call Off Contract Charges or this Call Off Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
- (b) provide to the Customer with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 17 (Continuous Improvement), has been taken into account in amending the Call Off Contract Charges.

21.2.3 Any change in the Call Off Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 21.2.1(b)) shall be implemented in accordance with the Variation Procedure.

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

22. CALL OFF CONTRACT CHARGES AND PAYMENT

22.1 Call Off Contract Charges

- 22.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Services, the Customer shall pay the undisputed Call Off Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).
- 22.1.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 11 (Testing), 20 (Records, Audit Access and Open Book Data), 34.6 (Freedom of Information), 34.7 (Protection of Personal Data).
- 22.1.3 If the Customer fails to pay any undisputed Call Off Contract Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 22.1.4 If at any time during this Call Off Contract Period the Supplier reduces its Framework Prices for any Services which are provided under the Framework Agreement (whether or not such Services are offered in a catalogue, if any, which is provided under the Framework Agreement) in accordance with the

terms of the Framework Agreement, the Supplier shall immediately reduce the Call Off Contract Charges for such Services under this Call Off Contract by the same amount.

22.2 VAT

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

22.2.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on or from the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 22.2 (VAT) shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

22.3 Retention and Set Off

22.3.1 The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Call Off Contract or under any other agreement between the Supplier and the Customer.

22.3.2 If the Customer wishes to exercise its right pursuant to Clause 22.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Call Off Contract Charges.

22.3.3 The Supplier shall make all payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order from a court of competent jurisdiction requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

22.4 Euro

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

22.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 22.4.1 by the Supplier.

22.5 Income Tax and National Insurance Contributions

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

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

23. PROMOTING TAX COMPLIANCE

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

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

23.1.2 promptly provide to the Customer:

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

24. BENCHMARKING

24.1 Notwithstanding the Supplier's obligations under Clause 17 (Continuous Improvement), where required by the Customer on the Order Form the Parties shall comply with the provisions of Call Off Schedule 17 (Benchmarking).

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

25. KEY PERSONNEL

25.1 The Parties have agreed to the appointment of the Key Personnel. Part C of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel) lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Call Off Commencement Date.

25.2 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Call Off Contract Period.

25.3 The Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.

25.4 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Call Off Schedule 11 (Exit Management)) unless:

25.4.1 requested to do so by the Customer;

25.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;

25.4.3 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

25.4.4 the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).

25.5 The Supplier shall:

25.5.1 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);

25.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;

25.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;

25.5.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and

25.5.5 ensure that any replacement for a Key Role:

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

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

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

26. SUPPLIER PERSONNEL

26.1 Supplier Personnel

26.1.1 The Supplier shall:

- (a) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards; and
 - (iii) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call Off Schedule 8 (Security);
- (c) subject to Call Off Schedule 12 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Call Off Contract shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.

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

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

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

26.2 [Relevant Convictions

26.2.1 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Services without Approval.

26.2.2 For each member of Supplier Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):

- (a) carry out a check with the records held by the Department for Education (DfE);
- (b) conduct thorough questioning regarding any Relevant Convictions; and
- (c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.]

27. STAFF TRANSFER

27.1 [The Parties agree that :

27.1.1 on the Call Off Commencement Date there is a relevant transfer for the purposes of the Employment Regulations, and the provisions of Parts [A and/or B] of Call Off Schedule 12 (Staff Transfer) will apply; and;

27.1.2 on the Call Off Expiry Date there may be a relevant transfer for the purposes of the Employment Regulations and Part D of Call Off Schedule 12 (Staff Transfer) will apply.]

27.2 The Parties agree that:

27.2.1 on the Call Off Commencement Date there is no relevant transfer for the purposes of the Employment Regulations, and the provisions of Part C of Call Off Schedule 12 (Staff Transfer) will apply; and

27.2.2 on the Call Off Expiry Date there may be a relevant transfer for the purposes of the Employment Regulations and Part D of Call Off Schedule 12 (Staff Transfer) will apply.

27.3 [If the Parties cannot agree whether or not based upon a reasonable assessment of the facts on the Call Off Commencement Date there is a situation to which the Employment Regulations may apply, the Customer shall determine whether Clause 27.1 or 27.2 applies based on a reasonable assessment of the evidence available to it. In assisting the Customer to make such determination, the Supplier and any Former Supplier shall be permitted to make representations to the Customer within such time period as the Customer may reasonably specify.]

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

[Guidance Note: Customers conducting a Further Competition will need to consider amending this Clause 27 (Staff Transfer) to reflect any Staff Transfer requirements other than those described in Clause 27.2].

28. SUPPLY CHAIN RIGHTS AND PROTECTION

28.1 Key Sub-Contractors

28.1.1 The Key Sub-Contractors shall be as listed in Framework Schedule 7 (Key Sub-Contractors).

28.2 Retention of Legal Obligations

28.2.1 Notwithstanding the Supplier's right to sub-contract pursuant to Clause 22 of the Framework Agreement (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

28.2.2 An obligation herein on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that the Supplier Personnel also do, or refrain from doing, such act or thing.

G. PROPERTY MATTERS

29. CUSTOMER PREMISES

29.1 Licence to occupy Customer Premises

29.1.1 Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Call Off Contract. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Call Off Contract and in accordance with Call Off Schedule 11 (Exit Management).

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

concurrently on such Customer Premises as the Customer may reasonably request.

- 29.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2.1.3(a) (Due Diligence) and set out in the Order Form (or elsewhere in this Call Off Contract), should the Supplier require modifications to the Customer Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this Clause 29.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 29.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Customer Premises and conduct of personnel at the Customer Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 29.1.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Call Off Contract, the Customer retains the right at any time to use any Customer Premises in any manner it sees fit.

29.2 Security of Customer Premises

- 29.2.1 The Customer shall be responsible for maintaining the security of the Customer Premises in accordance with the Security Policy. The Supplier shall comply with the Security Policy and any other reasonable security requirements of the Customer while on the Customer Premises.
- 29.2.2 The Customer shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

30. CUSTOMER PROPERTY

- 30.1 Where the Customer issues Customer Property free of charge to the Supplier such Customer Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Customer Property.
- 30.2 The Supplier shall not in any circumstances have a lien or any other interest on the Customer Property and at all times the Supplier shall possess the Customer Property as fiduciary agent and bailee of the Customer.
- 30.3 The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Customer Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Customer Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.
- 30.4 The Customer Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.

- 30.5 The Supplier shall maintain the Customer Property in good order and condition (excluding fair wear and tear) and shall use the Customer Property solely in connection with this Call Off Contract and for no other purpose without Approval.
- 30.6 The Supplier shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.
- 30.7 The Supplier shall be liable for all loss of, or damage to the Customer Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Customer Cause. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Customer Property.

31. SUPPLIER EQUIPMENT

- 31.1 Unless otherwise stated in the Order Form (or elsewhere in this Call Off Contract), the Supplier shall provide all the Supplier Equipment necessary for the provision of the Services.
- 31.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.
- 31.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Call Off Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.
- 31.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Supplier's property located on Customer Premises which is due to the negligent act or omission of the Customer.
- 31.5 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Call Off Contract, including the Service Level Performance Measures.
- 31.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.
- 31.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
 - 31.7.1 remove from the Customer Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Call Off Contract; and
 - 31.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.

32. MAINTENANCE OF THE ICT ENVIRONMENT

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

H. INTELLECTUAL PROPERTY AND INFORMATION

33. INTELLECTUAL PROPERTY RIGHTS

33.1 Allocation of title to IPR

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

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

33.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 33.1, 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).

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

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

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

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software (including any Supplier Background IPR or Third Party IPR that are embedded in or which are an integral part of the Specially Written Software) which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate such Specially Written Software;
- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "**Software Supporting Materials**"); and
- (c) the Project Specific IPR including but not limited to the right to copy, adapt, publish (including on the ICT Environment) and distribute such Project Specific IPR.

33.2.2 The Supplier shall:

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

33.2.3 The Supplier acknowledges and agrees that the ownership of the media referred to in Clause 33.2.2(b) shall vest in the Customer upon their receipt by the Customer.

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

33.3.1 The Supplier hereby grants to the Customer a perpetual, royalty-free and non-exclusive licence to use, copy, modify, amend and distribute:

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

33.3.2 Not Used.

33.3.3 In the event the licence of the Supplier Software or the Supplier Background IPR is terminated pursuant to Clause 33.3.2), the Customer shall:

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

33.4 Customer's right to sub-license

33.4.1 The Customer shall be freely entitled to sub-license the rights granted to it pursuant to Clause 33.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR).

33.4.2 The Customer may sub-license:

- (a) the rights granted under Clause 33.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-license is on terms no broader than those granted to the Customer; and
 - (ii) the sub-license only authorises the third party to use the rights licensed in Clause 33.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and
- (b) the rights granted under Clause 33.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPR provided that the sub-license is on terms no broader than those granted to the Customer.

33.5 Customer's right to assign/novate licences

33.5.1 The Customer:

- (a) shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 33.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR); and

- (b) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 33.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to:
 - (i) a Central Government Body; or
 - (ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.
- (c) Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 33.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 33.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR). If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 33.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and Clause 33.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR).
- (d) If a licence granted in Clause 33.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 33.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) is novated under Clause 33.5.1(b) or there is a change of the Customer's status pursuant to Clause 33.5.1(c) (both such bodies being referred to as the "Transferee"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

33.6 Third Party IPR and Third Party Software

- 33.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR and any Third Party Software which is not commercial off-the-shelf software grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 33.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) and Clause 33.5.1(b) (Customer's right to assign/novate licences).
- 33.6.2 The Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Customer on terms no less favourable than such software is usually made available.

33.7 Licence granted by the Customer

- 33.7.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call Off Contract Period to use the Customer Software, the Customer Background IPR and the Customer Data solely to the extent necessary for providing the Services in accordance with this Call Off Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
 - (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 34.4 (Confidentiality); and
 - (b) the Supplier shall not without Approval, which the Customer shall have the sole and absolute right to grant or deny, use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

33.8 Termination of licenses

- 33.8.1 Subject to Clauses 33.3.2 and/or 33.3.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR), all licences granted pursuant to this Clause 33 (Intellectual Property Rights) (other than those granted pursuant to Clause 33.6.2 (Third Party IPR and Third Party Software) and 33.7.1 (Licence granted by the Customer)) shall survive the Call Off Expiry Date.
- 33.8.2 The Supplier shall, if requested by the Customer in accordance with Call Off Schedule 11 (Exit Management), grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPR, Third Party IPR and/or Third Party Software on terms equivalent to those set out in Clause 33.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 33.8.3 The licence granted pursuant to Clause 33.7.1 (Licence granted by the Customer) and any sub-licence granted by the Supplier in accordance with Clause 33.7.1 (Licence granted by the Customer) shall terminate automatically on the Call Off Expiry Date and the Supplier shall:
- (a) immediately cease all use of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be);
 - (b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data, provided that if the Customer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Customer Software, Customer Background IPR and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Customer Software, Customer Background IPR and/or Customer Data.

33.9 IPR Indemnity

- 33.9.1 The Supplier shall at during and after the Call Off Contract Period, on written demand indemnify the Customer against all Losses incurred by, awarded against or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 33.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;

- (iii) there is no additional cost to the Customer; and
- (iv) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Services.

33.9.3 If the Supplier elects to procure a licence in accordance with Clause 33.9.2(a) or to modify or replace an item pursuant to Clause 33.9.2(b), but this has not avoided or resolved the IPR Claim, then:

- (i) the Customer may terminate this Call Off Contract by written notice with immediate effect; and
- (ii) without prejudice to the indemnity set out in Clause 33.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute services including the additional costs of procuring, implementing and maintaining the substitute items.

33.9.4 The provisions of Clauses 33.9.1 to 33.9.3 (inclusive) shall not apply to the extent that any IPR Claim is caused by any use by or on behalf of the Customer of the Software in a manner not reasonably to be inferred from the description of the Services in Call Off Schedule 2 (Services) or the provisions of this Call Off Contract.

33.9.5 The Supplier shall promptly notify the Customer (in writing) of any IPR Claim.

33.9.6 The Customer shall:

- (a) notify the Supplier in writing of any IPR Claim of which it is aware;
- (b) allow (subject to Clause 33.9.7) the Supplier to conduct all negotiations and proceedings and provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and
- (c) not, without first consulting with the Supplier, make an admission relating to the IPR Claim.

33.9.7 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the Customer into disrepute.

34. SECURITY AND PROTECTION OF INFORMATION

34.1 Security Requirements

34.1.1 The Supplier shall comply with the Security Policy and the requirements of Call Off Schedule 8 (Security) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

34.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.

34.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may propose a Variation to the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call Off Contract Charges shall then be subject to the Variation Procedure.

34.1.4 Until and/or unless a change to the Call Off Contract Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Services in accordance with its existing obligations.

34.2 Malicious Software

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

34.2.2 Notwithstanding Clause 34.2.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.

34.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 34.2.2 shall be borne by the Parties as follows:

- (a) by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Customer has waived the obligation set out in Clause 34.2.1) or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
- (b) by the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived its obligation set out in Clause 34.2.1) or the Customer Data (whilst the Customer Data was under the control of the Customer).

34.3 Protection of Customer Data

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

34.3.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call Off Contract or as otherwise Approved by the Customer.

34.3.3 To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified in this Call Off Contract and in any event as specified by the Customer from time to time in writing.

34.3.4 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.

34.3.5 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).

34.3.6 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).

34.3.7 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

34.3.8 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Supplier may:

- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Call Off Schedule 10 (Business Continuity and Disaster Recovery) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
- (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Call Off Schedule 10 (Business Continuity and Disaster Recovery)

34.4 Confidentiality

34.4.1 For the purposes of this Clause 34.4, 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.

34.4.2 Except to the extent set out in this Clause 34.4 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:

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

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

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 34.6 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;

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

34.4.4 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.

34.4.5 Subject to Clauses 34.4.2 and 34.4.7, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:

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

34.4.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 34.4.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.

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

- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 34.4.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Call Off Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer.

34.4.8 Nothing in this Clause 34.4 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use

does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

34.4.9 In the event that the Supplier fails to comply with Clauses 34.4.2 to 34.4.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

34.5 Transparency

34.5.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Contract is not Confidential Information. The Customer shall determine whether any of the content of this Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

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

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

34.6 Freedom of Information

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

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

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

34.7 Protection of Personal Data

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

34.7.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call Off Contract;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in Clauses 34.1 (Security Requirements) and 34.3 (Protection of Customer Data);
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call Off Contract)
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under this Clause 34.7.2 and Clauses 34.1 (Security Requirements), 34.3 (Protection of Customer Data) and 34.4 (Confidentiality);
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Customer within five (5) Working Days if it receives:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint,

communication or request made (as referred to at Clause 34.7.2(e)), including by promptly providing:

- (i) the Customer with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 34.7.2 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

34.7.3 [The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the UK]. [Guidance Note: This is an alternative to the standard clause (below) where UK-only Personal Data Processing is required. Only one or other of the versions apply. Delete the version not required]

The Supplier shall not Process or otherwise transfer any Personal Data in or to any Restricted Country except in accordance with this Clause 34.7.3. Where the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the following provisions shall apply:

- (a) the Supplier shall propose a Variation to the Customer which, if it is agreed by the Customer, shall be dealt with in accordance with the Variation Procedure and Clauses 34.7.3(b) to 34.7.3(c);
- (b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
 - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
 - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with 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 to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:

- (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and
- (ii) procuring that any Key Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (A) a direct data processing agreement with the Customer on such terms as may be required by the Customer; or
 - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-Contractor relating to the relevant Personal Data transfer, and

and the Supplier acknowledges that in each case this may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

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

35. PUBLICITY AND BRANDING

35.1 The Supplier shall not:

- 35.1.1 make any press announcements or publicise this Call Off Contract in any way; or
- 35.1.2 use the Customer's name or brand in any promotion or marketing or announcement of orders,
- 35.1.3 without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed).

35.2 Each Party acknowledges to the other that nothing in this Call Off Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Goods, 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.

I. LIABILITY AND INSURANCE

36. LIABILITY

36.1 Unlimited Liability

36.1.1 Neither Party excludes or limits its liability for:

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

- (b) bribery or Fraud by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be excluded or limited by Law.

36.2 Financial Limits

36.2.1 Subject to Clause 36.1 (Unlimited Liability), the Supplier's total aggregate liability:

- (a) in respect of all:
 - (i) Service Credits; and
 - (ii) Compensation for Critical Service Level Failure;incurred in any rolling period of 12 Months shall be subject in aggregate to the Service Credit Cap;
- (b) in respect of all other Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:
 - (i) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, **one million pounds (£1,000,000)**;
 - (ii) in relation to any Defaults occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, the higher of **one million pounds (£1,000,000)** in each such Call Off Contract Year or a sum equal to **one hundred and fifty percent (150%)** of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
 - (iii) in relation to any Defaults occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, the higher of **one million pounds (£1,000,000)** in each such Call Off Contract Year or a sum equal to **one hundred and fifty percent (150%)** of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period,

unless a different aggregate limit or percentage under this Clause (b) is stipulated by the Customer during a Further Competition Procedure.

[Guidance Note: The Customer should consider if the above default limits to the Supplier's liability under Clause 36 are appropriate. Customers may subsequently stipulate different financial limits during a Further Competition Procedure but cannot materially depart from those set by the Authority at the framework procurement stage]

36.2.2 Subject to Clauses 36.1 (Unlimited Liability) and 36.2 (Financial Limits) and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:

- (a) in relation to any Customer Causes occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, a sum equal to **one million pounds (£1,000,000)**;
- (b) in relation to any Customer Causes occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
- (c) in relation to any Customer Causes occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.

36.3 Non-recoverable Losses

36.3.1 Subject to Clause 36.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:

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

36.4 Recoverable Losses

36.4.1 Subject to Clause 36.2 (Financial Limits), and notwithstanding Clause 36.3.1 (Non-recoverable Losses), the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

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

36.5 Miscellaneous

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

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

36.5.3 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 36.2 (Financial Limits).

37. INSURANCE

37.1 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 28 (Insurance) of the Framework Agreement, the

Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Framework Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract as the Customer may stipulate during a Further Competition Procedure.

- 37.2 The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause 37.1 above for six (6) years after the Call Off Expiry Date.
- 37.3 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause 37.1 or at the Supplier's option a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 37.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause 37.1, the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 37.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 37.6 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

J. REMEDIES AND RELIEF

38. CUSTOMER REMEDIES FOR DEFAULT

38.1 Remedies

- 38.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising (including under Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 12.5 (Service Levels and Service Credits) and 6.4.1(b) (Delay Payments), if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:
- (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Customer's instructions;
 - (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Call Off Contract;

- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
- (i) instruct the Supplier to comply with the Rectification Plan Process;
 - (ii) suspend this Call Off Contract (whereupon the relevant provisions of Clause 44 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
 - (iii) without terminating or suspending the whole of this Call Off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 44 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Good and/or Services;

38.1.2 Where the Customer exercises any of its step-in rights under Clauses 38.1.1(c)(ii) or 38.1.1(c)(iii), the Customer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Replacement Services.

38.2 Rectification Plan Process

38.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 38.1.1(c)(i):

- (a) the Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.
- (b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a root cause analysis;
 - (ii) the actual or anticipated effect of the Default; and
 - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

38.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined

by an expert in accordance with paragraph 5 of Call Off Schedule 13 (Dispute Resolution Procedure).

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

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

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

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

39. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

39.1 If the Supplier has failed to:

- 39.1.1 Achieve a Milestone by its Milestone Date;
- 39.1.2 provide the Services in accordance with the Service Levels;
- 39.1.3 comply with its obligations under this Call Off Contract,

(each a "Supplier Non-Performance"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 16 (Supplier Notification of Customer Cause)):

- (a) the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (b) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.6 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
 - (ii) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;

- (iii) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and/or
- (d) where the Supplier Non-Performance constitutes a Service Level Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits;
 - (ii) the Customer shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 13 (Critical Service Level Failure); and
 - (iii) the Supplier shall be entitled to invoice for the Call Off Contract Charges for the provision of the relevant Services affected by the Customer Cause,
 - (iv) in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Customer Cause.

39.2 In order to claim any of the rights and/or relief referred to in Clause 39.1, the Supplier shall:

39.2.1 comply with its obligations under Clause 16 (Notification of Customer Cause); and

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

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

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

39.4 Without prejudice to Clauses 7.7 (Continuing obligation to provide the Services):

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

39.4.2 the nature and/or extent of the relief claimed by the Supplier,
 either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

39.5 Any Variation that is required to the Implementation Plan or to the Call Off Contract Charges pursuant to this Clause 39 shall be implemented in accordance with the Variation Procedure.

