

## Part 1 –Order Form

### SECTION A

This Order Form is issued in accordance with the provisions of the Framework Agreement dated 7 November 2014 between the Crown Commercial Service and Carat, a trading division of Dentsu Aegis UK Limited, reference **RM1501**. The Supplier agrees to supply the Services specified below on and subject to the terms of this Call Off Contract and for the avoidance of doubt this Call Off Contract consists of the terms set out in this Order Form and the Call-Off Terms, together with the Call Off Schedules thereto.

**DATE**                      **01/10/2015**

#### **ORDER NUMBER**

**FROM**                      **The Ministry of Defence (the "Customer"), to include all Arms Length Bodies (ALB) and Non-Departmental Public Bodies (NDPB)**

**TO**                              **Carat, a Trading Division of Dentsu Aegis Uk Ltd, Redacted Text**

### SECTION B

#### **1. TERM**

##### **1.1 Call Off Commencement Date:**

01/10/15

##### **1.2 Call Off Expiry Date:**

06/11/18

#### **2. CUSTOMER REQUIREMENTS**

##### **2.1 Services required**

Services shall be agreed between the parties in line with Framework Schedule 1 (Services and Key Performance Indicators) to meet the specified requirements ordered via any submitted Media Buying Brief pursuant to this Call Off Contract

**Redacted Text**

#### **3. CALL OFF CONTRACT CHARGES AND PAYMENT**

**3.1** The Customer shall pay the sums set out in each agreed Media Buying Brief which are payable in accordance with clause 22 of the Call Off Terms.

**3.2** Charges are to be based as per Framework Schedule 3 (Charging Structure)

**3.3** This Call of Agreement shall be valued at £62.5m with no guarantee of spend value or volume of orders.

**3.4** In order to receive payment the supplier shall sign up to the Customer Electronic Payment platform, all relevant sign up information has been provided in the attached documentation.

#### **4. SUPPLIER'S INFORMATION**

##### **4.1 Supplier Software**

N/A

##### **4.2 Commercially Sensitive Information**

**REDACTED TEXT**

#### **5. CUSTOMER RESPONSIBILITIES**

Detailed in the Call Off Terms, Order Form and each Media Buying Brief.

#### **6. OTHER CONTRACTUAL REQUIREMENTS**

##### **6.1 Relevant Convictions**

N/A

##### **6.2 Location/Sites of Delivery for:**

All contact details and delivery information shall be provided with the Media Buying Brief.

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

##### **7.1 Supplemental requirements to the Call-Off Terms**

N/A

##### **7.2 Amendments to/refinements of the Call-Off Terms**

N/A

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

Schedule 8 provides a complete breakdown

#### **8. FORMATION OF CALL OFF CONTRACT**

**8.1** By signing and returning this Order Form (which may be done electronically) the Supplier agrees to enter a Call Off Contract with the Customer to provide the Services.

**8.2** Each order from this call off contract shall be agreed between the parties via the initial submission of a Media Buying Brief to the Supplier.

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

**8.4** In accordance with paragraph 5 of Framework Schedule 5 (Call Off Procedure), the Parties hereby acknowledge and agree that this Call Off Contract shall be formed when the Customer acknowledges (which may be done electronically) the receipt of the signed copy of the Order Form from the Supplier within two (2) Working Days

from receipt (the “**Call Off Execution Date**”) and shall take effect on the Call Off Commencement Date.

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

Name and Title	
Signature	
Date	

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

Name and Title	
Signature	
Date	

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## TERMS AND CONDITIONS

### A. GENERAL PROVISIONS

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1. Definitions

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

##### 1.2. Interpretation

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

- 1.2.1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2. words importing the masculine include the feminine and the neuter;
- 1.2.3. the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.2.4. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5. the Call Off Schedules form part of this Call Off Contract and shall have effect as if set out in full in the body of this Call Off Contract. Any reference to this Call Off Contract includes the Glossary to the Call Off Form and the Call Off Terms and the Call Off Schedules;
- 1.2.6. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.7. headings are included in this Call Off Contract for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract;
- 1.2.8. references to "Clauses" and "Schedules" are, unless otherwise provided, references to the Clauses of and Schedules (the "Call Off Schedules") to the Call Off Terms of this Call Off Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the Call Off Schedule in which the references are made. References to "Contract" are, unless otherwise provided, references to this Call Off Contract;
- 1.2.9. terms or expressions contained in this Call Off Contract which are capitalised but which do not have an interpretation in the Glossary to the Call Off Form and Call Off Terms or, if not that Glossary, in

the Glossary to the Framework Agreement shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;

- 1.2.10. reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.3. Subject to Clause 1.4, 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:
  - 1.3.1. the Framework Agreement, except Framework Schedule 17 (Tender);
  - 1.3.2. the Order Form;
  - 1.3.3. the Call Off Terms;
  - 1.3.4. Framework Schedule 17 (Tender).
- 1.4. Any permitted changes by the Customer to the Template Call Off Terms and the Template Call Off Form under Clause 4 of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to the Parties entering this Call Off Contract shall prevail over the Framework Agreement.
- 1.5. Where the Tender contains provisions which are more favourable to the Customer in relation to the Call Off Contract, such provisions of the Tender shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in relation to the Call Off Contract.

## **2. DUE DILIGENCE**

- 2.1. The Supplier acknowledges that it:
  - 2.1.1. has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
  - 2.1.2. has raised all relevant due diligence questions with the Customer before the Call Off Commencement Date; and
  - 2.1.3. has entered into this Call Off Contract in reliance on its own due diligence alone.
- 2.2. Any disputes relating to due diligence as set out in this Clause 2 (Due Diligence) shall be resolved in accordance with the Dispute Resolution Procedure.

## **3. NOT USED**

## **4. CALL OFF CONTRACT PERIOD**

- 4.1. This Call Off Contract shall take effect on the Call Off Commencement Date and shall expire on the Call Off Expiry Date unless otherwise terminated (or partially terminated in respect of the terminated part only) earlier pursuant to Clause 31 (Termination Events).

## **5. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

- 5.1. The Supplier warrants, represents and undertakes to the Customer that:
- 5.1.1. it has full capacity and authority and all necessary consents, licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under this Call Off Contract;
  - 5.1.2. this Call Off Contract is executed by a duly authorised representative of the Supplier;
  - 5.1.3. in entering this Call Off Contract it has not committed any Fraud;
  - 5.1.4. in entering this Call Off Contract it has not committed or agreed to commit a Prohibited Act including any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
  - 5.1.5. in entering this Call Off Contract it has no knowledge, that:
    - 5.1.5.1. in connection with it, any money or other inducement has been, or will be, paid to any person working for or engaged by the Customer or other Contracting Body or any other public body or any person engaged or employed by or on behalf of the Customer in connection with this Call Off Contract; and
    - 5.1.5.2. an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and the Authority before execution of this Call Off Contract;
  - 5.1.6. this Call Off Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
  - 5.1.7. as at the Call Off Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Call Off Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the Tender shall be deemed repeated in this Call Off Contract;
  - 5.1.8. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its

assets which will or might affect its ability to perform its obligations under this Call Off Contract;

5.1.9. it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under this Call Off Contract;

5.1.10. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;

5.1.11. it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Call Off Contract and shall maintain the same