40. FORCE MAJEURE

- 40.1 Subject to the remainder of this Clause 40 (and, in relation to the Supplier, subject to its compliance with its obligations in Clause 14 (Business Continuity and Disaster Recovery)), a Party may claim relief under this Clause 40 from liability for failure to meet its obligations under this Call Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 40.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 40.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 40 to the extent that consequences of the relevant Force Majeure Event:
- 40.3.1 are capable of being mitigated by any of the provision of any Services including the BCDR Services, but the Supplier has failed to do so; and/or
 - 40.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Call Off Contract.
- 40.4 Subject to Clause 40.5, 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.
- 40.5 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.
- 40.6 Where, as a result of a Force Majeure Event:
- 40.6.1 an Affected Party fails to perform its obligations in accordance with this Call Off Contract, then during the continuance of the Force Majeure Event:
 - (a) the other Party shall not be entitled to exercise any rights to terminate this Call Off Contract in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
 - (b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Cause arising as a result of such failure;
 - 40.6.2 the Supplier fails to perform its obligations in accordance with this Call Off Contract:
 - (a) the Customer shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 38.1.1(b) and 38.1.1(c) (Customer Remedies for Default) as a result of such failure;

- (ii) to receive Delay Payments pursuant to Clause 6.4.1 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (iii) to receive Service Credits or withhold and retain any of the Call Off Contract Charges as Compensation for Critical Service Level Failure pursuant to Clause 13 (Critical Service Level Failure) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; and
- (b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.

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

40.8 Relief from liability for the Affected Party under this Clause 40 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract and shall not be dependent on the serving of notice under Clause 40.7.

K. TERMINATION AND EXIT MANAGEMENT

41. CUSTOMER TERMINATION RIGHTS

41.1 [Termination in Relation to Guarantee

41.1.1 Where the Supplier has procured a Call Off Guarantee pursuant to Clause 4 (Call Off Guarantee), the Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where:

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

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

41.2 Termination on Material Default

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

- (a) the Supplier commits a Critical Service Level Failure;
- (b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading;
- (c) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clauses 36.2.1(a) and 36.2.1(b) (Liability);

- (d) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: 6.2.3 (Implementation Plan), 7.4.2 (Provision of Services), 13.1 (Critical Service Failure), 15.4 (Disruption), 20.5 (Records, Audit Access and Open Book Data), 24 (Benchmarking), 34.4.9 (Confidentiality), 50.6.2 (Prevention of Fraud and Bribery);
- (e) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Customer, capable of remedy; and/or
- (f) the Supplier commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer in accordance with the Rectification Plan Process;

41.2.2 For the purpose of Clause 41.2.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

41.3 Termination in Relation to Financial Standing

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

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

41.4 Termination on Insolvency

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

41.5 Termination on Change of Control

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

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

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

41.6 Termination Without Cause

41.6.1 Following the expiration of twelve (12) Months from the Call Off Commencement Date, the Customer shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving at least thirty (30) Working Days written notice.

41.7 Termination in Relation to Framework Agreement

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

41.8 Termination In Relation to Benchmarking

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

41.9 Termination in Relation to Variation

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

41.10 Termination in Relation to Promoting Tax Compliance

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

- (a) the warranty given by the Supplier pursuant to Clause 6.2.6 of the Framework Agreement 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 23; or
- (c) the Supplier fails to provide details of proposed mitigating factors as required by Clause 23.1.2 (a) which in the reasonable opinion of the Customer, are acceptable

42. SUPPLIER TERMINATION RIGHTS

42.1 Termination on Customer Cause for Failure to Pay

42.1.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call Off Contract if the Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract which in aggregate exceeds £50,000 and such amount remains outstanding forty (40) Working Days (the “Undisputed Sums Time Period”) after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

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

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 22.3 (Retention and Set off).

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

43. TERMINATION BY EITHER PARTY

43.1 Termination for continuing Force Majeure Event

43.1.1 Either Party may, by, by issuing a Termination Notice to the other Party terminate this Call Off Contract if, in accordance with Clause 40.6.1(a) (Force Majeure).

44. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

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

44.2 Any suspension of this Call Off Contract under Clause 44.1 shall be for such period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

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

44.3.1 an increase in the Call Off Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 41 (Customer Termination Rights) except Clause 41.6 (Termination Without Cause); and

44.3.2 reject the Variation.

45. CONSEQUENCES OF EXPIRY OR TERMINATION

45.1 **Consequences of termination under Clauses [41.1 (Termination in Relation to Guarantee),] 41.2 (Termination on Material Default), 41.3 (Termination in Relation to Financial Standing), 41.7 (Termination in Relation to Framework Agreement) and 41.841.910 (Termination in Relation to Variation)**

45.1.1 Where the Customer:

(a) terminates (in whole or in part) this Call Off Contract under any of the Clauses [41.1 (Termination in Relation to Guarantee),] 41.2 (Termination on Material Default), 41.3 (Termination in Relation to Financial Standing), 41.7 (Termination in Relation to Framework Agreement) and 41.841.910 (Termination in Relation to Variation); and

(b) then makes other arrangements for the supply of the Services,

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

45.2 Consequences of termination under Clauses 41.6 (Termination without Cause) and 42.1 (Termination on Customer Cause for Failure to Pay)

45.2.1 Where:

- (a) the Customer terminates (in whole or in part) this Call Off Contract under Clauses Clause 41.6 (Termination without Cause); or
- (b) the Supplier terminates this Call Off Contract pursuant to Clause 42.1 (Termination on Customer Cause for Failure to Pay),

the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 41.6 (Termination without Cause).

45.2.2 The Customer shall not be liable under Clause 45.2.1 to pay any sum which:

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

45.3 Consequences of termination under Clause 43.1 (Termination for Continuing Force Majeure Event)

45.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause 43.1 (Termination for Continuing Force Majeure Event).

45.4 Consequences of Termination for Any Reason

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

- (a) termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 20 (Records, Audit Access & Open Book Data), 33 (Intellectual Property Rights), 34.4 (Security and Protection of Information), , 36 (Liability), 37 (Insurance) 45 (Consequences of Expiry or Termination), 48 (Waiver and Cumulative Remedies) 51 (Severance), 53 (Entire Agreement), 54 (Third Party Rights), 55 (Notices), 56 (Dispute Resolution) and 57 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), Call Off Schedule 11 (Exit Management), Call Off Schedule 12 (Staff Transfer), Call Off Schedule 13 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Call

Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

45.5 Exit management

45.5.1 The Parties shall comply with the exit management provisions set out in Call Off Schedule 11 (Exit Management).

L. MISCELLANEOUS AND GOVERNING LAW

46. COMPLIANCE

46.1 Health and Safety

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

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

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

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

46.2 Equality and Diversity

46.2.1 The Supplier shall:

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

46.3 Official Secrets Act and Finance Act

46.3.1 The Supplier shall comply with the provisions of:

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

46.4 Environmental Requirements

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

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

47. ASSIGNMENT AND NOVATION

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

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

47.2.1 any other Contracting Body; or

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

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

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 47.2.

47.3 A change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 47.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.

47.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a body which is not a Contracting Body or if a body which is not a Contracting Body succeeds the Customer (both "**Transferee**" in the rest of this Clause) the right of termination of the Customer in Clause 41.4 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in Clause 41.4 (Termination on Insolvency) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee).

48. WAIVER AND CUMULATIVE REMEDIES

48.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 55 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Call Off Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of.

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

49. RELATIONSHIP OF THE PARTIES

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

Off Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

50. PREVENTION OF FRAUD AND BRIBERY

- 50.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Call Off Commencement Date:
- 50.1.1 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
 - 50.1.2 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.
- 50.2 The Supplier shall not during the Call Off Contract Period:
- 50.2.1 commit a Prohibited Act; and/or
 - 50.2.2 do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 50.3 The Supplier shall during the Call Off Contract Period:
- 50.3.1 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;
 - 50.3.2 keep appropriate records of its compliance with its obligations under Clause 50.3.1 and make such records available to the Customer on request;
 - 50.3.3 if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Call Off Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
 - 50.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 50.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 50.1, or has reason to believe that it has or any of the Supplier Personnel have:
- 50.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 50.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

- 50.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call Off Contract or otherwise suspects that any person or Party directly or indirectly connected with this Call Off Contract has committed or attempted to commit a Prohibited Act.
- 50.5 If the Supplier makes a notification to the Customer pursuant to Clause 50.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with Clause 20 (Records, Audit Access and Open Book Data).
- 50.6 If the Supplier breaches Clause 50.3, the Customer may by notice:
- 50.6.1 require the Supplier to remove from performance of this Call Off Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
- 50.6.2 immediately terminate this Call Off Contract for material Default.
- 50.7 Any notice served by the Customer under Clause 50.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).

51. SEVERANCE

- 51.1 If any provision of this Call Off Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Call Off Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call Off Contract shall not be affected.
- 51.2 In the event that any deemed deletion under Clause 51.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract or materially alters the balance of risks and rewards in this Call Off Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.
- 51.3 If the Parties are unable to resolve the Dispute arising under this Clause 51 within twenty (20) Working Days of the date of the notice given pursuant to Clause 51.2, this Call Off Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Contract is terminated pursuant to this Clause 51.

52. FURTHER ASSURANCES

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

53. ENTIRE AGREEMENT

- 53.1 This Call Off Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and

extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

53.2 Neither Party has been given, nor entered into this Call Off Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call Off Contract.

53.3 Nothing in this Clause 53 shall exclude any liability in respect of misrepresentations made fraudulently.

54. THIRD PARTY RIGHTS

54.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part D of Call Off Schedule 12 (Staff Transfer) and the provisions of paragraph 9.9 of Schedule 11 (Exit Management) (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.

54.2 Subject to Clause 54.1, a person who is not a Party to this Call Off Contract has no right under the CTRPA to enforce any term of this Call Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

54.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.

54.4 Any amendments or modifications to this Call Off Contract may be made, and any rights created under Clause 54.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

55. NOTICES

55.1 Except as otherwise expressly provided within this Call Off Contract, any notices sent under this Call Off Contract must be in writing. For the purpose of this Clause 55, an e-mail is accepted as being "in writing".

55.2 Subject to Clause 55.3, the following table sets out the method by which notices may be served under this Call Off Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 55.3 and 55.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail	At the time recorded by	Properly addressed prepaid

Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery	the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	and delivered as evidenced by signature of a delivery receipt
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55.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 55.2:

55.3.1 any Termination Notice (Clause 41 (Customer Termination Rights)),

55.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 44 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 48 (Waiver and Cumulative Remedies))
- (c) Default or Customer Cause; and

55.3.3 any Dispute Notice.

55.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 55.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 55.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

55.5 This Clause 55 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

55.6 For the purposes of this Clause 55, the address and email address of each Party shall be the address and email address set out in the Order Form.

56. DISPUTE RESOLUTION

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

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

57. GOVERNING LAW AND JURISDICTION

57.1 This Call Off Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

57.2 Subject to Clause 56 (Dispute Resolution) and Call Off Schedule 13 (Dispute Resolution Procedure) (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.

CALL OFF SCHEDULE 1: DEFINITIONS

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

"Achieve"	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Strategy Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "Achieved" and "Achievement" shall be construed accordingly;
"Achieved Service Level"	means the actual level of performance of a Service achieved by the Supplier in relation to a Service Level Performance Measure for a Service Period;
"Acquired Rights Directive"	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Additional Clauses"	means the additional Clauses in Call Off Schedule 15 (Alternative and/or Additional Clauses) and any other additional Clauses stipulated by the Customer during a Further Competition Procedure and set out in the Order Form or elsewhere in this Call Off Contract;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Alternative Clauses"	means the alternative Clauses in Call Off Schedule 15 (Alternative and/or Additional Clauses) and any other alternative Clauses stipulated by the Customer during a Further Competition Procedure and set out in the Order Form or elsewhere in this Call Off Contract;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Approved Sub-Licensee"	means any of the following: <ul style="list-style-type: none">a) a Central Government Body;b) any third party providing services to a Central Government Body; and/orc) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;
"Auditor"	means:

	<ul style="list-style-type: none"> a) the Customer's internal and external auditors; b) the Customer's statutory or regulatory auditors; c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office d) HM Treasury or the Cabinet Office e) any party formally appointed by the Customer to carry out audit or similar review functions; and f) successors or assigns of any of the above;
"Available"	a Service shall be "Available" when End Users are able to access and use all its functions at a level that enables them to carry out their normal duties. Availability shall be construed accordingly;
"Authority"	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") as represented by Government Procurement Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
"BCDR Services"	means the Business Continuity Services and Disaster Recovery Services as defined in Call Off Schedule 10 (Business Continuity and Disaster Recovery);
"BCDR Plan"	means the Supplier's plan relating to business continuity and disaster recovery as referred to in Clause 14 (Business Continuity and Disaster Recovery) and Call Off Schedule 10 (Business Continuity and Disaster Recovery);
"Call Off Agreement"	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
"Call Off Commencement Date"	means the date of commencement of this Call Off Contract set out in paragraph 1.1 of the Order Form;
"Call Off Contract"	means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Order Form and the Call Off Terms;
"Call Off Contract Charges"	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract, as set out in Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Call Off Contract less any Deductions;
"Call Off Contract Period"	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date or date of earlier termination; and in no event exceed a

maximum duration of **seven (7)** years;

"Call Off Contract Year"	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;
"Call Off Expiry Date"	means: <ul style="list-style-type: none">a) the end date of the Call Off Initial Period unless the right to extend is exercised pursuant to Clause 5 (Call Off Contract Period) in which case it means the end date of the Call Off Extension Period; orb) if this Call Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call Off Contract;
"Call Off Extension Period"	means the extension term of this Call Off Contract from the end date of the Call Off Initial Period to the end date of the extension period stated in the Order Form;
["Call Off Guarantee"	means a deed of guarantee in favour of the Customer in the form set out in Framework Schedule 13 (Guarantee) granted pursuant to Clause 7 (Call Off Guarantee);]
["Call Off Guarantor"	means the person acceptable to the Customer to give a Call Off Guarantee;]
"Call Off Initial Period"	means the initial term of this Call Off Contract from the Call Off Commencement Date to the end date of the initial term stated in the Order Form; and for Direct Award Call Off Contracts shall be three (3) years;
"Call Off Schedule"	means a schedule to this Call Off Contract;
"Call Off Terms"	means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Services, together with the Call Off Schedules hereto;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none">a) Government Department;b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);c) Non-Ministerial Department; ord) Executive Agency;
"Change in Law"	means any change in Law which impacts on the supply of the Services and performance of the Call Off Terms which comes into force after the Call Off Commencement Date;
"Change of Control"	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	means the charges raised under or in connection with a

	Call Off Agreement from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure;
"Charging Structure"	means the structure to be used in the establishment of the charging model which is applicable to each Call Off Agreement, which structure is set out in Framework Schedule 3 (Framework Prices and Charging Structure);
"Commercially Sensitive Information"	means the Confidential information listed in the Order Form (if any) comprising of a commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
"Compensation for Critical Service Level Failure"	has the meaning given to it in Clause 13.1.2 (Critical Service Level Failure);
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
"Continuous Improvement Plan"	means a plan for improving the provision of the Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);
"Contracting Body"	means the Authority, the Customer and any other bodies listed in paragraph VI.3 of the OJEU Notice;
"Control"	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
["Conviction"]	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;]
"Costs"	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services: <ul style="list-style-type: none"> a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of

engaging the Supplier Personnel, including:

- i) base salary paid to the Supplier Personnel;
 - ii) employer's national insurance contributions;
 - iii) pension contributions;
 - iv) car allowances;
 - v) any other contractual employment benefits;
 - vi) staff training;
 - vii) work place accommodation;
 - viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and
 - ix) reasonable recruitment costs, as agreed with the Customer;
- b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Customer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
- c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services;

but excluding:

- a) Overhead;
- b) financing or similar costs;
- c) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Call Off Contract Period whether in relation to Supplier Assets or otherwise;
- d) taxation;
- e) fines and penalties;
- f) amounts payable under Clause 24 (Benchmarking); and
- g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

"Critical Service Level Failure"

means any instance of critical service level failure specified in Annex 2 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance

	Monitoring);
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown Body"	means any department, office or executive agency of the Crown;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Customer"	means the customer(s) identified in the Order Form;
"Customer Assets"	means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Services;
"Customer Background IPR"	means: <ul style="list-style-type: none"> a) IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, processes and procedures; b) IPRs created by the Customer independently of this Call Off Contract; and/or c) Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract; but excluding IPRs owned by the Customer subsisting in the Customer Software;
"Customer Cause"	means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Customer is liable to the Supplier;
"Customer Data"	means: <ul style="list-style-type: none"> a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which: <ul style="list-style-type: none"> i) are supplied to the Supplier by or on behalf of the Customer; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or b) any Personal Data for which the Customer is the

	Data Controller;
"Customer Premises"	means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for provision of the Services (or any of them);
"Customer Property"	means the property, other than real property and IPR, including the Customer System issued or made available to the Supplier by the Customer in connection with this Call Off Contract;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to this Call Off Contract;
"Customer Responsibilities"	means the responsibilities of the Customer set out in the Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel) and any other responsibilities of the Customer in the Order Form or agreed in writing between the Parties from time to time in connection with this Call Off Contract;
"Customer Software"	means any software identified as such in the Order Form together with all other software which is not identified as such in the Order Form but which is owned by or licensed to the Customer and which is or will be used by the Supplier for the purposes of providing the Services;
"Customer System"	means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Call Off Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the Services;
"Customer's Confidential Information"	means: <ul style="list-style-type: none"> a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Customer (including all Customer Background IPR and Project Specific IPR); b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Customer's attention or into the Customer's possession in connection with this Call Off Contract; and c) information derived from any of the above;
"Data Controller"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Processor"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Protection"	means the Data Protection Act 1998 and all applicable

Legislation" or "DPA"	laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
"Deductions"	means all Service Credits, Delay Payments or any other deduction which the Customer is paid or is payable under this Call Off Contract;
"Default"	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;
"Defect"	means any of the following: <ul style="list-style-type: none"> a) any error, damage or defect in the manufacturing of a Deliverable; or b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract; or d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract;
"Delay"	means: <ul style="list-style-type: none"> a) a delay in the Achievement of a Milestone by its Milestone Date; or b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date

	set out in the Implementation Plan;
"Delay Payments"	means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified Part A of Call Off Schedule 4 (Milestones, Customer Responsibilities and Key Personnel);;
"Deliverable"	means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date listed Part A of Schedule 4 (Milestones, Customer Responsibilities and Key Personnel) or at any other stage during the performance of this Call Off Contract;
"Delivery"	means, in respect of Goods, the time at which the Goods have been delivered and, in respect of Services, the time at which the Services have been provided or performed by the Supplier as confirmed by the issue by the Customer of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Call Off Contract and accepted by the Customer and "Deliver" and "Delivered" shall be construed accordingly;
"Dependent Service"	means a Service provided by the Supplier, which is dependent on another Service provided by the Supplier to function;
"Disclosing Party"	has the meaning given to it in Clause 34.4 (Confidentiality);
"Dispute"	means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Call Off Schedule 13 (Dispute Resolution Procedure);
"Documentation"	means all documentation as: <ul style="list-style-type: none"> a) is required to be supplied by the Supplier to the Customer under this Call Off Contract; b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services; c) is required by the Supplier in order to provide the Services; and/or d) has been or shall be generated for the purpose of providing the Services;

"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"Downtime"	means any period of time within the Service Hours during which a Service is not Available, excluding Planned Downtime;
"Due Diligence Information"	means any information supplied to the Supplier by or on behalf of the Customer prior to the Call Off Commencement Date;
["Emergency Maintenance"	<p>means ad hoc and unplanned maintenance provided by the Supplier where:</p> <ul style="list-style-type: none"> a) the Customer reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or b) the Supplier reasonably suspects that the ICT Environment or the Services, or any part the ICT Environment or the Services, has or may have developed a fault;]
"Employee Liabilities"	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"> a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; b) unfair, wrongful or constructive dismissal compensation; c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; d) compensation for less favourable treatment of part-time workers or fixed term employees;

- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- f) claims whether in tort, contract or statute or otherwise;
- g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"Employment Regulations"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

End User

means an individual who uses the Service;

"Environmental Information Regulations or EIRs"

means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Customer;

"Environmental Policy"

means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

"Euro Compliant"

means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Customer's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):

- a) be able to perform all such functions in any number of currencies and/or in Euros;
- b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK,

dual denominations;

- c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
- d) incorporate protocols for dealing with rounding and currency conversion;
- e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
- f) permit the input of data in euro and display an outcome in euro where such data, supporting the Customer's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

"Expedited Dispute Timetable"

means the timetable set out in paragraph 5 of Schedule 13 (Dispute Resolution Procedure);

"FOIA"

means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

"Force Majeure"

means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:

- a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Call Off Contract;
- b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- c) acts of the Crown, local government or Regulatory Bodies;
- d) fire, flood or any disaster; and
- e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
 - i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and
 - ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and

	iii) any failure of delay caused by a lack of funds;
"Force Majeure Notice"	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Former Supplier"	means a supplier supplying the services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
"Framework Agreement"	means the framework agreement between the Authority and the Supplier referred to in the Order Form;
"Framework Commencement Date"	means the date of commencement of the Framework Agreement as stated in the Call Off Schedule 1 (Definitions);
"Framework Period"	means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;
"Framework Price(s)"	means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);
"Framework Schedule"	means a schedule to the Framework Agreement;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"Further Competition Procedure"	means the award procedure described in paragraph 3 of Framework Schedule 5 (Call Off Procedure);
Full Audit Transparency	means Auditor access to those elements set out in Clause 20.2.3
"General Anti-Abuse Rule"	means the legislation in Part 5 of the Finance Act 2013 and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for

	Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	means Her Majesty's Revenue and Customs;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"ICT Environment"	means the Customer System and the Supplier System;
"ICT Policy"	means the Customer's ICT policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
	[Guidance Note: if the Customer wants the Supplier to comply with its ICT Policy, ensure it is handed over to the Customer BEFORE the Call Off Commencement Date]
"Impact Assessment"	has the meaning given to it in Clause 21.1.3 (Variation Procedure);
"Implementation Plan"	means the plan specified in paragraph 2.4 of the Order Form;
"Information"	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
"Incident"	means an unplanned incident or interruption to Services, reduction in the quality of the Services or event which could affect the Services in the future;
"Incident Resolution Time"	means the time taken by the Supplier to Resolve an Incident, as set out in Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Incident Severity Level"	means the severity levels for Incidents as set out in Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Insolvency Event"	means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable): <ul style="list-style-type: none"> a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment

of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) where the Supplier or Framework Guarantor or Call Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

"Intellectual Property Rights" or "IPR"

means

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

"IPR Claim"

means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of its obligations under this Call Off Contract;

"Key Performance Indicators" or "KPIs"

means the performance measurements and targets in respect of the Supplier's performance of the Framework Agreement set out in Part B of Framework Schedule 2

	(Services and Key Performance Indicators);
"Key Personnel"	means the individuals (if any) identified as such in Part C of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel);
"Key Role(s) "	has the meaning given to it in Clause 25.1 (Key Personnel);
"Key Sub-Contract"	means each Sub-Contract with a Key Sub-Contractor;
"Key Sub-Contractor"	means any Sub-Contractor: <ul style="list-style-type: none"> a) listed in Framework Schedule 7 (Key Sub-Contractors); b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;
"Licensed Software"	means all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Customer for the purposes of or pursuant to this Call Off Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
["Maintenance Schedule"	has the meaning given to it in Clause 32.1 (Maintenance of the ICT Environment);]
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software

	is introduced wilfully, negligently or without knowledge of its existence;
"Man Day"	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Man Hours"	means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Milestone"	means an event or task described in Part A of Schedule 4 (Milestones, Customer Responsibilities and Key Personnel) which, if applicable, must be completed by the relevant Milestone Date;
"Milestone Date"	means the target date for Achievement of a Milestone as set out against the relevant Milestone in Part A of Call Off Schedule 4 (Milestones, Customer Responsibilities and Key Personnel);;
"Milestone Payment"	means a payment identified in Part A of Call Off Schedule 4 (Milestones, Customer Responsibilities and Key Personnel) ;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"New Release"	means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Occasion of Tax Non Compliance"	means: <ul style="list-style-type: none"> a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of: <ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or b) the Supplier's tax affairs give rise on or after 1 April 2013 to a conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a penalty for civil fraud or

evasion;

"Open Book Data "

means complete and accurate financial and non-financial information which is sufficient to enable the Customer to verify the Call Off Contract Charges already paid or payable and Call Off Contract Charges forecast to be paid during the remainder of this Call Off Contract, including details and all assumptions relating to:

- a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- b) operating expenditure relating to the provision of the Services including an analysis showing:
 - i) the unit costs and quantity of Goods and any other consumables and bought-in services;
 - ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
 - iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and
- c) Overheads;
- d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- e) the Supplier Profit achieved over the Call Off Contract Period and on an annual basis;
- f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- h) the actual Costs profile for each Service Period.

"Open Source Software"

means computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;

"Operating Environment"

means the Customer System and the Sites;

"Order"

means the order for the provision of the Services placed by the Customer with the Supplier in accordance with the

	Framework Agreement and under the terms of this Call Off Contract;
"Order Form"	means the form, as completed and forming part of this Call Off Contract, which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied;
"Other Supplier"	means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Overhead"	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Customer or the Supplier and "Parties" shall mean both of them;
"Performance Monitoring System"	has the meaning given to it in paragraph 1.1.2 in Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Performance Monitoring Reports"	has the meaning given to it in paragraph 3.1 of Part B of Schedule 6 (Service Level, Service Credit and Performance Monitoring);
"Personal Data"	has the meaning given to it in the Data Protection Act 1998;
["Permitted Maintenance"	has the meaning given to it in Clause 32.3 (Maintenance of the ICT Environment);]
"Planned Downtime"	means the time agreed in advance in writing by the Supplier and Contracting Body within the Service Hours when a Service is not Available;
"PQQ Response"	means, where the Framework Agreement has been awarded under the Restricted Procedure, the response submitted by the Supplier to the Pre-Qualification Questionnaire issued by the Authority, and the expressions "Restricted Procedure" and "Pre-Qualification Questionnaire" shall have the meaning given to them in the Regulations;

"Processing"	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
"Provisioning"	The time taken from the placement of an order for a Service until this is available to the Customer and Provision shall be construed accordingly;
"Prohibited Act"	<p>means any of the following:</p> <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority or other Contracting Body or any other public body a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; c) committing any offence: <ul style="list-style-type: none"> i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act) ii) under legislation or common law concerning fraudulent acts; or iii) defrauding, attempting to defraud or conspiring to defraud the Customer; or iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
"Project Specific IPR"	<p>means:</p> <ul style="list-style-type: none"> a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or b) IPR in or arising as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same; <p>but shall not include the Supplier Background IPR or the Specially Written Software;</p>
"Quality Plans"	shall have the meaning given in Clause 10.2 (Standards

	and Quality);
"Recipient"	has the meaning given to it in Clause 34.4.1 (Confidentiality);
"Rectification Plan"	means the rectification plan pursuant to the Rectification Plan Process;
"Rectification Plan Process"	means the process set out in Clause 38.2 (Rectification Plan Process);
"Registers"	has the meaning given to in Call Off Schedule 11 (Exit Management);
"Regulations"	means the Public Contracts Regulations 2006 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
"Regulatory Body"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Authority or Other Contracting Body or the Supplier or its Parent Company;
"Related Supplier"	means any person who provides services to the Customer which are related to the Services from time to time;
["Relevant Conviction"	means a Conviction that is relevant to the nature of the Services to be provided or as specified by the Customer in the Order Form or elsewhere in this Call Off Contract;]
"Relevant Requirements"	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return;
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Relief Notice"	has the meaning given to it in Clause 39.2.2 (Supplier Relief Due to Customer Cause);
"Replacement Goods"	means any goods which are substantially similar to any of the Goods and which the Customer receives in substitution for any of the Goods following the Call Off Expiry Date, whether those goods are provided by the Customer internally and/or by any third party;
"Replacement Services"	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the Call Off Expiry Date, whether those services are provided by the Customer internally and/or by any third party;

"Replacement Sub-Contractor"	means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"Replacement Supplier"	means any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;
"Request for Information"	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
Resolution	means an action taken by or on behalf of the Supplier to fully repair the root cause of an Incident or to implement a workaround. Resolve and Resolved shall be construed accordingly
"Restricted Countries"	means any countries that are not within the EEA or which have not been determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;
"Satisfaction Certificate"	means the certificate materially in the form of the document contained in Annex 3 to Call Off Schedule 5 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph 3 of Call Off Schedule 8 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 3 of Call Off Schedule 8 (Security) and as updated from time to time;
"Security Policy"	means the Customer's security policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
"Service Credit Cap"	means: <ul style="list-style-type: none"> a) in the period from the Call Off Commencement Date to the end of the first Call Off Contract Year £15,000; and b) during the remainder of the Call Off Contract Period, 35% of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the period of 12 Months immediately preceding the Month in respect of which Service Credits are accrued; <p style="background-color: #00FF00; padding: 2px;">[Guidance Note: Customers undertaking a Further Competition may adjust these figures as deemed appropriate]</p>
"Service Credits"	means any service credits specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) being payable by the Supplier to

	the Customer in respect of any failure by the Supplier to meet one or more Service Levels;
“Service Desk”	means the single point of contact set up and operated by the Supplier to log, monitor and escalate Incidents, Incident Resolutions and Service Requests;
"Service Failure"	means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future;
"Service Level Failure"	means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
"Service Level Performance Criteria"	has the meaning given to it in paragraph 4.6 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Service Level Performance Measure"	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Service Level Threshold"	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Service Levels"	means any service levels applicable to the provision of the Services under this Call Off Contract specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Service Period"	has the meaning given to in paragraph 5.1 of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
“Service Hours”	Monday to Saturday 08:00 to 18:00 (excluding Bank Holidays) unless otherwise stated on the Order Form; [Guidance Note: Customers conducting Further Competitions to amend as per their requirement]
“Service Restoration”	means an action taken by or on behalf of the Supplier to return a Service to the Customer and End Users after repair and recovery from an Incident. This action must fully repair the root cause of an Incident and the Service must be able to perform in accordance with its specifications and this Contract;
"Service Transfer"	means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
"Service Transfer Date"	means the date of a Service Transfer;
"Services"	means the services to be provided by the Supplier to the Customer as referred to Annex A of Call Off Schedule 2

	(Services);
"Sites"	means: <ul style="list-style-type: none"> a) any premises (including the Customer Premises, the Supplier's premises or third party premises): <ul style="list-style-type: none"> i) from, to or at which: <ul style="list-style-type: none"> (1) the Services are (or are to be) provided; or (2) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or ii) where: any part of the Supplier System is situated; or b) any physical interface with the Customer System takes place;
"Software"	means Specially Written Software, Supplier Software and Third Party Software;
"Software Supporting Materials"	has the meaning given to it in Clause 33.2.1(b) (Licences granted by the Supplier: Specially Written Software and Project Specific IPR);
"Source Code"	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Call Off Contract;
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
"Staffing Information"	has the meaning give to it in Call Off Schedule 12 (Staff Transfer);
"Standards"	means any: <ul style="list-style-type: none"> a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;

- b) standards detailed in the specification in Framework Schedule 2 (Services and Key Performance Indicators);
- c) standards detailed by the Customer in Call Off Schedule 7 (Standards) following a Further Competition Procedure or agreed between the Parties from time to time;
- d) relevant Government codes of practice and guidance applicable from time to time.

"Sub-Contract"

means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the provision of the Services or any part thereof;

"Sub-Contractor"

means any third party engaged by the Supplier, including any Key Sub-Contractor, from time to time under a Sub-Contract permitted pursuant to the Framework Agreement and this Call Off Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;

"Supplier"

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

"Supplier Assets"

means all assets and rights used by the Supplier to provide the Services in accordance with this Call Off Contract but excluding the Customer Assets;

"Supplier Background IPR"

means

- a) Intellectual Property Rights owned by the Supplier before the Call Off Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or
- b) Intellectual Property Rights created by the Supplier independently of this Call Off Contract,

but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

"Supplier Call Off Solution"

means the Supplier's solution in response to the Customer's invitation to suppliers for formal offers to supply the Customer with the Services pursuant to a Further Competition Procedure;

"Supplier Personnel"

means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Call Off Contract;

"Supplier Equipment"	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Call Off Contract;
"Supplier Non-Performance"	has the meaning given to it in Clause 39.1 (Supplier Relief Due to Customer Cause);
"Supplier Profit"	means, in relation to a period or a Milestone (as the context requires), the difference between the total Call Off Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
"Supplier Profit Margin"	means, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Call Off Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supplier Representative"	means the representative appointed by the Supplier named in the Order Form;
"Supplier Software"	means any software which is proprietary to the Supplier (or an Affiliate of the Supplier) and identified as such in the Order Form together with all other software which is not identified as such in the Order Form but which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for the Customer to receive the benefit of and/or make use of the Services;
"Supplier System"	means the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer System);
"Supplier's Confidential Information"	means <ul style="list-style-type: none"> a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier; b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Call Off Contract;

	c) information derived from any of the above.
"Template Call Off Terms"	means the template terms and conditions in Annex 2 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
"Template Order Form"	means the template order form in Annex 1 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
"Tender"	means the tender submitted by the Supplier to the Authority on [insert date dd/mm/yyyy] and annexed to Framework Schedule 19;
	[Guidance Note: Customer to complete]
"Test" and "Testing"	means any tests required to be carried out pursuant to this Call Off Contract as set out in the Test Plan or elsewhere in this Call Off Contract and "Tested" shall be construed accordingly;
"Test Issue"	means any variance or non-conformity of the Services or Deliverables from their requirements as set out in this Call Off Contract;
"Testing Strategy Plan"	means a plan: <ul style="list-style-type: none"> a) for the Testing of Deliverables; and b) setting out other agreed criteria related to the achievement of Milestones, as described further in paragraph 6 of Call Off Schedule 5 (Testing);
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Call Off Contract on a specified date and setting out the grounds for termination;
"Third Party IPR"	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party Software"	means any software identified as such in the Order Form together with all other software which is not listed in the Order Form which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which is or will be used by the Supplier for the purposes of providing the Services);
"Transferring Supplier Employees"	means those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.
"Unavailable"	in relation to a Service, means that the Service is not Available;
"Undelivered Services"	has the meaning given to it in Clause 7.4 (Supply of Services);
"Undisputed Sums Time"	has the meaning given to it Clause 42.142.1.1 (Termination

"Period"	of Customer Cause for Failure to Pay);
"Update"	means in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
"Upgrade"	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Call Off Contract Period;
"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph 5 (Invoicing Procedure) of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
"Variation"	has the meaning given to it in Clause 21.1 (Variation Procedure);
"Variation Form"	means the form set out in Call Off Schedule 14 (Variation Form);
"Variation Procedure"	means the procedure set out in Clause 21.1 (Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Day"	means any Day other than a Saturday or Sunday or public holiday in England and Wales.

CALL OFF SCHEDULE 2: SERVICES

1. INTRODUCTION

1.1 This Call Off Schedule specifies the Services to be provided under this Call Off Contract.

[Guidance Note: insert details of the Services to be provided by the Supplier (for example, as described in the Service Package)]

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

1. GENERAL PROVISIONS

1.1 This Call Off Schedule details:

- 1.1.1 the Call Off Contract Charges for the Services under this Call Off Contract; and
- 1.1.2 the payment terms/profile for the Call Off Contract Charges;
- 1.1.3 the invoicing procedure; and
- 1.1.4 the procedure applicable to any adjustments of the Call Off Contract Charges.

2. CALL OFF CONTRACT CHARGES

2.1 The Call Off Contract Charges which are applicable to this Call Off Contract are set out in Annex 1 of this Call Off Schedule.

2.2 The Supplier acknowledges and agrees that:

- 2.2.1 the Call Off Contract Charges will comply with Framework Schedule 3 (Framework Prices and Charging Structure); and
- 2.2.2 subject to paragraph 6 of this Call Off Schedule (Adjustment of Call Off Contract Charges), the Call Off Contract Charges cannot be increased during the Call Off Contract Period.

3. COSTS AND EXPENSES

3.1 The Call Off Contract Charges include all costs and expenses relating to the Services and/or the Supplier's performance of its obligations under this Call Off Contract and no further amounts shall be payable by the Customer to the Supplier in respect of such performance, including in respect of matters such as:

- 3.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
- 3.1.2 any amount for any services provided or costs incurred by the Supplier prior to the Call Off Commencement Date.

4. PAYMENT TERMS/PAYMENT PROFILE

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

5. INVOICING PROCEDURE

5.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Customer in paragraph 5.5 of this Call Off Schedule and in accordance with the provisions of this Call Off Contract.

5.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Customer may specify):

- 5.2.1 contains:

- (a) all appropriate references, including the unique Order reference number []
[Guidance note: specify unique Order Reference Number]; and
- (b) a detailed breakdown of the Delivered Services, including the Milestone(s) (if any) and Deliverable(s) within this Call Off Contract to which the Delivered Services relate, against the applicable due and payable Call Off Contract Charges; and

5.2.2 shows separately:

- (a) any Service Credits due to the Customer; and
- (b) the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 22.2.1 of this Call Off Contract (VAT) and the tax point date relating to the rate of VAT shown; and

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

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

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

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

5.5 The Supplier shall submit invoices directly to:

[]

[Guidance Note insert the Customer billing address]

6. ADJUSTMENT OF CALL OFF CONTRACT CHARGES

6.1 The Call Off Contract Charges shall only be varied:

- 6.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Call Off Contract Charges in accordance with Clause 21.2 of this Call Off Contract (Legislative Change);
- 6.1.2 in accordance with Clause 22.1.4 of this Call Off Contract (Call Off Contract Charges and Payment) where all or part of the Call Off Contract Charges are reduced as a result of a reduction in the Framework Prices;
- 6.1.3 where all or part of the Call Off Contract Charges are reduced as a result of a review of the Call Off Contract Charges in accordance with Clause 17 of this Call Off Contract (Continuous Improvement); or
- 6.1.4 where all or part of the Call Off Contract Charges are reduced as a result of a review of Call Off Contract Charges in accordance with Clause 24 of this Call Off Contract (Benchmarking);

6.2 Subject to paragraph 6.1 of this Call Off Schedule, the Call Off Contract Charges will remain fixed for the Call Off Contract Period.

7. NOT USED

8. NOT USED

9. IMPLEMENTATION OF ADJUSTED CALL OFF CONTRACT CHARGES

9.1 Variations in accordance with the provisions of this Call Off Schedule to all or part the Call Off Contract Charges (as the case may be) shall be made by the Customer to take effect:

9.1.1 in accordance with Clause 21.2.2 of this Call Off Contract (Legislative Change) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.1.1 of this Call Off Schedule;

9.1.2 in accordance with Clause 22.1.4 of this Call Off Contract (Call Off Contract Charges and Payment) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.1.2 of this Call Off Schedule;

9.1.3 in accordance with Clause 17 (Continuous Improvement) of this Call Off Contract where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.1.3 of this Call Off Schedule;

9.1.4 in accordance with Clause 24 (Benchmarking) of this Call Off Contract where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.1.4 of this Call Off Schedule

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

ANNEX 1: CALL OFF CONTRACT CHARGES

[REDACTED]

[Guidance Note: Prior to the commencement of this Call Off Contract, the Customer will incorporate here the Supplier's tendered Call Off Contract Charges including any discounts e.g. volume discounts. For the avoidance of doubt, where a Customer has conducted a Direct Award Procedure, the Charges are derived from the prices on the Price Card of the selected Service Catalogue.]

[Guidance Note: the Call Off Contract Charges must be consistent with the provisions of Framework Schedule 3 (Framework Prices and Charging Structure) and paragraph 2 of this Call Off Schedule]

ANNEX 2: PAYMENT TERMS/PROFILE

[REDACTED]

[Guidance Note: insert details of the agreed payment terms/payment profile]

CALL OFF SCHEDULE 4: MILESTONES, CUSTOMER RESPONSIBILITIES AND KEY PERSONNEL

1. INTRODUCTION

1.1 This Call Off Schedule specifies:

- 1.1.1 In Part A, the Milestones to be achieved by the Supplier In Part B, the Customer Responsibilities in respect of facilitating the Supplier's achievement of the Implementation Plan; and
- 1.1.2 In Part C, The Key Personnel and their Key Roles assigned by the Supplier to this Call Off Contract in accordance with Clause 25.1 of this Call Off Contract (Key Personnel).

PART A: MILESTONES

2. GENERAL

2.1 The Milestones to be Achieved are Identified below:

Milestone	Deliverables	Duration	Milestone Date	Customer Responsibilities	Milestone Payments	Delay Payments
[]	[]	[]	[]	[]	[]	[]

2.2 The Milestones will be Achieved in accordance with [Call Off Schedule 5 (Testing)][the Test Strategy Plan].

[Guidance Note: See Clauses 6, 7.1.2 and Error! Reference source not found. of the Template Call Off Terms and refer to the Specification in Part A of Framework Schedule 1 (Services and Key Performance Indicators). Consider If your need an Implementation Plan prior to the commencement of the provision of the Services. Consider if you should ask the Supplier to provide a draft Implementation Plan and, if so, specify within what period.]

[Guidance Note: See Clauses 6.1 and make sure that the Customer specifies formation of the Implementation Plan requirements e.g. deadlines such as. submission of draft Implementation Plan, Approval etc]

[Guidance Note: Consider what Milestones should be inserted, together with associated Deliverables and Milestone Dates. See also Clauses 7.2 and/or Error! Reference source not found. of the Template Call Off Terms in relation to time of Delivery and consider if you should make 'time of the essence" in respect of any Milestone Dates.]

[Guidance Note: Consider if you should include any Milestone Payments for Achievement of certain Milestones. If so, tie any Milestone Payments to Clause 22 of the Template Call Off terms and Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Invoicing and Payment). See also Clause 6.4 of the Template Call Off Terms in relation to Delay Payments and refine the Delay Payment provisions if needed. If Customers are expressing Delay Payments as fixed amounts, we suggest that such amounts are genuine pre-estimates of loss that the Customer would suffer in relation to the Supplier missing a particular Milestone Date and should not be a penalty for poor performance otherwise there is a risk that the Delay Payment will be unenforceable against the Supplier. We suggest that Delay Payments are applied reasonably and proportionately by Customers. Excessive usage may damage relationships with Suppliers. Furthermore, we advise that the Customer keeps a record of how it has calculated each Delay Payment detailing calculations of pre-estimates of losses.]

[Guidance Note: Consider whether Call Off Schedule 5 provides an appropriate test strategy or whether an alternative plan needs to be produced by the Supplier.]

[Guidance Note: See also Clauses 7.2 of the Template Call Off Terms in relation to time of Delivery. Consider if you should make 'time of the essence" in respect of any Milestone Dates.]

PART B: CUSTOMER RESPONSIBILITIES

3. GENERAL

- 3.1 The Customer Responsibilities associated with the Milestones identified in the Implementation Plan are set out in the column entitled Customer Responsibilities in the Implementation Plan.

[Guidance Note: Include in the Implementation Plan details of any specific responsibilities of the Customer, for example, the granting of access to the Customer Sites, use of the Customer System, provision of Property, Customer Assets or information (e.g. copies of the Security Policy and the ICT Policy) etc.]

[Guidance Note: See also Clauses 2, 29 and 30 of the Template Call Off Terms. Consider whether to include any specific mechanisms to deal with the consequences of a failure by the Customer to comply with its responsibilities e.g. the Supplier will be given extra time to fulfil its obligations]

PART C: KEY PERSONNEL

4. GENERAL

4.1 The Supplier has assigned the following Key Personnel to this Call Off Contract in the Key Roles detailed below:

[REDACTED]

[Guidance Note: Insert details of any Key Personnel and their Key Roles]

CALL OFF SCHEDULE 5: TESTING

[Guidance Note: This Call Off Schedule is likely to be relevant in the context of procuring ICT Services where there is a need to test the Services. Switch all paragraphs and Annexes 1 and 2 to "Not Used" if not required. However, retain Annex 3 (Satisfaction Certificate) for use in respect of Achievement of any Milestones in an Implementation Plan (if any)]

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Component"	means any constituent parts of the Services, bespoke or COTS, hardware or software;
"COTS"	means commercially available off the shelf software, being software that is commonly used and is provided in a standard form and on standard licence terms which are not typically negotiated by the licensor;
"Material Test Issue"	means a Test Issue of Severity Level 1 or Severity Level 2;
"Severity Level"	means the level of severity of a Test Issue, the criteria for which are described in Annex 1;
"Test Certificate"	means a certificate materially in the form of the document contained in Annex 2 issued by the Customer when a Deliverable has satisfied its relevant Test Success Criteria;
"Test Issue Threshold"	means, in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Testing Strategy Plan ;
"Test Issue Management Log"	means a log for the recording of Test Issues as described further in paragraph 10.1 of this Call Off Schedule;
"Test Reports"	means the reports to be produced by the Supplier setting out the results of Tests;
"Test Specification"	means the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in paragraph 7 of this Call Off Schedule;
"Test Strategy"	means a strategy for the conduct of Testing as described further in paragraph 5 of this Call Off Schedule;
"Test Success Criteria"	means, in relation to a Test, the test success criteria for that Test as referred to in paragraph 7 of this Call Off Schedule;
"Test Witness"	means any person appointed by the Customer pursuant to paragraph 11 of this Call Off Schedule; and
"Testing Procedures"	means the applicable testing procedures and Test Success Criteria set out in this Schedule .

2. INTRODUCTION

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

3. RISK

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

- 3.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Customer's requirements for that Deliverable or Milestone; or
- 3.1.2 affect the Customer's right subsequently to reject:
 - (a) all or any element of the Deliverables to which a Test Certificate relates; or
 - (b) any Milestone to which the Satisfaction Certificate relates.

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

- 3.2.1 the Services are implemented in accordance with this Call Off Contract; and
- 3.2.2 each Service Level is met.

4. TESTING OVERVIEW

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

4.2 The Supplier shall not submit any Deliverable for Testing:

- 4.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
- 4.2.2 until the Customer has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
- 4.2.3 until the Parties have agreed the Testing Strategy Plan and the Test Specification relating to the relevant Deliverable(s).

4.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.

4.4 Prior to the issue of a Test Certificate, the Customer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

4.5 Any Disputes between the Supplier and the Customer regarding this Testing shall be referred to the Dispute Resolution Procedure.

5. TEST STRATEGY

5.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Call Off Commencement Date but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree) after the Call Off Commencement Date.

5.2 The final Test Strategy shall include:

- 5.2.1 an overview of how Testing will be conducted in accordance with the Implementation Plan;
- 5.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
- 5.2.3 the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
- 5.2.4 the procedure to be followed to sign off each Test;
- 5.2.5 the process for the production and maintenance of Test Reports, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues
- 5.2.6 the names and contact details of the Customer's and the Supplier's Test representatives;
- 5.2.7 a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Customer and/or third party involvement in the conduct of the Tests;
- 5.2.8 the technical environments required to support the Tests; and
- 5.2.9 the procedure for managing the configuration of the Test environments.

6. TESTING STRATEGY PLANS

6.1 The Supplier shall develop Testing Strategy Plans and submit these for Approval as soon as practicable but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.

6.2 Each Testing Strategy Plan shall include as a minimum:

- 6.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied;
- 6.2.2 a detailed procedure for the Tests to be carried out, including:
 - (a) the relevant Test Issue Thresholds;
 - (b) the timetable for the Tests including start and end dates;
 - (c) the Testing mechanism;
 - (d) dates and methods by which the Customer can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
 - (e) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (f) the format and an example of Test progress reports and the process with which the Customer accesses daily Test schedules;
 - (g) the process which the Customer will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
 - (h) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and

- (i) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

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

7. TEST SUCCESS CRITERIA

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

8. TEST SPECIFICATION

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

8.2 Each Test Specification shall include as a minimum:

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

9. TESTING

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

9.2 The Supplier shall manage the progress of Testing in accordance with the relevant Testing Strategy Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with paragraph 11 of this Call Off Schedule.

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

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

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

- 9.5.1 a draft Test Report not less than 2 Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
 - 9.5.2 the final Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 9.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
- 9.6.1 an overview of the Testing conducted;
 - 9.6.2 identification of the relevant Test Success Criteria that have been satisfied;
 - 9.6.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
 - 9.6.4 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
 - 9.6.5 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with paragraph 10.1 of this Call Off Schedule; and
 - 9.6.6 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
- 9.7 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 9.8 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Customer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 9.9 If the Supplier successfully completes the requisite Tests, the Customer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Services are provided in accordance with this Call Off Contract.

10. TEST ISSUES

- 10.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 10.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Customer upon request.
- 10.3 The Customer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

11. TEST WITNESSING

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

12. TEST QUALITY AUDIT

- 12.1 Without prejudice to its rights pursuant to Clause 20 of this Call Off Contract (Records, Audit Access and Open Book Data), the Customer or an agent or contractor appointed by the Customer may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.
- 12.2 The focus of the Testing Quality Audits shall be on:
 - 12.2.1 adherence to an agreed methodology;
 - 12.2.2 adherence to the agreed Testing process;
 - 12.2.3 adherence to the Quality Plan;
 - 12.2.4 review of status and key development issues; and
 - 12.2.5 identification of key risk areas.
- 12.3 The Supplier shall allow sufficient time in the Testing Strategy Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 12.4 The Customer will give the Supplier at least 5 Working Days' written notice of the Customer's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Customer will materially and adversely impact the Implementation Plan.

- 12.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Customer witnessing Tests and demonstrations of the Deliverables to the Customer. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Customer on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Customer to enable it to carry out the Testing Quality Audit.
- 12.6 If the Testing Quality Audit gives the Customer concern in respect of the Testing Procedures or any Test, the Customer shall:
- 12.6.1 discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
- 12.6.2 subsequently prepare a written report for the Supplier detailing its concerns, and the Supplier shall, within a reasonable timeframe, respond in writing to the Customer's report.
- 12.7 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Satisfaction Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

13. OUTCOME OF TESTING

- 13.1 The Customer will issue a Test Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 13.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Customer shall notify the Supplier and:
- 13.2.1 the Customer may issue a Test Certificate conditional upon the remediation of the Test Issues;
- 13.2.2 where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Customer may extend the Testing Strategy Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
- 13.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Customer's other rights and remedies, such failure shall constitute a material Default.
- 13.3 The Customer shall be entitled, without prejudice to any other rights and remedies that it has under this Call Off Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

14. ISSUE OF SATISFACTION CERTIFICATE

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

- 14.1.1 the issuing by the Customer of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
- 14.1.2 performance by the Supplier to the reasonable satisfaction of the Customer of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 14.2 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Schedule 3 (Call Off Contract Charging, Payment and Invoicing).
- 14.3 If a Milestone is not Achieved, the Customer shall promptly issue a report to the Supplier setting out:
 - 14.3.1 the applicable Test Issues; and
 - 14.3.2 any other reasons for the relevant Milestone not being Achieved.
- 14.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Customer shall issue a Satisfaction Certificate.
- 14.5 If there is one or more Material Test Issue(s), the Customer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Customer's other rights and remedies, such failure shall constitute a material Default.
- 14.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Customer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
 - 14.6.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Customer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Customer within 10 Working Days of receipt of the Customer's report pursuant to paragraph 13.3 of this Call Off Schedule); and
 - 14.6.2 where the Customer issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES – SEVERITY LEVELS

1. SEVERITY 1 ERROR

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

2. SEVERITY 2 ERROR

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

2.1.1 causes a Component to become unusable;

2.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or

2.1.3 has an adverse impact on any other Component(s) or any other area of the Services;

3. SEVERITY 3 ERROR

3.1 This is an error which:

3.1.1 causes a Component to become unusable;

3.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or

3.1.3 has an impact on any other Component(s) or any other area of the Services; but for which, as reasonably determined by the Customer, there is a practicable workaround available;

4. SEVERITY 4 ERROR

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

5. SEVERITY 5 ERROR

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

ANNEX 2: TEST CERTIFICATE

To: [insert name of Supplier]

From: [insert name of Customer]

[insert Date dd/mm/yyyy]

Dear Sirs,

TEST CERTIFICATE

Deliverables:

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

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

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

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

[OR]

[This Test Certificate is issued pursuant to paragraph 13.1 of Call Off Schedule 5 (Testing) of this Call Off Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[*Guidance Note: delete as appropriate]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

ANNEX 3: SATISFACTION CERTIFICATE

To: [insert name of Supplier]

From: [insert name of Customer]

[insert Date dd/mm/yyyy]

Dear Sirs,

SATISFACTION CERTIFICATE

Milestone:

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

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

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

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

[OR]

[This Satisfaction Certificate is granted pursuant to paragraph 13.1 of Call Off Schedule 5 (Testing) of this Call Off Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)]*

[*Guidance Note: delete as appropriate]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

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

1. SCOPE

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

1.2 This Call Off Schedule comprises:

- 1.2.1 Part A: Service Levels and Service Credits;
- 1.2.2 Annex 1 to Part A - Service Levels and Service Credits Table;
- 1.2.3 Annex 2 to Part A – Critical Service Level Failure;
- 1.2.4 Part B: Performance Monitoring; and
- 1.2.5 Annex 1 to Part B: Additional Performance Monitoring Requirements.

PART A: SERVICE LEVELS AND SERVICE CREDITS

2. GENERAL PROVISIONS

2.1 The Supplier shall provide a proactive Call Off Contract manager to ensure that all Service Levels in this Call Off Contract and Key Performance Indicators in the Framework Agreement are achieved to the highest standard throughout, respectively, the Call Off Contract Period and the Framework Period.

2.2 The Supplier shall provide a managed service through the provision of the dedicated Call Off Contract manager where required on matters relating to:

- 2.2.1 Availability;
- 2.2.2 Quality;
- 2.2.3 Incident Resolution; and
- 2.2.4 Provisioning

[Guidance Note: For Further Competitions, consider if the above list should be refined or further supplemented; and include your corresponding Service Levels in the table in Annex 1 to this Part A of this Call Off Schedule]

2.3 The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Annex 1 to this Part A of this Call Off Schedule will result in Service Credits being issued to the Customer.

3. PRINCIPAL POINTS

3.1 The objectives of the Service Levels and Service Credits are to:

- 3.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
- 3.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of the Supplier's failure to deliver the level of service for which it has contracted to deliver; and
- 3.1.3 incentivise the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.

4. SERVICE LEVELS

4.1 Availability:

- 4.1.1 The Supplier shall be responsible for measuring the Availability of the Service.
- 4.1.2 The Supplier shall monitor the Availability of the Service in accordance with the Performance Monitoring System and the provisions of Part B of this Schedule, and shall provide the results of such monitoring to the Customer in accordance with the provisions of Part B of this Schedule.
- 4.1.3 The Availability of the Service shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Availability \%} = \frac{(\text{MP} - \text{SD}) \times 100}{\text{MP}}$$

Where:

- (a) MP = Total time within the Service Hours, excluding Planned Downtime, within the relevant Service Period; and
- (b) SD = Total Service Downtime within the Service Hours within the relevant Service Period during which a Service is not Available, excluding Planned Downtime.
- (c) If a Service is Unavailable and such Unavailability causes a Dependent Service to become Unavailable then the Downtime experienced by the Dependent Service shall not count towards the Service Downtime of that Dependent Service.
- (d) The Service Level Performance Measures and Service Credits for Availability are set out in Annex 1 paragraph 1.

4.2 Quality:

- 4.2.1 Measurement of answer and response times in Annex 1 Paragraph 2.3 will be based on the time taken for the Supplier to respond. Calls and emails receiving an automated response or calls placed into a queuing system shall be deemed not to have been answered.
- 4.2.2 The Service Level Performance Measures and Service Credits for Quality are set out for the Application Response Times, Email Delivery Time and Service Desk in Annex 1 paragraph 2.

4.3 Incident Resolution:

- 4.3.1 Incident Resolution Times shall be calculated from the first report to the Supplier's Service Desk until the action has been completed by or on behalf of the Supplier to repair the root cause of the Incident or a workaround has been implemented by the Supplier.
- 4.3.2 Where an Incident is reported outside the Service Hours, the Incident will be treated as if it has been reported at the beginning of the next period of Service Hours.
- 4.3.3 The Incident is 'closed' once Service Restoration has been achieved. However, the Supplier shall not close any Incident until the Customer has confirmed that Service Restoration has in fact been achieved. Notwithstanding the foregoing, if the Supplier has in fact achieved Service Restoration and has made three attempts in good faith to confirm this with the Customer, but has been unable to contact the Customer to obtain this confirmation, the Incident will be closed.
- 4.3.4 The Service Level Performance Measures and Service Credits for Incident Resolution are set out in in Annex 1 paragraph 3.
- 4.3.5 Incident Severity Levels in relation to Incident Resolution:

<p>Incident Level 1 Service Failure</p> <p>Severity Service</p>	<p>A Service Failure which, in the reasonable opinion of the allocating party (whether the Supplier, the Customer or an Customer Service Recipient) has the potential to:</p> <ul style="list-style-type: none"> • have a significant adverse impact on the provision of the Service to a large number of End User; or • cause significant financial loss and/or disruption to the Customer; or • results in any material loss or corruption of Customer Data, or in the provision of incorrect Customer Data to a End User. • Non-exhaustive examples: <ul style="list-style-type: none"> ○ Loss of power to data centre causing failure of Services; ○ An element of the Service fails leading to loss of access for a significant number of End Users; ○ A significant degradation in performance of the Service.
<p>Incident Level 2 Service Failure</p> <p>Severity Service</p>	<p>A Service Failure which, in the reasonable opinion of the allocating party (whether the Supplier, the Customer) has the potential to:</p>
	<ul style="list-style-type: none"> • have a significant adverse impact on the provision of the Service to a small (i.e. one or more) or moderate number of End Users; or • have a moderate adverse impact on the delivery of the Service to a significant number of End Users; or • cause a financial loss and/or disruption to the Customer, which is more than trivial but less severe than the significant financial loss described in the definition of a Incident Severity 1 Service Failure. • Non-exhaustive examples: <ul style="list-style-type: none"> ○ One physical location of staff who are authorised End Users are unable to access the Service; ○ One or more emails are corrupted and unreadable; ○ One or more emails delivered without the submitted attachment; ○ Delivery or non-delivery of reports not provided when requested; ○ A degradation in performance of the Service.

<p>Incident Level 3 Service Failure</p>	<p>A Service Failure which, in the reasonable opinion of the allocating party (whether the Supplier, the Customer) has the potential to:</p> <ul style="list-style-type: none"> • have a moderate adverse impact on the provision of the Service to a small (i.e. one or more) or a moderate number of End Users; or • have a minor adverse impact on the provision of the Service to a large number of End Users; or • Non-exhaustive examples: <ul style="list-style-type: none"> ○ A Customer’s directory connector failed to run overnight; ○ A reminder for a calendar event was not received by a group of End Users; ○ Adverse performances reported by a small community of End Users.
<p>Incident Level 4 Service Failure</p>	<p>A Service Failure which, in the reasonable opinion of the allocating party (whether the Supplier, the Customer) has the potential to:</p> <ul style="list-style-type: none"> • have a minor adverse impact on the provision of the Service to a small (i.e. one or more) or moderate number of End Users; or • Non-exhaustive examples: <ul style="list-style-type: none"> ○ a End User is unable to update a group shared calendar; ○ a End User is unable to set an auto signature on their account; ○ a End User cannot update their “out of office” setting.
<p>Incident Level 5 Service Failure</p>	<p>A Service Failure affecting only the presentation of the Service that does not undermine the End User’s confidence in the information being displayed.</p> <ul style="list-style-type: none"> • Non-exhaustive examples: <ul style="list-style-type: none"> ○ there is a spelling mistake in one of the help screens; ○ a directory search returns incorrect capitalisation on the name of a End User; ○ there is a requirement for some improved guidance material to assist understanding of the Service.

4.4 Provisioning:

4.4.1 The Service Level Performance Measure for Provisioning is set out for the Services in paragraph 4 Annex 1 Part A (Service Levels and Service Credits Table). Remedies for failing to meet any agreed Provisioning dates associated with the initial implementation of the Services are dealt with as

Delay Payments in relation to (where and as applicable) Milestones and Deliverables specified in the Implementation Plan, in accordance with Clause 6.1.9 of the Call-Off Contract and not as set out in paragraph 4 Annex 1 Part A (Service Levels and Service Credits Table).

4.5 Annex 1 to this Part A of this Call Off Schedule sets out the Service Levels the performance of which the Parties have agreed to measure.

4.6 The Supplier shall monitor its performance of this Call Off Contract by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Call Off Schedule (the “**Service Level Performance Criteria**”) and shall send the Customer a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Call Off Schedule.

4.7 The Supplier shall, at all times, provide the Services in such a manner that the Service Levels Performance Measures are achieved.

4.8 If the level of performance of the Supplier of any element of the provision by it of the Services during the Call Off Contract Period:

4.8.1 is likely to or fails to meet any Service Level Performance Measure or

4.8.2 is likely to cause or causes a Critical Service Failure to occur,

4.8.3 the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under Clause 12 of this Call Off Contract (Service Levels and Service Credits), may:

- (a) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and
- (b) if the action taken under paragraph (a) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Customer shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or
- (c) if a Service Level Failure has occurred, deduct from the Call Off Contract Charges the applicable Service Level Credits payable by the Supplier to the Customer in accordance with the calculation formula set out in Annex 1 of this Part A of this Call Off Schedule; or
- (d) if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause 13 of this Call Off Contract (Critical Service Level Failure) (including subject, for the avoidance of doubt, the proviso in Clause 13.1.2 of this Call Off Contract in relation to Material Breach).

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

5. SERVICE CREDITS

5.1 Annex 1 to this Part A of this Call Off Schedule sets out the formula used to calculate a Service Credit payable to the Customer as a result of a Service Level Failure in a given service period which, for the purpose of this Call Off Schedule, shall be a recurrent period of **one Month** during the Call Off Contract Period (the

“Service Period”). **[Guidance Note: This figure may be amended by Customers conducting a Further Competition]**

- 5.2 Annex 1 to this Part A of this Call Off Schedule includes details of each Service Credit available to each Service Level Performance Criterion if the applicable Service Level Performance Measure is not met by the Supplier. **[Guidance Note: the table in Annex 1 to this Part A of this Call Off Schedule may be amended by Customers conducting a Further Competition]**
- 5.3 The Customer shall use the Performance Monitoring Reports supplied by the Supplier under Part B (Performance Monitoring) of this Call Off Schedule to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
- 5.4 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in Annex 1 of Part A of this Call Off Schedule.

6. NATURE OF SERVICE CREDITS

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

ANNEX 1 TO PART A: SERVICE LEVELS AND SERVICE CREDITS TABLE

1. AVAILABILITY

Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
Availability of the Service	Availability	99.90% (or as otherwise specified in the Service Package)	98%	5% Service Credit gained for each percentage under the specified Service Level Performance Measure

2. QUALITY

2.1 Application response times:

Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
Access to any application delivered as part of the Service	Quality	90% within 5 seconds 95% within 15 seconds 99% within 20 seconds 100% within 45 seconds	75% within 5 seconds 80% within 15 seconds 84% within 20 seconds 90% within 45 seconds	0.1% Service Credit gained for each percentage under the specified Service Level Performance Measure

2.2 Email delivery times:

Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
Email Service Mailbox to Email Service Mailbox	Quality	85% within 1 minute 90% within 3 minutes 94.8% within 30 minutes	75% within 1 minute 80% within 3 minutes 84.8% within 30 minutes	0.1% Service Credit gained for each percentage under the specified Service Level Performance Measure

2.3 Service Desk:

Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
Call Answer time	Quality	Answered within 20 seconds >= 90%	Answered within 20 seconds < 80%	0.1% Service Credit gained for each percentage under the specified Service Level Performance Measure
Call Answer time	Quality	Answered within 40 seconds >= 95%	Answered within 40 seconds < 85%	0.1% Service Credit gained for each percentage under the specified Service Level Performance Measure
Email response	Quality	Responded to within 60 minutes >= 90%	Responded to within 60 minutes >= 60%	0.1% Service Credit gained for each percentage under the specified Service Level Performance Measure

Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
Email response	Quality	Responded to within 120 minutes \geq 99%	Responded to within 60 minutes \geq 75%	0.1% Service Credit gained for each percentage under the specified Service Level Performance Measure
Abandoned Calls	Quality	Calls not abandoned $<$ 95%	Calls not abandoned $<$ 85%	0.1% Service Credit gained for each percentage under the specified Service Level Performance Measure
First Time Fix	Quality	incidents resolved by the helpdesk without the need for onward internal referral $>$ 65%	incidents resolved by the helpdesk without the need for onward internal referral $>$ 30%	0.1% Service Credit gained for each percentage under the specified Service Level Performance Measure

3. INCIDENT RESOLUTION

Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
Incident Severity Level 1	Incident Resolution	Within 2 hours	6 hours	2.5% Service Credit gained for each incident not resolved under the specified Service Level Performance

Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
				Measure
Incident Severity Level 2	Incident Resolution	Within 4 hours	12 hours	2% Service Credit gained for each incident not resolved under the specified Service Level Performance Measure
Incident Severity Level 3	Incident Resolution	Within 12 hours	24 hours	1.5% Service Credit gained for each incident not resolved under the specified Service Level Performance Measure
Incident Severity Level 4	Incident Resolution	Within 72 hours	144 hours	1% Service Credit gained for each incident not resolved under the specified Service Level Performance Measure
Incident Severity Level 5	Incident Resolution	Within 216 hours	532 hours	0.5% Service Credit gained for each incident not resolved under the specified Service Level Performance Measure

4. PROVISIONING

- 4.1.1 As set out in the Service Description of the Service Package (Direct Award only); and to be set out in the table below by the Customer for Further Competitions:

Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	

5. SERVICE CREDITS

5.1 Service Credits are required to be paid in the event that the Achieved Service Level falls below the Service Level Performance Measure in a Service Period.

5.2 The Service Credit is determined by the Achieved Service Level, the Service Level Performance Measure and the Service Level Threshold and is calculated by using the straight line formula below:

5.2.1 Availability and Quality:

$$\text{Service Credit } \pounds = ((a-x)*c)*d$$

where

- a is the Service Level Performance Measure (%) below which Service Credits become payable;
- x is the Achieved Service Level (%) for a Service Period;
- c is the Service Credit (%) payable if the Achieved Service Level falls below the Service Level Target; and
- d is the amount payable in respect of the Services during the Service Period, not including VAT

5.2.2 Incident Resolution:

$$\text{Service Credit } \pounds = ((a*c)*d)$$

where

- a is the number of Incidents not resolved within the Service level Performance Measure during a Service Period;
- c is the Service Credit (%) payable in each instance where the Achieved Service Level falls below the Service Level Performance Measure; and
- d is the amount payable in respect of the Services during the Service Period, not including VAT

ANNEX 2 TO PART A: CRITICAL SERVICE LEVEL FAILURE

1. CRITICAL SERVICE LEVEL FAILURE

1.1 A Critical Service Level Failure will be deemed to have occurred if any one of the following occurs:

- 1.1.1 In relation to Availability a Critical Service Level Failure shall include a loss of the Service during core hours (08:00 – 18:00 Mon – Fri excluding bank holidays) to the Customer for more than twenty four (24) hours accumulated in any three (3) Month period, or forty eight (48) hours in any rolling twelve (12) Month period;
- 1.1.2 The performance of the Services falls below any Service Level Threshold on two (2) occasions in any Service Period;

[Guidance Note: Clause 13 of the Template Call Off Terms provides the Customer with a right to retain and deduct Call Off Contract Charges as compensation or terminate this Call Off Contract for Material Breach in the event of a Critical Service Level Failure. See also the definition of Critical Service Level Failure. The intention is to provide certainty over what level of performance by the Supplier in relation to Service Levels would trigger the aforementioned rights. See the above examples and include any specific events that would constitute Critical Service Level Failure]

PART B: PERFORMANCE MONITORING

1. PRINCIPAL POINTS

1.1 Part B to this Call Off Schedule provides the methodology for monitoring the provision of the Services:

- 1.1.1 to ensure that the Supplier is complying with the Service Levels; and
- 1.1.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services ("**Performance Monitoring System**").

1.2 Within twenty (20) Working Days of the Call Off Commencement Date the Supplier shall provide the Customer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

2. REPORTING OF SERVICE FAILURES

2.1 The Supplier shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Customer in accordance with the processes agreed in paragraph 1.2 of Part B of this Call Off Schedule above.

3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

3.1 The Supplier shall provide the Customer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 1.2 of Part B of this Call Off Schedule above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:

- 3.1.1 for each Service Level, the Achieved Service Level over the Service Level for the relevant Service Period;
- 3.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
- 3.1.3 any Critical Service Level Failures and details in relation thereto;
- 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
- 3.1.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
- 3.1.6 such other details as the Customer may reasonably require from time to time.

3.2 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

- 3.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
- 3.2.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;

- 3.2.3 be attended by the Supplier's Representative and the Customer's Representative; and
- 3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Customer's Representative at each meeting.
- 3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 3.4 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

4. SATISFACTION SURVEYS

- 4.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 4.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Call Off Contract.
- 4.3 All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 17 of this Call Off Contract (Continuous Improvement).

ANNEX 1 TO PART B: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS

This Annex 1 to Part B is not applicable for Direct Award

[Guidance Note: Please see the Guidance Note on Performance Monitoring in the Template Order Form, Clause 18 of the Template Call Off Terms, and the provisions of this Call Off Schedule (Service Levels, Service Credits and Performance Monitoring). The Customer to insert any further details of Performance Monitoring as stipulated during a Further Competition Procedure.]

[You may for example wish to include the following clauses and definitions:

In this Schedule, the following definitions shall apply:

"Project Manager" means the manager described in paragraph 1.1 of this Annex;

"Technical Board" means the board described in paragraph 1.1 of this Annex;

1. MANAGEMENT OF THE SERVICES

1.1 The Supplier and the Customer shall each appoint a Project Manager for the purposes of this Call Off Contract through whom the provision of the Services shall be managed at a day-to-day.

1.2 Both parties shall ensure that appropriate resource is made available on a regular basis including, for example, a Technical Board such that the aims, objectives and specific provisions of this Call Off Contract can be fully realised.

2. TECHNICAL BOARD

2.1 The Technical Board shall be established by the Customer for the purposes of this Call Off Contract on which the Supplier and the Customer shall be represented.

2.2 The Technical Board members, frequency and location of board meetings and planned start date by which the board shall be established shall be set out in Annex [x].

2.3 In the event that either Party wishes to replace any of its appointed board members, that party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Customer board member has at all times a counterpart Supplier board member of equivalent seniority and expertise.

2.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Technical Board meeting in his/her place (wherever possible) is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.

2.5 The Technical Board shall be accountable to the Project Managers for oversight of the technology used in the Supplier Solution and ensuring that technological choices are made to maximise the long term value of the Services.

2.6 The Technical Board shall:

- 2.6.1 assure compliance with the overall technical architecture of the Customer and with Government IT Strategy (as defined at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85968/uk-government-government-ict-strategy_0.pdf);
- 2.6.2 grant dispensations for variations from such compliance where appropriate;
- 2.6.3 assure the coherence and consistency of the systems architecture for the provision of the Services;
- 2.6.4 monitor developments in new technology and reporting on their potential benefit to the provision of the Services;
- 2.6.5 provide advice, guidance and information on technical issues; and
- 2.6.6 assure that the technical architecture for the provision of the Services is aligned to the requirements specified in Call Off Schedule 2 (Services) and has sufficient flexibility to cope with future requirements of the Customer.]

CALL OFF SCHEDULE 7: STANDARDS

This Call Off Schedule is not applicable for Direct Award

[Guidance Note: See Clause 10 of the Template Call Off Terms and the definition of Standards in Call Off Schedule 1 (Definitions). For Further Competitions, insert below details of any additional Standards that the Supplier shall comply with in providing the Services (note this is not applicable for Direct Awards)]

1. STANDARDS

[]

CALL OFF SCHEDULE 8: SECURITY

1. DEFINITIONS

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

"Breach of Security"	means the occurrence of: <ul style="list-style-type: none">a) any unauthorised access to or use of the Services, the Sites and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Call Off Contract; and/orb) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Call Off Contract, in either case as more particularly set out in the Security requirements in Annex 1 (Security) to this Call Off Schedule 8 and the Security Policy;
"ISMS"	the information security management system developed by the Supplier in accordance with paragraph 2 (ISMS) as updated from time to time in accordance with this Schedule 8;
"Security Policy Framework"	the HMG Security Policy Framework (available from the Cabinet Office); and
"Security Tests"	has the meaning given in paragraph 5.1 of this Call Off Schedule (Testing of the ISMS).

2. ISMS

2.1 By the date specified in the Implementation Plan the Supplier shall develop and submit to the Customer for the Customer's Approval an information security management system for the purposes of this Call Off Contract, which:

2.1.1 if required by the Implementation Plan, shall have been tested in accordance with Call Off Schedule 5 (Testing); and

2.1.2 shall comply with the requirements of paragraphs 2.3 to 2.5 of this Call Off Schedule 8 (Security).

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

2.3 The ISMS shall:

2.3.1 unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites, the Supplier System and any ICT, information and data (including the Customer's Confidential Information and the Customer Data) to the extent

used by the Customer or the Supplier in connection with this Call Off Contract;

2.3.2 meet the relevant standards in ISO/IEC 27001;and

2.3.3 at all times provide a level of security which:

- (a) is in accordance with Good Industry Practice, Law and this Call Off Contract;
- (b) complies with the Security Policy;
- (c) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4);
- (d) meets any specific security threats to the ISMS;
- (e) complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 6 (Compliance of the ISMS With ISO/IEC 27001);
- (f) complies with the security requirements as set out in Annex 1 (Security) to this Call Off Schedule 8; and
- (g) complies with the Customer's ICT policies.

2.4 Subject to Clause 34 of this call Off Contract (Security And Protection of Information) the references to standards, guidance and policies set out in paragraph 2.3 of this Call Off Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

2.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 2.3 of this Call Off Schedule, the Supplier shall immediately notify the Customer Representative of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.

2.6 If the ISMS submitted to the Customer pursuant to paragraph 2.1 of this Call Off Schedule is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule. If the ISMS is not Approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Customer. If the Customer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph 2 of this Call Off Schedule may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 2.3 to 2.5 of this Call Off Schedule shall be deemed to be reasonable.

2.7 Approval by the Customer of the ISMS pursuant to paragraph 2.6 of this Call Off Schedule or of any change or amendment to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

3. SECURITY MANAGEMENT PLAN

3.1 Within twenty (20) Working Days after the Call Off Commencement Date, the Supplier shall prepare and submit to the Customer for Approval in accordance

with paragraph 3 of this Call Off Schedule a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 3.2 of this Call Off Schedule.

3.2 The Security Management Plan shall:

- 3.2.1 be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);
- 3.2.2 comply with the Security Policy;
- 3.2.3 unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites, the Supplier System and any ICT, information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract;
- 3.2.4 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Call Off Schedule 8 (including the requirements set out in paragraph 2.3 of this Call Off Schedule);
- 3.2.5 set out the plans for transiting all security arrangements and responsibilities from those in place at the Call Off Commencement Date to those incorporated in the Supplier's ISMS at the date set out in the Implementation Plan for the Supplier to meet the full obligations of the security requirements set out in Schedule Annex 1 (Security) to this Schedule 8.
- 3.2.6 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
- 3.2.7 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall reference only documents which are in the possession of the Customer or whose location is otherwise specified in this Call Off Schedule 8.

3.3 If the Security Management Plan submitted to the Customer pursuant to paragraph 3.1 of this Call Off Schedule is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule. If the Security Management Plan is not approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the Customer of the Security Management Plan. If the Customer does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 3.2 of this Call Off Schedule shall be deemed to be reasonable.

3.4 Approval by the Customer of the Security Management Plan pursuant to paragraph 3.3 of this Call Off Schedule or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Call Off Schedule.

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

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

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

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

- 4.2.1 suggested improvements to the effectiveness of the ISMS;
- 4.2.2 updates to the risk assessments;
- 4.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
- 4.2.4 suggested improvements in measuring the effectiveness of controls.

4.3 Subject to paragraph 4.4 of this Call Off Schedule, any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 4.1 of this Call Off Schedule, a Customer request, change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Customer.

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

5. TESTING OF THE ISMS

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

- 5.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such Security Tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 5.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Call Off Contract, the Customer and/or its authorised representatives shall be entitled, at any time by giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Customer may notify the Supplier of the results of such tests after completion of each such test.
- 5.4 Where any Security Test carried out pursuant to paragraphs 5.2 or 5.3 of this Call Off Schedule reveals any actual or potential breach of security, the Supplier shall promptly notify the Customer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Customer's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Security) to this Call Off Schedule) or the requirements of this Call Off Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Customer.
- 5.5 If any repeat Security Test carried out pursuant to paragraph 5.4 of this Call Off Schedule reveals an actual or potential breach of security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Call Off Contract.

6. COMPLIANCE OF THE ISMS WITH ISO/IEC 27001

- 6.1 The Customer shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.
- 6.2 If, on the basis of evidence provided by such security audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Supplier, then the Customer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Supplier does not become compliant within the required time then the Customer shall have the right to obtain an independent audit against these standards in whole or in part.
- 6.3 If, as a result of any such independent audit as described in paragraph 6.2 of this Call Off Schedule the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

7. BREACH OF SECURITY

- 7.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted breach of security.
- 7.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 7.1 of this Call Off Schedule, the Supplier shall:
- 7.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Customer) necessary to:
- (a) remedy such breach of security or any potential or attempted breach of security or protect the integrity of the ISMS against any such breach of security or any potential or attempted breach of security; and
 - (b) prevent a further breach of security or any potential or attempted breach of security in the future exploiting the same root cause failure; and
- 7.2.2 as soon as reasonably practicable provide to the Customer full details (using such reporting mechanism as defined by the ISMS) of the breach of security or the potential or attempted breach of security, including a root cause analysis where required by the Customer.
- 7.3 In the event that such action is taken in response to a breach of security or potential or attempted breach of security that demonstrates non-compliance of the ISMS with the Security Policy or security requirements (as set out in Annex 1 (Security) to this Call Off Schedule) or the requirements of this Call Off Schedule, then any required change to the ISMS shall be at no cost to the Customer.

ANNEX 1: SECURITY POLICY

[REDACTED]

ANNEX 2: SECURITY MANAGEMENT PLAN

[REDACTED]

**CALL OFF SCHEDULE 9: SUPPLIER SOFTWARE, CUSTOMER SOFTWARE AND
THIRD PARTY SOFTWARE**

[Guidance Note: See the definitions of the Supplier Software and Third Party Software and consider Clause 33. If necessary, insert below details of any specific software packages that the Supplier will use to provide the Services]

1. SUPPLIER SOFTWARE

[]

2. THIRD PARTY SOFTWARE

[]

3. CUSTOMER SOFTWARE

[]

CALL OFF SCHEDULE 10: BUSINESS CONTINUITY AND DISASTER RECOVERY

OPTION 1: Further Competitions

1. CUSTOMER BCDR REQUIREMENTS

[REDACTED]

2. SUPPLIER BCDR PLAN

[REDACTED]

[Guidance Note: If you have refined your BCDR requirements during the Further Competition Procedure set out those BCDR requirements and include the Supplier's BCDR Plan from the Supplier Call Off Solution.]

OPTION 2: Direct Award or where specified in a Customer's Further Competition

1. DEFINITIONS

1.1 In this Call Off Schedule 10, the following definitions shall apply:

"Business Continuity Plan"	has the meaning given to it in paragraph 2.2.1(b) of this Call Off Schedule;
"Business Continuity Services"	has the meaning given to it in paragraph 4.2.2 of this Call Off Schedule;
"Disaster"	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable for a period of 24 hours [Guidance Note: This figure may be amended by Customers conducting a Further Competition] or which is reasonably anticipated will mean that the provision of the Services or a material part thereof will be unavailable for that period;
"Disaster Recovery Plan"	has the meaning given to it in 2.2.1(c) of this Call Off Schedule;
"Disaster Recovery Services"	the services embodied in the processes and procedures for restoring the Services following the occurrence of a disaster;
"Disaster Recovery System"	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
"Review Report"	has the meaning given to it in paragraph 6.2 of this Call Off Schedule;
"Supplier's Proposals"	has the meaning given to it in paragraph 6.2.3 of this Call Off Schedule;

2. BCDR PLAN

2.1 Within thirty (30) **[Guidance Note: This figure may be amended by Customers conducting a Further Competition]** Working Days from the Call Off

Commencement Date the Supplier shall prepare and deliver to the Customer for the Customer's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

2.1.2 the recovery of the Services in the event of a Disaster.

2.2 The BCDR Plan shall:

2.2.1 be divided into three parts:

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

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

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

2.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and

2.3.2 notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Customer.

2.4 If the Customer rejects the draft BCDR Plan:

2.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and

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

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

3.1 Part A of the BCDR Plan shall:

3.1.1 set out how the business continuity and disaster recovery elements of the Plan link to each other;

3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Services and any services provided to the Customer by a Related Supplier;

3.1.3 contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;

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

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

4. BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

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

4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Services; and

4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

4.2.1 address the various possible levels of failures of or disruptions to the provision of Services;

4.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such goods, services and steps, the “**Business Continuity Services**”);

4.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and

4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

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

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

5.3 The Disaster Recovery Plan shall include the following:

5.3.1 the technical design and build specification of the Disaster Recovery System;

5.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

(a) data centre and disaster recovery site audits;

(b) backup methodology and details of the Supplier's approach to data back-up and data verification;

- (c) identification of all potential disaster scenarios;
- (d) risk analysis;
- (e) documentation of processes and procedures;
- (f) hardware configuration details;
- (g) network planning including details of all relevant data networks and communication links;
- (h) invocation rules;
- (i) Service recovery procedures; and
- (j) steps to be taken upon resumption of the provision of Services to address any prevailing effect of the failure or disruption of the provision of Services;

5.3.3 any applicable Service Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;

5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;

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

5.3.6 testing and management arrangements.

6. REVIEW AND AMENDMENT OF THE BCDR PLAN

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

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

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

6.1.3 where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Call Off Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Customer for the Customer's approval. The costs of both Parties of any such additional reviews shall be met by the Customer except that the Supplier shall not be entitled to charge the Customer for any costs that it may incur above any estimate without the Customer's prior written approval.

6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 of this Call off Schedule shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such

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

- 6.2.1 the findings of the review;
 - 6.2.2 any changes in the risk profile associated with the provision of Services; and
 - 6.2.3 the Supplier's proposals (the “**Supplier's Proposals**”) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any goods, services or systems provided by a third party.
- 6.3 Following receipt of the Review Report and the Supplier's Proposals, the Customer shall:
- 6.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
 - 6.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Customer.
- 6.4 If the Customer rejects the Review Report and/or the Supplier's Proposals:
- 6.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and
 - 6.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Customer's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Customer for the Customer's approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraphs 6.3 and 6.4 of this Call Off Schedule shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the Customer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7. TESTING OF THE BCDR PLAN

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

the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

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

8. INVOCATION OF THE BCDR PLAN

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

CALL OFF SCHEDULE 11: EXIT MANAGEMENT

[Guidance Note: Consider the guidance note on Exit Management in the Template Order Form and Clause 45.5 of the Template Call Off Terms. This Call Off Schedule is likely to be relevant in the context of procuring Services rather than Goods only, with emphasis on ongoing Services. Switch to "Not Used" if not required; or retain and refine the parts relevant to your requirements if procuring through further competition]

1. DEFINITIONS

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

"Exclusive Assets"	means those Supplier Assets used by the Supplier or a Key Sub-Contractor which are used exclusively in the provision of the Services;
"Exit Information"	has the meaning given to it in paragraph 4.1 of this Call Off Schedule;
"Exit Manager"	means the person appointed by each Party pursuant to paragraph 3.4 of this Call Off Schedule for managing the Parties' respective obligations under this Call Off Schedule;
"Exit Plan"	means the plan described in paragraph 5 of this Call Off Schedule
"Net Book Value"	means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Customer of even date with this Call Off Contract;
"Non-Exclusive Assets"	means those Supplier Assets (if any) which are used by the Supplier or a Key Sub-Contractor in connection with the Services but which are also used by the Supplier or Key Sub-Contractor for other purposes;
"Registers"	means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Call Off Schedule;
"Termination Assistance"	means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Customer pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in paragraph 6.1 of this Call Off Schedule;
"Termination Assistance Period"	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide

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

2. INTRODUCTION

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

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

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

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

- 3.1.1 create and maintain a Register of all:
- (a) Supplier Assets, detailing their:
 - (i) make, model and asset number;
 - (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (iii) Net Book Value;
 - (iv) condition and physical location; and
 - (v) use (including technical specifications); and
 - (b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
- 3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Customer and/or Replacement Supplier to understand how the Supplier provides the

Services and to enable the smooth transition of the Services with the minimum of disruption;

3.1.3 agree the format of the Registers with the Customer as part of the process of agreeing the Exit Plan; and

3.1.4 at all times keep the Registers up to date, in particular in the event that Supplier Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.

3.2 The Supplier shall:

3.2.1 procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Call Off Contract; and

3.2.2 (unless otherwise agreed by the Customer in writing) procure that all licences for Third Party Software and all Sub-Contracts that are exclusive to this Call Off Contract (if any) shall be assignable and/or capable of novation at the request of the Customer to the Customer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Customer.

3.3 Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2.2 of this Call Off Schedule which the Supplier proposes to enter into after the Call Off Commencement Date is assignable and/or capable of novation to the Customer (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Customer of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Customer so directs, may include the Supplier seeking an alternative Sub-Contractor or provider of services to which the relevant agreement relates.

3.4 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Call Off Schedule and provide written notification of such appointment to the other Party within three (3) months of the Call Off Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Call Off Schedule. The Supplier shall ensure that its Exit Manager has the requisite Authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Call Off Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination or expiry of this Call Off Contract and all matters connected with this Call Off Schedule and each Party's compliance with it.

4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

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

4.1.1 detailed descriptions of the Service(s);

4.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;

- 4.1.3 an inventory of Customer Data in the Supplier's possession or control;
 - 4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 4.1.6 all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Call Off Contract; and
 - 4.1.7 such other material and information as the Customer shall reasonably require,
(together, the “**Exit Information**”).
- 4.2 The Supplier acknowledges that the Customer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Customer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Customer may not under this paragraph 4.2 of this Call Off Schedule disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).
- 4.3 The Supplier shall:
- 4.3.1 notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Customer regarding such proposed material changes; and
 - 4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.
- 4.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- 4.4.1 prepare an informed offer for those Services; and
 - 4.4.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

5. EXIT PLAN

- 5.1 The Supplier shall, within three (3) months after the Call Off Commencement Date, deliver to the Customer an Exit Plan which:
- 5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Customer and/or its Replacement Supplier on the expiry or termination of this Call Off Contract;
 - 5.1.2 complies with the requirements set out in paragraph 5.3 of this Call Off Schedule;
 - 5.1.3 is otherwise reasonably satisfactory to the Customer.
- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 5.3 Unless otherwise specified by the Customer or Approved, the Exit Plan shall set out, as a minimum:
- 5.3.1 how the Exit Information is obtained;
 - 5.3.2 the management structure to be employed during both transfer and cessation of the Services;
 - 5.3.3 the management structure to be employed during the Termination Assistance Period;
 - 5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 5.3.5 how the Services will transfer to the Replacement Supplier and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Customer's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - 5.3.6 details of contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon the Call Off Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
 - 5.3.7 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Services following the Call Off Expiry Date charged at rates agreed between the Parties at that time;
 - 5.3.8 proposals for the process of handing over to the Customer or a Replacement Supplier copies of all documentation:
 - (a) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Services;
 - 5.3.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
 - 5.3.10 proposals for the identification and return of all Customer Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
 - 5.3.11 proposals for the disposal of any redundant Services and materials;
 - 5.3.12 procedures to deal with requests made by the Customer and/or a Replacement Supplier for Staffing Information pursuant to Call Off Schedule 12 (Staff Transfer);
 - 5.3.13 how each of the issues set out in this Call Off Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Customer with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and

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

6. TERMINATION ASSISTANCE

6.1 The Customer shall be entitled to require the provision of Termination Assistance at any time during the Call Off Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least six (6) months prior to the Call Off Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

6.1.1 the date from which Termination Assistance is required;

6.1.2 the nature of the Termination Assistance required; and

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

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

7. TERMINATION ASSISTANCE PERIOD

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

7.1.1 continue to provide the Services (as applicable) and, if required by the Customer pursuant to paragraph 6.1 of this Call Off Schedule, provide the Termination Assistance;

7.1.2 in addition to providing the Services and the Termination Assistance, provide to the Customer any reasonable assistance requested by the Customer to allow the Services to continue without interruption following the termination or expiry of this Call Off Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Customer and/or its Replacement Supplier;

7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Call Off Schedule without additional costs to the Customer;

7.1.4 provide the Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and

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

7.2 Without prejudice to the Supplier's obligations under paragraph 7.1.3 of this Call Off Schedule, if it is not possible for the Supplier to reallocate resources to

provide such assistance as is referred to in paragraph 7.1.2 of this Call Off Schedule without additional costs to the Customer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Change Control Procedure.

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

8. TERMINATION OBLIGATIONS

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

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

- 8.2.1 cease to use the Customer Data;
- 8.2.2 provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the Customer);
- 8.2.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Customer Data and promptly certify to the Customer that it has completed such deletion;
- 8.2.4 return to the Customer such of the following as is in the Supplier's possession or control:
 - (a) all copies of the Customer Software and any other software licensed by the Customer to the Supplier under this Call Off Contract;
 - (b) all materials created by the Supplier under this Call Off Contract in which the IPRs are owned by the Customer;
 - (c) any parts of the IT Environment and any other equipment which belongs to the Customer;
 - (d) any items that have been on-charged to the Customer, such as consumables; and
 - (e) all Customer Property issued to the Supplier under Clause 30 of this Call Off Contract (Customer Property). Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);
 - (f) any sums prepaid by the Customer in respect of Services not Delivered by the Call Off Expiry Date;
- 8.2.5 vacate any Customer Premises;
- 8.2.6 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any

damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;

8.2.7 provide access during normal working hours to the Customer and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:

- (a) such information relating to the Services as remains in the possession or control of the Supplier; and
- (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.

8.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

8.4 Except where this Call Off Contract provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

9. ASSETS, SUB-CONTRACTS AND SOFTWARE

9.1 Following notice of termination of this Call Off Contract and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:

- 9.1.1 terminate, enter into or vary any Sub-Contract;
- 9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
- 9.1.3 terminate, enter into or vary any licence for software in connection with the provision of Services.

9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5 of this Call Off Schedule, the Customer shall provide written notice to the Supplier setting out:

- 9.2.1 which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Supplier ("**Transferring Assets**");
- 9.2.2 which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,
 - the Customer and/or the Replacement Supplier requires the continued use of; and

- 9.2.3 which, if any, of Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Supplier (the **“Transferring Contracts”**) in order for the Customer and/or its Replacement Supplier to provide the Replacement Services from the expiry of the Termination Assistance Period. Where requested by the Customer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Customer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Customer and/or its Replacement Supplier requires to provide the Services or the Replacement Services.
- 9.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Customer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Call Off Contract Charges at the Call Off expiry Date, in which case the Customer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Call Off Contract Charges.
- 9.4 Risk in the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) on payment for the same.
- 9.5 Where the Supplier is notified in accordance with paragraph 9.2.2 of this Call Off Schedule that the Customer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 9.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Customer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- 9.5.2 procure a suitable alternative to such assets and the Customer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 9.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Customer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.
- 9.7 The Customer shall:
- 9.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- 9.7.2 once a Transferring Contract is novated or assigned to the Customer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 9.8 The Supplier shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has been effected.

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

10. SUPPLIER PERSONNEL

10.1 The Customer and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Call Off Schedule 12 (Staff Transfer) shall apply.

10.2 The Supplier shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Customer and/or the Replacement Supplier.

10.3 During the Termination Assistance Period, the Supplier shall give the Customer and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Customer and/or the Replacement Supplier.

10.4 The Supplier shall immediately notify the Customer or, at the direction of the Customer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.

10.5 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Customer and/or the Replacement Supplier.

11. CHARGES

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

12. APPORTIONMENTS

12.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

12.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

12.1.2 the Customer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

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

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

CALL OFF SCHEDULE 12: STAFF TRANSFER

1. DEFINITIONS

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

"Notified Sub-Contractor"	means a Sub-Contractor identified in Annex 2 of this Call Off Schedule to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
"New Employee"	means any employee employed by the Supplier following the Call Off Commencement Date;
"Principles of Good Employment Practice"	means the guidance published by the Cabinet Office and found at www.gov.uk/government/publications/principles-of-good-employment-practice
"Staffing Information"	means, in relation to all persons identified on the Supplier's Provisional Personnel List or Supplier's Final Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format: <ul style="list-style-type: none">a) their ages, dates of commencement of employment or engagement and gender;b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;c) the identity of the employer or relevant contracting party;d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;e) their wages, salaries and profit sharing arrangements as applicable;f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term

absence;

- i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

"Supplier's Final Personnel List"

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

"Supplier's Provisional Personnel List"

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

"Transferring Customer Employees"

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

"Transferring Former Supplier Employees"

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

2. INTERPRETATION

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

PART A

TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

1. RELEVANT TRANSFERS

1.1 The Customer and the Supplier agree that:

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

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

2. CUSTOMER INDEMNITIES

2.1 Subject to paragraph 2.2 of Part A of this Call Off Schedule, the Customer shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- 2.1.1 any act or omission by the Customer occurring before the Relevant Transfer Date;
- 2.1.2 the breach or non-observance by the Customer before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;
- 2.1.3 any claim by any trade union or other body or person representing the Transferring Customer Employees arising from or connected with any failure by the Customer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

- 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Customer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 2.1.5 a failure of the Customer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees arising before the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.7 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in paragraph 2.1 of Part A of this Call Off Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date); or
 - 2.2.2 arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer; and

- 2.3.2 the Customer may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such other reasonable steps as the Customer considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in paragraph 2.3.2 of Part A of this Call Off Schedule is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in paragraph 2.3.2 of Part A of this Call Off Schedule:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part A of this Call Off Schedule and in accordance with all applicable proper employment procedures set out in applicable Law, the Customer shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part A of this Call Off Schedule provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in paragraph 2.6 of Part A of this Call Off Schedule:
- 2.7.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- 2.7.2 any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.7.3 shall apply only where the notification referred to in paragraph 2.3.1 of Part A of this Call Off Schedule is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer within six (6) months of the Call Off Commencement Date.
- 2.8 If any such person as is referred to in paragraph 2.3 of Part A of this Call Off Schedule is neither re-employed by the Customer nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in paragraph 2.5 of Part A of this Call Off Schedule such person shall be treated as having

transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to paragraph 3.2 of Part A of this Call Off Schedule, the Supplier shall indemnify the Customer against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

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

- 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees in respect of the period from (and including) the Relevant Transfer Date; and
 - 3.1.8 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Customer's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in paragraph 3 of Part A of this Call Off Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Customer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Customer and the Supplier.

4. INFORMATION

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

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the principles set out in the Principles of Good Employment Practice apply to the treatment of New Employees by the Supplier. The Supplier undertakes to treat each New Employee in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in:
- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; and/or

5.2.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004,

or any statement of practice, paper or other guidance that replaces any of the foregoing.

6. PENSIONS

6.1 The Supplier shall, and shall procure that each of its Sub-Contractors shall, comply with the pensions provisions set out in Annex 1.

PART B

TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

1. RELEVANT TRANSFERS

1.1 The Customer and the Supplier agree that:

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

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

2. FORMER SUPPLIER INDEMNITIES

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

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

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

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

2.4 If an offer referred to in paragraph 2.3.2 of Part B of this Call Off Schedule is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in paragraph 2.3.2 of Part B of this Call Off Schedule:

2.5.1 no such offer of employment has been made;

2.5.2 such offer has been made but not accepted; or

2.5.3 the situation has not otherwise been resolved;

the Supplier and/or any notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

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

2.7 The indemnity in paragraph 2.6 of Part B of this Call Off Schedule:

2.7.1 shall not apply to:

(a) any claim for:

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

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

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

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

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

2.8 If any such person as is described in paragraph 2.3 of Part B of this Call Off Schedule is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in paragraph 2.5 of Part B of this Call Off Schedule, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier

shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to paragraph 3.2 of Part B of this Call Off Schedule, the Supplier shall indemnify the Customer and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

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

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

4. INFORMATION

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

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

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

- 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004,
or any statement of practice, paper or other guidance that replaces any of the foregoing.

6. PROCUREMENT OBLIGATIONS

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

7. PENSIONS

- 7.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in Annex 1 where any Transferring Former Supplier Employee is a Pension Member as such term is defined in Annex 1 of this Call Off Schedule.

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

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

2. INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of paragraphs 1.2 to 1.4 of Part C of this Call Off Schedule and in accordance with all applicable employment procedures set out in applicable Law and subject also to paragraph 2.4 of Part C of this Call Off Schedule, the Customer shall:
- 2.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in paragraph 1.2 of Part C of this Call Off Schedule made pursuant to the provisions of paragraph 1.4 of Part C of this Call Off Schedule provided that the Supplier takes, or shall procure that

the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

2.1.2 procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of paragraph 1.4 of Part C of this Call Off Schedule provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

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

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

2.4 The indemnities in paragraph 2.1 of Part C of this Call Off Schedule:

2.4.1 shall not apply to:

(a) any claim for:

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

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

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

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

2.4.2 shall apply only where the notification referred to in paragraph 1.2 of Part C of this Call Off Schedule is made by the Supplier and/or any Sub-Contractor to the Customer and, if applicable, Former Supplier within six (6) months of the Call Off Commencement Date.

3. PROCUREMENT OBLIGATIONS

3.1 Where in this of Part C of this Call Off Schedule the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer

must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D

EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

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

- 1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any partial termination of this Call Off Contract;
- 1.1.3 the date which is twenty four (24) months before the end of the Call Off Contract Period; and
- 1.1.4 receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six (6) month period),

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

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

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

1.3 The Customer shall be permitted to use and disclose information provided by the Supplier under paragraphs 1.1 and 1.2 of Part D of this Call Off Schedule for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.

1.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to paragraphs 1.1 and 1.2 of Part D of this Call Off Schedule shall be true and accurate in all material respects.

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

- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

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

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

1.6 During the Call Off Contract Period, the Supplier shall provide to the Customer any information the Customer may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the DPA) including without limitation the Staffing Information and, upon reasonable request by the Customer and subject only to any limitation imposed by the DPA, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, the Customer or, at the direction of the Customer to a Replacement Supplier and/or any Replacement Sub-Contractor with access (on reasonable notice and during normal working hours) to such employment records as the Customer reasonably requests and shall allow the Customer or at the Customer's direction, the Replacement Supplier and/or any Replacement Sub-Contractor to have copies of any such documents.

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

- 1.7.1 the most recent month's copy pay slip data;
- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;

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

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this Call Off Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 2.3 Subject to paragraph 2.6 of Part D of this Call Off Schedule, the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
 - 2.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

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

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

2.5.1 the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

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

2.7 If after the fifteen (15) Working Day period specified in paragraph 2.5.2 of Part D of this Call Off Schedule has elapsed:

2.7.1 no such offer of employment has been made;

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved

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

2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of paragraphs 2.5 to 2.7 of Part D of this Call Off Schedule and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.7 of Part D of this Call Off Schedule provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in paragraph 2.8 of Part D of this Call Off Schedule:

2.9.1 shall not apply to:

(a) any claim for:

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

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

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

- (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in paragraph 2.5.1 of Part D of this Call Off Schedule is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date .
- 2.10 If any such person as is described in paragraph 2.5 of Part D of this Call Off Schedule is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in paragraphs 2.5 to 2.7 of Part D of this Call Off Schedule, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Supplier and/or any Sub-Contractor; and
- 2.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to paragraph 2.14 of Part D of this Call Off Schedule, the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor;
- 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:

- (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
- 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in paragraph 2.13 of Part D of this Call Off Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act

or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX 1: PENSIONS

The provisions of this Annex shall apply in respect of the Transferring Employees who transfer from the Customer to the Supplier.

1. DEFINITIONS

In this Annex the following definitions shall apply:

"Fair Deal Employee"	means those Transferring Former Supplier Employees whose period of continuous employment commenced with, and who originally transferred from employment with, central or local government or a public sector employer pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), and who remain in employment relating to the provision of foods and/or services to which that Relevant Transfer applied;
"PCSPS"	means the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament;
"PCSPS Admission Agreement"	means an admission agreement by which the Supplier agrees to participate in the PCSPS as amended from time to time;
"Pension Member"	means each Transferring Customer Employee who remains or becomes a member of the PCSPS under paragraph 3.1 of this Annex and who has not subsequently ceased to be an active member of the PCSPS; and
"Transferring Employee"	means each Transferring Customer Employee and each Fair Deal Employee.

2. PARTICIPATION

2.1 The Supplier and the Customer undertake to do all such things and execute any documents (including the PCSPS Admission Agreement) as may be required to enable the Supplier to participate in the PCSPS in respect of the Pension Members.

2.2 All costs that the Parties reasonably incur in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the PCSPS shall be borne by the Supplier.

3. FUTURE SERVICE BENEFITS

3.1 Subject to compliance by the Customer with paragraph 2.1 of this Annex, the Supplier shall procure that the Transferring Employees who are members or eligible to be members of the PCSPS shall be either automatically enrolled in or offered continued membership of the relevant section of the PCSPS that they currently contribute to or would have become eligible to join immediately prior to the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of PCSPS for service from (and including) the Relevant Transfer Date.

3.2 The Supplier shall procure that there shall be provided for each Transferring Employee, as far as practicable, on termination of employment by the Supplier on or after the Relevant Transfer Date, continued rights under, or rights which replicate those to which such Transferring Employee would have been entitled under, the Civil Service Compensation Scheme (pursuant to section 1 of the Superannuation Act 1972) had he remained in the employment of the Customer or, if any such Transferring Employee cannot be given in any respect such equivalent rights to which he would have been entitled under the Civil Service Compensation Scheme, he shall be provided with compensation by the Supplier that is broadly comparable or of equal value to the lost entitlement.

4. FUNDING

4.1 The Supplier undertakes to pay to the PCSPS such employer contributions as are provided for in the PCSPS Admission Agreement and shall deduct and pay to the PCSPS such employee contributions as are required by the PCSPS.

4.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by or payment to the PCSPS in respect of the non-payment or the late payment of any sum payable by the Supplier to or in respect of the PCSPS.

5. PROVISION OF INFORMATION

5.1 The Supplier and the Customer respectively undertake to each other:

5.1.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and the information shall be supplied as expeditiously as possible; and

5.1.2 not to issue any announcements to the Transferring Employees concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

6. INDEMNITIES

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

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

7. EMPLOYER OBLIGATION

7.1 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005 in relation to all relevant employees.

8. SUBSEQUENT TRANSFERS

8.1 The Supplier shall:

- 8.1.1 not adversely affect pension rights accrued by any Pension Member in the period ending on the date of the relevant future transfer; and
- 8.1.2 provide all such co-operation and assistance as the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the PCSPS in respect of the Pension Members.

ANNEX 2: LIST OF NOTIFIED SUB-CONTRACTORS

[REDACTED]

CALL OFF SCHEDULE 13: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this Call Off Schedule 13, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Counter Notice”	has the meaning given to it in paragraph 6.2 of this Call Off Schedule;
“Exception”	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Services;
“Expert”	the person appointed by the Parties in accordance with paragraph 5.2 of this Call Off Schedule 13; and
“Mediation Notice”	has the meaning given to it in paragraph 3.2 of this Call Off Schedule;
“Mediator”	the independent third party appointed in accordance with paragraph 4.2 of this Call Off Schedule 13.

2. INTRODUCTION

2.1 If a Dispute arises then:

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

2.2 The Dispute Notice shall set out:

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

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

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

- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Call Off Schedule);
- 2.4.2 then by mediation (as prescribed in paragraph 4 of this Call Off Schedule); and

- 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Call Off Schedule) or litigation (in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Call Off Schedule) where specified under the provisions of this Call Off Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Call Off Schedule.
- 2.6 In exceptional circumstances where the use of the times in this Call Off Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- 2.7.1 in paragraph 3.2.3, ten (10) Working Days;
- 2.7.2 in paragraph 4.2, ten (10) Working Days;
- 2.7.3 in paragraph 5.2, five (5) Working Days; and
- 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

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

4. MEDIATION

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

5. EXPERT DETERMINATION

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

6. ARBITRATION

- 6.1 The Customer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Call Off Schedule.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Call Off Schedule shall apply;
 - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 61 of this Call Off Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
 - 6.3.3 the Customer does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Call Off Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Call Off Schedule or commence court proceedings in the courts in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Call Off Schedule, the Parties hereby confirm that:
- 6.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to paragraphs 6.4.5 to 6.4.7 of this Call Off Schedule);
 - 6.4.2 the arbitration shall be administered by the LCIA;
 - 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - 6.4.5 the chair of the arbitral tribunal shall be British;
 - 6.4.6 the arbitration proceedings shall take place in [London] and in the English language; and
 - 6.4.7 the seat of the arbitration shall be [London].

[Guidance Note: Customer to consider whether London is an appropriate seat for the needs of the Parties]

7. URGENT RELIEF

7.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

7.1.1 for interim or interlocutory remedies in relation to this Call Off Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or

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

CALL OFF SCHEDULE 14: VARIATION FORM

No of Order Form being varied:

.....

Variation Form No:

.....

BETWEEN:

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

and

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

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

[Guidance Note: Insert details of the Variation]

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

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

.....

CALL OFF SCHEDULE 15: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION

1.1 This Call Off Schedule 15 specifies the range of Alternative Clauses and Additional Clauses that may be requested in the Order Form and, if requested in the Order Form, shall apply to this Call Off Contract.

2. CLAUSES SELECTED

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

- 2.1.1 Scots Law (see paragraph 0 of this Call Off Schedule);
- 2.1.2 Northern Ireland Law (see paragraph 0 of this Call Off Schedule)
- 2.1.3 Non-Crown Bodies (see paragraph 0 of this Call Off Schedule); or
- 2.1.4 Non-FOIA Public Bodies (see paragraph 0 of this Call Off Schedule).

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

- 2.2.1 Security Measures (see paragraph 5 of this Call Off Schedule);
- 2.2.2 Financial Distress (see paragraph 7 of this Call Off Schedule);

2.3 The Customer may, in the Order Form, request the following MOD (“**Ministry of Defence**”) Additional or Alternative Clauses should apply:

- 2.3.1 [MOD Additional Clauses] (see paragraph 6 of this Call Off Schedule);

[Guidance Note: The Ministry of Defence (or any other Customer) to select and refine during the Further Competition Procedure]

3. IMPLEMENTATION

3.1 The appropriate changes have been made in this Call Off Contract to implement the Alternative and/or Additional Clauses specified in paragraph 2.1 of this Call Off Schedule and the Additional Clauses specified in paragraphs 2.2 and 2.3 of this Call Off Schedule shall be deemed to be incorporated into this Call Off Contract.

4. ALTERNATIVE CLAUSES

SCOTS LAW

Law and Jurisdiction (Clause 57)

References to “England and Wales” in the original Clause 57 of this Call Off Contract (Law and Jurisdiction) shall be replaced with “Scotland”.

NORTHERN IRELAND LAW

Law and Jurisdiction (Clause 57)

References to “England and Wales” in the original Clause 57 of this Call Off Contract (Law and Jurisdiction) shall be replaced with “Northern Ireland”.

Insolvency Event

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

NON-CROWN BODIES

[Guidance Note: only where the Customer is not a Crown Body]

Clause 46.3.1(a) of this Call Off Contract (Official Secrets Act and Finance Act) shall be deleted.

NON-FOIA PUBLIC BODIES

[Guidance Note: only where the Customer is not a public body for the purposes of FOIA]

Replace Clause 34.6 of this Call Off Contract (Freedom of Information) with "The Customer has notified the Supplier that the Customer is exempt from the provisions of FOIA and EIR."

5. ADDITIONAL CLAUSES: GENERAL

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

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

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

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

5.2 The following new Clause [58] shall apply:

[Guidance Note: the intention is for the clause to follow after the last clause in the T&Cs]

58. **[SECURITY MEASURES]**

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

58.1.1. without the prior consent in writing of the Customer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;

58.1.2. disclosed to or acquired by a person as respects whom the Customer has given to the Supplier a notice in writing which has not been cancelled stating that the Customer requires that secret matters shall not be disclosed to that person;

58.1.3. without the prior consent in writing of the Customer, disclosed to or acquired by any person who is not a servant of the Supplier; or

- 58.1.4. disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Call Off Contract that such person shall have the information.
- 58.2. Without prejudice to the provisions of Clause 58.1, the Supplier shall, both before and after the completion or termination of this Call Off Contract, take all reasonable steps to ensure:
 - 58.2.1. no such person as is mentioned in Clauses 58.1, 58.1.1 or 58.1.2 hereof shall have access to any item or document under the control of the Supplier containing information about a secret matter except with the prior consent in writing of the Customer;
 - 58.2.2. that no visitor to any premises in which there is any item to be supplied under this Call Off Contract or where Services are being supplied shall see or discuss with the Supplier or any person employed by him any secret matter unless the visitor is authorised in writing by the Customer so to do;
 - 58.2.3. that no photograph of any item to be supplied under this Call Off Contract or any portions of the Services shall be taken except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;
 - 58.2.4. that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and
 - 58.2.5. that if the Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such document, model or item as is mentioned in Clause 58.2.3, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
- 58.3. The decision of the Customer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 57 shall be final and conclusive.

- 58.4. If and when directed by the Customer, the Supplier shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 58.5. If and when directed by the Customer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Call Off Contract.
- 58.6. If, at any time either before or after the expiry or termination of this Call Off Contract, it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Call Off Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Customer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.
- 58.7. The Supplier shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by Clauses 58.1 and 58.2 and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause 57 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.
- 58.8. The Supplier shall, if directed by the Customer, include in the Sub-Contract provisions in such terms as the Customer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Clause 57, but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:
- 58.8.1. give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the

provisions relating to secrecy and security which are included in Sub-Contracts under this Clause 57 into operation in such cases and to such extent as the Customer may direct;

58.8.2. if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Clause 57, notify such breach forthwith to the Customer; and

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

58.9. The Supplier shall give the Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer that the obligations imposed by or under the foregoing provisions of this Clause 57 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Customer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Call Off Contract or in which there is or will be any item to be supplied under this Call Off Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Call Off Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

58.10. Nothing in this Clause 57 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

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

58.11.1. that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause 57; or

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

58.11.3. that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in 58.11.2, information about a secret matter

has been or is likely to be acquired by a person who, in the opinion of the Customer, ought not to have such information;

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

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

58.13. Supplier's notice

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

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

58.14. Matters pursuant to termination

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

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

58.14.3. The Customer may take over any work or thing done or made under this Call Off Contract (whether completed or not) and not accepted at the date of such termination which the Customer may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of this Clause 57 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken

over, is reasonable. The Supplier shall in accordance with directions given by the Customer, deliver any work or thing taken over under this Clause, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this Clause; and

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

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

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

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

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

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

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

58.15.5. the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in

connection with this Call Off Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract;

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

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

6. MOD (OR ANY OTHER CONTRACTING BODY) ADDITIONAL CLAUSES

6.1 The definition of Call Off Contract in Call Off Schedule 1 (Definitions) to the Call Off Terms shall be replaced with the following:

6.1.1 **"Call Off Contract"** means this written agreement between the Customer and the Supplier consisting of the Order Form and the Call Off Terms and the MoD Terms and Conditions.

6.2 The following definitions shall be inserted into in Call Off Schedule 1 (Definitions) to the Call Off Terms:

6.2.1 **"MoD Terms and Conditions"** means the contractual terms and conditions listed in Schedule [...] which form part of the Call Off Terms **[Guidance Note: read with the Guidance Note below]**

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

6.2.3 **"Officer in charge"** shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.

6.3 The following clauses shall be inserted into Clause 2 of this Call Off Contract (Due Diligence):

6.3.1 The Supplier confirms that it has had the opportunity to review the MoD Terms and Conditions and has raised all due diligence questions in relation to those documents with the Customer prior to the Commencement Date.

6.3.2 Where required by the Customer, the Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Supplier.

6.4 The following new Clause [59] shall apply:

[Guidance Note: the intention is for the clause to follow after the last clause in the T&Cs and/or the Additional Clause "Security Measures"]

59. [ACCESS TO MOD SITES]

59.1. In this Clause 59:

- 59.1.1. The Customer shall issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Customer and shall be surrendered on demand or on completion of the supply of the Services.
- 59.1.2. The Supplier's representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.
- 59.1.3. The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Customer wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Call Off Contract where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Customer and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Customer with other evidence relating to the costs of this Call Off Contract.
- 59.1.4. Where the Supplier's representatives are required by this Call Off Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Supplier shall make such arrangements through the Technical Branch named for this purpose in this Call Off Contract. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its

representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Customer shall reimburse the Supplier's reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Call Off Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.

- 59.1.5. Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.
- 59.1.6. Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 59.1.7. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 59.1.8. The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Customer shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Customer shall be recovered from the Supplier.

6.5 The following new Call Off Schedule [16] shall apply:

CALL OFF SCHEDULE [16]: MOD DEFCONS AND DEFFORMS

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

DEFCONS

DEFCON No	Version	Description

DEFFORMs (Ministry of Defence Forms)

DEFFORM No	Version	Description

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[Guidance Note: the above documents can be found at <http://www.aof.mod.uk/>]

[Guidance Note for the Ministry of Defence: Upon placing of an Order the Ministry of Defence shall select and refine the DEFCONs or DEFFORMs from the tables above, in accordance with the DEFCONs and DEFFORMs which are appropriate to the specific Call Off Contract, and set them out in Call Off Schedule [11].]

[insert text of applicable DEFCONs and DEFFORMs]

7. ADDITIONAL CLAUSE FOR FINANCIAL DISTRESS

7.1 The following new Clause [58] shall apply:

[Guidance Note: the intention is for the clause to follow after the last clause in the T&Cs:]

58 [FINANCIAL DISTRESS]

58.1 The Parties shall comply with the provisions of Call Off Schedule XX (Financial Distress) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.

7.2 The following new Call Off Schedule [16] shall apply:

[CALL OFF SCHEDULE XX: FINANCIAL DISTRESS]

[Guidance Note: Throughout this additional Call Off Schedule XX, delete all references to “Framework Guarantor/ [and Call Off Guarantor]” and “Key Sub-Contractor” highlighted in yellow where not applicable]

1. DEFINITIONS

1.1 In this Call Off Schedule [16], the following definitions shall apply:

“Credit Rating Threshold” means the minimum credit rating level for the Supplier [and the Framework Guarantor/ [and Call Off Guarantor]]as set out in Annex 2 [and for each Key Sub-Contractor as set out in Framework Schedule 7 (Key Sub-Contractors)]; and

“Financial Distress Service Continuity Plan” means a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Call Off Contract in the event that a Financial Distress Event occurs;

“Rating Agencies” means the rating agencies listed in Annex 1.

2. CREDIT RATING AND DUTY TO NOTIFY

- 2.1 The Supplier warrants and represents to the Customer for the benefit of the Customer that as at the Call Off Commencement Date the long term credit ratings issued for the Supplier [and Framework Guarantor/ [and Call Off Guarantor]] by each of the Rating Agencies are as set out in Annex 2.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Customer in writing if there is any downgrade in the credit rating issued by any Rating Agency for either the Supplier [or the Framework Guarantor/ [and Call Off Guarantor]] (and in any event within five (5) Working Days of the occurrence of the downgrade).
- 2.3 If there is any downgrade credit rating issued by any Rating Agency for either the Supplier [or the Framework Guarantor/ [and Call Off Guarantor],] the Supplier shall ensure that the Supplier's auditors [Framework Guarantor/ [and Call Off Guarantor]] auditors (as the case may be) thereafter provide the Customer within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Customer (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Supplier [or the Framework Guarantor/ [and Call Off Guarantor] as the case may be] as at the end of each Contract Year or such other date as may be requested by the Customer. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Supplier [or the Framework Guarantor/ [and Call Off Guarantor] (as the case may be)];
- B is the value of all marketable securities held by the Supplier [or the Framework Guarantor/ [and Call Off Guarantor] (as the case may be)] determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Supplier [Framework Guarantor/ [and Call Off Guarantor] (as the case may be)]; and
- D is the value at the relevant date of the current liabilities of the Supplier [or the Framework Guarantor/ [and Call Off Guarantor] (as the case may be)].

- 2.4 The Supplier shall:
- 2.4.1 regularly monitor the credit ratings of the Supplier [Framework Guarantor/ [and Call Off Guarantor] and each Key Sub-Contractor] with the Rating Agencies; and
- 2.4.2 promptly notify (or shall procure that its auditors promptly notify) the Customer in writing following the occurrence of a Financial Distress Event [or Key Sub-Contractor Financial Distress Event] or any fact,

circumstance or matter which could cause a Financial Distress Event [or a Key Sub-Contractor Financial Distress Event] (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event[, the Key Sub-Contractor Financial Distress Event] or the fact, circumstance or matter which could cause a Financial Distress Event [or a Key Sub-Contractor Financial Distress Event]).

- 2.5 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of paragraph 3.1.1, the credit rating of the Supplier, the [Framework Guarantor/ [and Call Off Guarantor] or relevant Key Sub-Contractor] (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or relevant Key Sub-Contractor (as the case may be)] at or below the applicable Credit Rating Threshold.

3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

- 3.1 In the event of:
- 3.1.1 the credit rating of the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] dropping below the applicable Credit Rating Threshold;
 - 3.1.2 the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
 - 3.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor];
 - 3.1.4 the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] committing a material breach of covenant to its lenders;
 - 3.1.5 a Key Sub-Contractor notifying the Customer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or
 - 3.1.6 any of the following:
 - (a) commencement of any litigation against the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] with respect to financial indebtedness or obligations under a service contract;
 - (b) non-payment by the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] of any financial indebtedness;
 - (c) any financial indebtedness of the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] becoming due as a result of an event of default; or
 - (d) the cancellation or suspension of any financial indebtedness in respect of the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor],

in each case which the Customer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Call Off Contract;

then, immediately upon notification of the Financial Distress Event (or if the Customer becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Customer shall have the rights and remedies as set out in paragraphs 3.3 to 3.6.

3.2 In the event of a late or non-payment of a Key Sub-Contractor pursuant to paragraph 3.1.5, the Customer shall not exercise any of its rights or remedies under paragraph 3.3 without first giving the Supplier ten (10) Working Days to:

3.2.1 rectify such late or non-payment; or

3.2.2 demonstrate to the Customer's reasonable satisfaction that there is a valid reason for late or non-payment.

3.3 The Supplier shall [(and shall procure that the Framework Guarantor/ [and Call Off Guarantor] and/or any relevant Key Sub-Contractor shall)]:

3.3.1 at the request of the Customer meet the Customer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Customer may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Call Off Contract; and

3.3.2 where the Customer reasonably believes (taking into account the discussions and any representations made under paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Call Off Contract:

(a) submit to the Customer for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Customer may permit and notify to the Supplier in writing); and

(b) provide such financial information relating to the Supplier [or the Framework Guarantor/ [and Call Off Guarantor]]as the Customer may reasonably require.

3.4 The Customer shall not withhold its Approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Customer does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Customer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by the Customer or referred to the Dispute Resolution Procedure pursuant to paragraph 3.5.

3.5 If the Customer considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the

Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

- 3.6 Following Approval of the Financial Distress Service Continuity Plan by the Customer, the Supplier shall:
- 3.6.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Call Off Contract;
 - 3.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 3.6.1, submit an updated Financial Distress Service Continuity Plan to the Customer for its Approval, and the provisions of paragraphs 3.5 and 3.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
 - 3.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Customer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under paragraph 3.6.

4. TERMINATION RIGHTS

- 4.1 The Customer shall be entitled to terminate this Call Off Contract for material Default if:
- 4.1.1 the Supplier fails to notify the Customer of a Financial Distress Event in accordance with paragraph 2.4;
 - 4.1.2 the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 3.3 to 3.5; and/or
 - 4.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.6.3.

5. PRIMACY OF CREDIT RATINGS

- 5.1 Without prejudice to the Supplier's obligations and the Customer's rights and remedies under paragraph 3, if, following the occurrence of a Financial Distress Event pursuant to Paragraphs 3.1.1 to 3.1.6, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:
- 5.1.1 the Supplier shall be relieved automatically of its obligations under paragraphs 3.3 to 3.6; and
 - 5.1.2 the Customer shall not be entitled to require the Supplier to provide financial information in accordance with paragraph 3.3.2(b).

[ANNEX 1: RATING AGENCIES]

[Rating Agency 1]

[Rating Agency 2]

[ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS]

Entity	Credit rating (long term)	Credit Rating Threshold
Supplier		
[Framework Guarantor/ [and Call Off Guarantor]		

CALL OFF SCHEDULE 17: BENCHMARKING

1. DEFINITIONS

In this Annex the following definitions shall apply:

“Benchmark Review”	a review of the Services carried out in accordance with Paragraph 6 of this Call Off Schedule to determine whether any or all of the Services represent Good Value;
“Benchmarked Services”	the Services that the Customer elects to include in a Benchmark Review under Paragraph 3.1 of this Call Off Schedule, and where a sub-set of Services is selected, such Services shall be related;
“Benchmarker”	the independent third party appointed under Paragraph 5.1 of this Call Off Schedule;
“Benchmarking Report”	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 7 of this Call Off Schedule;
“Benchmark Review”	a review of the Services carried out in accordance with Paragraph 6 of this Call Off Schedule to determine whether any or all of the Services represent Good Value;
“Good Value”	that: (a) the Charges attributable to a Benchmarked Service are, having taken into account the Service Level Performance Measures less than or equal to the Average Price or within the Upper Quartile (as specified in the Order Form); and (b) any Service Levels Performance Measure attributable to Benchmarked Services are, having taken into account the Charges, equal to or greater than the median or mean average (as specified in the Order Form) service levels for Comparable Services as adjusted using Equivalent Services Data;
“Average Price”	in relation to the Comparable Services provided by the Comparison Group(s), the mean average of prices for those Comparable Services as adjusted to produce Equivalent Services Data over the previous twelve (12) month period or other period as agreed in writing between the Parties. The “mean average price” shall be calculated by aggregating the prices derived from Equivalent Services Data for each of the services and dividing the same by the number instances of Comparable Services;
“Comparable Services”	services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar services exist in the market, the Benchmarker shall propose an approach for developing a comparable service benchmark;

“Equivalent Services Data”	data (including price data) derived from an analysis of the Comparable Services provided by the Comparison Group(s) as adjusted in accordance with Paragraph 6.8.1 of this Call Off Schedule;
“Comparison Group(s)”	a sample group or groups of organisations providing Comparable Services identified by the Benchmark under Paragraph 6.8 of this Call Off Schedule which consist(s) of organisations which are either of similar size to the Contractor or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmark's professional opinion) fair comparators with the Contractor or which, in the professional opinion of the Benchmark, are best practice organisations;
“Upper Quartile”	that based on an analysis of Equivalent Services Data, the Charges for the Benchmarked Services, as compared to the range of prices for Comparable Services, are within the top twenty five percent (25%) in terms of best value for money or the recipients of Comparable Services;

2. INTRODUCTION

2.1 The purpose of this Schedule is to enable the Customer to ensure that the provision of Services and payment of Charges continues to represent value for money for the Customer throughout the Term.

3. FREQUENCY OF BENCHMARK REVIEW

3.1 The Customer may, by written notice to the Supplier (with a copy being simultaneously sent to the Authority), require a Benchmark Review of any or all of the Services.

3.2 The Customer shall not be entitled to carry out a Benchmark Review during the twelve (12) month period from the Commencement Date nor at intervals of less than twelve (12) months after any previous Benchmark Review.

3.3 The Benchmarking Review may be undertaken by or on behalf of the Customer. If the Customer wishes the Authority to carry out a Benchmarking Review on its behalf, the Customer shall approach the Authority but the Authority shall not be obliged to carry out such Benchmarking Review. The costs and expenses of the Authority shall be borne by the Parties in accordance with Paragraph 5.3 below. The Authority shall have no liability for any costs or expenses of the Benchmark and the Benchmark Review if it agrees to undertake the Benchmarking Review on behalf of the Customer.

4. PURPOSE AND SCOPE OF BENCHMARK REVIEW

4.1 The purpose of a Benchmark Review shall be to establish whether a Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.

4.2 The Services that are to be the Benchmarked Services shall be identified by the Customer in the written request given under Paragraph 3.1 above.

5. APPOINTMENT OF BENCHMARKER

5.1 The Parties shall appoint the Benchmarker to carry out the Benchmark Review from the list of organisations set out in the Call Off Form. The terms under which the Benchmarker is engaged shall be:

5.1.1 consistent with the relevant provisions set out in this Schedule; and

5.1.2 determined and agreed solely by the Customer (unless otherwise advised by the Customer). The Customer may consult with the Supplier on the terms under which the Benchmarker is engaged but the Supplier agrees that such terms shall be determined and agreed solely by the Customer.

5.2 The Customer will, at the written request of the Supplier, require the Benchmarker to enter into an appropriate confidentiality undertaking with the Supplier provided that nothing shall prevent the Benchmarker from using anonymised data about the Services in future benchmarks for its other clients.

5.3 The costs and expenses of the Benchmarker and the Benchmark Review (including any costs and expenses incurred by the Authority pursuant to Paragraph 3.3 above) shall be shared equally between the Parties provided that each Party shall bear its own internal costs of the Benchmark Review.

5.4 In order to enable the Benchmarker to be in a position to effectively and efficiently conduct Benchmark Reviews, the Parties acknowledge that a newly appointed Benchmarker will need to be given a sufficient opportunity, prior to its initial Benchmark Review, to:

5.4.1 become familiar with the requirements of this Schedule and the information that will be required from the Parties to facilitate any Benchmark Review; and

5.4.2 determine that its methodology is not ineffective or inadequate to any material extent and make any changes that it deems appropriate.

5.5 Where the Authority carries out a Benchmark Review on behalf of the Customer, the Authority will require the Benchmarker to enter into an appropriate confidentiality undertaking with the Supplier, provided that nothing shall prevent the Benchmarker from using anonymised data about the Services in future benchmarks for its other clients.

6. BENCHMARKING PROCESS

6.1 The Customer shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review (a copy of the plan shall be provided to the Authority upon request) within eight (8) Working Days (or such other period as the Parties agree in writing) after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:

6.1.1 the scope, proposed timetable and description of Services for the Benchmark Review;

6.1.2 a description of the information that the Benchmarker requires each Party to provide;

6.1.3 a description of the benchmarking methodology to be used and the means by which Good Value will be established;

6.1.4 a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives;

- 6.1.5 an estimate of the resources required from each Party to underpin the delivery of the plan;
- 6.1.6 a description of how the Benchmarker will scope and identify the Comparison Group(s) and the minimum number of samples required to establish each Comparison Group; and
- 6.1.7 details of any entities which the Benchmarker proposes to include within the Comparison Group(s) including a description of the methodology which the Benchmarker may use to normalise or otherwise adjust the results from the Comparison Group(s).
- 6.2 Each Party must give notice in writing to the Benchmarker and to the other Party within eight (8) Working Days (or such other period as the Parties agree in writing) after receiving the draft plan, advising whether it approves the draft plan or, if it does not approve the draft plan, suggesting amendments to that plan. Neither Party may unreasonably withhold or delay its approval of the draft plan nor suggest any amendments which are unreasonable.
- 6.3 Where a Party suggests amendments to the draft plan in accordance with Paragraph 6.2 above, the Benchmarker must, if it believes the amendments are reasonable, produce an amended draft plan. In making a determination as to whether or not to accept amendments put forward by either Party, the Benchmarker must act reasonably and in accordance with the terms under which it has been engaged by the Customer. Paragraph 6.2 above shall apply to any amended draft plan.
- 6.4 Failure by a Party to give notice under Paragraph 6.2 above shall be treated as approval of the draft plan by that Party.
- 6.5 Once the plan is approved by both Parties (a copy of the approved plan shall be provided to the Authority upon request), the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any material information requested from it by the Benchmarker and does not promptly remedy such failure once such omission has been identified such failure shall constitute a material Default for the purposes of Clause 41.2.1.
- 6.6 Each Party shall cooperate fully with the Benchmarker including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Benchmarked Services.
- 6.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 6.8 Once it has received the information it requires, the Benchmarker shall finalise a sample of entities constituting the Comparison Group(s) and collect data relating to Comparable Services. The selection of the Comparison Group(s) (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment by:
- 6.8.1 applying the adjustment factors listed in Paragraph 6.10 below and from an analysis of the Comparable Services derive the Equivalent Services Data;

- 6.8.2 using the Equivalent Services Data calculate (as set out in Appendix 11 of the Call-Off Form) the Average Price or the Upper Quartile and/or the mean or median Service Levels;
 - 6.8.3 comparing the Charges attributable to the Benchmarked Services (having regard in particular to the Service Level Performance Measures and Service Credits regime) with (as set out in the Call-Off Form) the Average Price or Upper Quartile using the Equivalent Services Data;
 - 6.8.4 comparing the Service Level Performance Measures attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with (as set out in the Call-Off Form) the median or mean average service levels using the Equivalent Services Data; and
 - 6.8.5 determining whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 6.9 Members of the Comparison Group(s) with unusually high or low prices due, for example, to loss-leading prices or cross-subsidised prices, will be identified by the Benchmarking Group and removed from the Comparison Group(s) with the agreement of the Parties (not to be unreasonably withheld or delayed). The Benchmarking Group shall ensure that both Parties have full visibility of such Comparison Group(s) before and after the elimination of the identified members. No other organisations shall be removed from the Comparison Group(s).
- 6.10 In carrying out the benchmarking analysis the Benchmarking Group shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services and the Comparable Services in order to derive Equivalent Services Data:
- 6.10.1 the contractual and business environment under which the Benchmarked Services are being provided (including the scope, scale, complexity and geographical spread of the Benchmarked Services);
 - 6.10.2 any front-end investment and development costs of the Supplier;
 - 6.10.3 the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Benchmarked Services as a whole;
 - 6.10.4 the extent of the Supplier's management and contract governance responsibilities; and
 - 6.10.5 any other factors reasonably identified by the Supplier which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing or over-aggressive pricing).
- 6.11 The Benchmarking Group shall maintain an audit trail which is sufficiently detailed for any Expert appointed pursuant to Paragraph 7.10 below to understand all work conducted by the Benchmarking Group, including, so far as is reasonably practicable, details of the relevant information referred to in Paragraphs 6.8 to 6.10 (inclusive) above, calculations, cost base information, source data, analyses, normalisation and adjustment.

7. BENCHMARKER'S REPORT

- 7.1 The Customer shall be entitled to disclose the Benchmarking Report to the Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).
- 7.2 The Benchmarking Group shall be required to prepare a Benchmarking Report and deliver it simultaneously to both Parties (a copy of the Benchmarking Report shall

be provided to the Authority upon request), at the time specified in the plan approved under Paragraph 6 above, setting out its findings. Those findings shall be required to:

7.2.1 identify whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;

7.2.2 address the quality and competitiveness or otherwise of those Benchmarked Services; and

7.2.3 if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges or Service Level Performance Measures, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value.

7.3 The Benchmarker shall act as an expert and not as an arbitrator.

7.4 Benchmark Reviews shall not result in any increase to the Charges or any decrease in the performance of any Services or Service Level Performance Measures.

7.5 If the Benchmarking Report states that any Benchmarked Service is not Good Value, or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraph 7.7 below) implement the changes set out in the Benchmarking Report as soon as reasonably practicable within a timescale agreed in writing with the Customer but (in the case only of a reduction in the Charges) in any event within no more than one (1) month of receipt of the Benchmarking Report and otherwise no more than three (3) months of receipt of the Benchmark Report.

7.6 Subject to the Supplier's right to dispute or reject the Benchmarking Report under Paragraph 7.8 below, if the Benchmarking Report determines that any or all of the Benchmarked Services are not Good Value, any failure by the Supplier to reduce the Charges in accordance with such timescales agreed between the Parties under Paragraph 7.5 above shall, without prejudice to any other rights or remedies of the Customer, constitute a material Default for the purposes of Clause 41.2.1.

7.7 The Supplier shall not be obliged to:

7.7.1 reduce any Charges which relate to a Service which has a service term specified in this Agreement and such service term has not expired. In such instance and notwithstanding anything to the contrary in this Agreement, the Customer shall be entitled to terminate such Service for convenience (and pay the early service termination charge (if any) relating to such Service stated in this Agreement (or the Supplier's Pricing Catalogue where such is required by the Customer)) and re-order such Service from the Supplier (at the reduced price) or another supplier; or

7.7.2 implement any Benchmarking Report to the extent this would cause the Supplier to provide the Benchmarked Services at a loss or to the extent the Supplier cannot technically implement the recommended changes.

7.8 If the Supplier believes that implementation of any changes set out in the Benchmarking Report would cause the Supplier to provide the Services at a loss, it shall be entitled to provide a written submission to the Customer explaining why it believes this. Any such submission must be made to the Customer within ten (10) Working Days of receipt of the Benchmarking Report and must demonstrate clearly:

7.8.1 how specific elements of the Supplier's profit and profit margin would be impacted by implementation of the proposed changes; and

7.8.2 that it has taken full account of the financial impact of the change on all other Services due to be performed under this Agreement.

7.9 If the Customer receives a written submission from the Contactor pursuant to Paragraph 7.8 above, it shall review the evidence provided by the Supplier and shall, acting reasonably and in good faith, within ten (10) Working Days, either:

7.9.1 accept the Supplier's submission that implementation of the changes set out in the Benchmarking Report would cause the Supplier to provide the Services at a loss, in which case the Supplier shall implement the changes set out in the Benchmarking Report only to the extent that such changes could be implemented without the Supplier incurring a loss in respect of performance of the Services; or

7.9.2 reject the Supplier's submission, in which case the Customer shall provide a written explanation of its rationale for rejecting the Supplier's submission; and the Supplier shall implement the changes set out in the Benchmarking Report.

7.10 In the event of a Dispute or rejection of the Benchmarking Report under Paragraph 7.9 above, the matter shall be referred to an Expert for determination in accordance with Schedule 13 (Dispute Resolution). In the event of a Dispute between the Parties, the Customer shall continue to pay the Charges to the Supplier in accordance with the terms of this Call Off Agreement pending the conclusion of the Expert determination process.

On conclusion of the Expert determination process, if the Expert determines that all or any part of the Benchmarking Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall, within four (4) Working Days, repay to the Customer the difference between the Charges paid by the Customer up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect.

CALL OFF SCHEDULE 18: PSN COMPLIANCE

[GUIDANCE NOTE: THIS SCHEDULE WILL ONLY BE REQUIRED WHERE THE CUSTOMER HAS INDICATED ON THE ORDER FORM THAT THE SERVICES ARE TO BE PSN COMPLIANT]

1. DEFINITIONS

1.1 In this Annex the following definitions shall apply:

“CESG”		Communications-Electronics Security Group, namely the information assurance arm of the Government Communications Headquarters, which is responsible for establishing security requirements for communications infrastructure and advising on matters relating to compliance and accreditation to the necessary standards;
“Code Connection”	of	the obligations and requirements for PSN Customers wanting to participate in the PSN, together with all documents annexed to it and referenced within it as set out in the Code Template;
“Code of Practice”		the obligations and requirements for PSN Service Providers wanting to participate in the PSN, but not wanting to connect directly to the GCN, together with all documents annexed to it and referenced within it, as set out in the Code Template;
“Code Template”		a template which sets out the obligations and requirements against which PSN Compliance is verified, as published from time to time by the PSN Authority;
“Direct Network Service”		a PSN Compliant network with direct connectivity to the GCN;
“Direct Network Service Providers” or “DNSP”		PSN Service Providers that have fulfilled the terms of the Code of Interconnection, and which may as a result connect directly to the GCN subsequent to a GCN Service Agreement;
“GCN” “Government Conveyance Network”	or	the total network of all GCN services provided by all GCN Service Providers to which DNSPs connect;
“GCN Service Agreements”		the agreement between a GCNSP and a Direct Network Service Provider for the provision of access to and use of the GCN Services;
“GCN Provider” “GCNSP”	or	an entity that intends to or currently provides GCN services, and that has a current GCN compliance certificate for its GCN services (including GCN Services);
“Infrastructure SIRO”		The person who is accountable to the Cabinet Office for Information Assurance and risk management of the Public Services Network;
“PSN Compliance Certificate”		the certificate awarded to the individual PSN Customer Environments, GCN Services and PSN Services (data and business services plus communications infrastructure) that make up the PSN, and “PSN Compliance Certification” shall be construed accordingly;

“PSN Compliance Conditions”	the governance, technical, security and other conditions applied to the PSN as specified from time to time by the PSNA;
“PSN Compliance Verification”	the processes of review and assurance to verify that the PSN Service or Customer Environment satisfies the criteria set out in a Code;
“PSN Compliance”	the process to ensure ongoing adherence to the rules, conditions and obligations identified in the Codes;
“PSN Compliant”	a state describing ongoing adherence to the rules, conditions, and obligations identified in a signed Code;
“PSN Customers”	A customer who has achieved PSN Compliance Certification for their Customer Environments and who holds PSN Supply Agreement(s) with PSN Service Providers for the services concerned;
“PSN Operating Model”	the document produced by the PSNA which contains information relating to the PSN including the PSN Compliance Conditions, the PSN Environment and the PSN Security Model. This document will (i) be subject to change from time to time by the PSNA and (ii) be maintained by the PSNA with the assistance of the PSN Design Authority and PSN Commercial Authority;
“PSN Service Provider”	an organisation that is supplying or is approved to supply PSN Services in accordance with a Code;
“PSN Service” or “PSN Services”	a service which is offered by a PSN Service Provider and for which a PSN Compliance Certification has been awarded by the PSNA;
“PSN” or “Public Services Network”	the network of networks delivered through multiple service providers, as further detailed in the PSN Operating Model;
“PSNA” or “PSN Authority”	the Government body which administers the PSN;

2. DELIVERY OF SERVICES

2.1 The Supplier shall ensure that the Services:

2.1.1 are PSN Services to the extent specified by the Customer on the Order Form;

2.1.2 are not provided in such a way that causes or is likely to cause a breach of the Customer’s compliance with their Code of Connection and/or PSN Compliance Certificate.

2.2 The Supplier shall ensure, at its cost and expense, that any PSN Services that it supplies, or are supplied by others, pursuant to this Call Off Contract:

2.2.1 shall have been awarded and retain at all times a PSN Compliance Certificate;

2.2.2 are, and remain throughout the Call Off Contract Period, PSN Compliant;

2.2.3 have and continue to have any approval and accreditation required under this Agreement (including PSNA approval and CESG accreditation); and

2.2.4 are delivered in accordance with the applicable Code or Codes.

3. PARTICIPATION IN THE PUBLIC SERVICES NETWORK

3.1 The Supplier warrants that where it provides PSN Services it has and will continue to maintain PSN Compliance Certification in respect of such PSN Services and will comply with all agreements and arrangements (whether or not legally binding) which it has entered into with the Authority, the PSNA and the GCN Service Providers, or otherwise in relation to the governance and administration of the PSN;

3.2 In addition to its obligations under this Agreement, the Supplier shall:

3.2.1 deliver the PSN Services in a way that enables the sharing of services between PSN Customers and maximises the savings to be achieved by such sharing of Services;

3.2.2 cooperate with suppliers of other PSN Services and GCN Service Providers to enable the efficient operation of the Public Services Network in accordance with the PSN Operating Model;

3.3 The Parties acknowledge that Services under this Call Off Contract may be provided on a shared basis to other PSN Customers (for example where more than one PSN Customer is sharing a single building) and that in such cases equipment identified as Exclusive Assets may be used for the purpose of providing the Services to the Customer and other PSN Customers.

3.4 Except to the extent specified from time to time by the Customer, the Parties shall participate (and the Supplier shall ensure that appropriate Sub-Suppliers participate) in the UK Critical National Infrastructure protection programme and give all necessary assistance to those organisations responsible for this programme so as to ensure that the provision of the Services to the Customer Authority is protected at all times.

[GUIDANCE NOTE: Delete this paragraph 3.4 if not required]

4. CUSTOMER OBLIGATIONS

4.1 The Customer shall procure that any Customer System used to consume PSN Services supplied pursuant to this Call Off Contract shall:

4.1.1 have been awarded and retain at all times a PSN Compliance Certificate;

4.1.2 be, and remain throughout the Call Off Contract Period, PSN Compliant;

4.1.3 have and continue to have any approval and accreditation required under this Agreement (including PSNA approval and CESG accreditation); and

4.1.4 be provided and maintained in accordance with the applicable Code or Codes.

5. ROLE OF THE PSN AUTHORITY

- 5.1 The Parties warrant and undertake that they shall throughout the Call Off Contract Period, where specifically requested in writing by the PSN Authority acting on advice from the Infrastructure SIRO, immediately disconnect its PSN Services or Customer System (as the case may be) from such PSN Services (including any Direct Network Services), GCN Services and Customer Environments as the PSN Authority instructs where there is an event affecting national security, or the security of the GCN or PSN.
- 5.2 The Parties acknowledge and agree that the PSN Authority shall not be liable to them or any other party for any claims, proceedings, actions, damages, costs, expenses and any other liabilities of any kind which may arise out of, or in consequence of any notification pursuant to paragraph 4.1 above.
- 5.3 The Parties acknowledge and agree that the terms of this Schedule are for the benefit of and may be enforced by the PSN Authority, notwithstanding the fact that the PSN Authority is not a party to this agreement, pursuant to the Contracts (Rights of Third Parties) Act 1999.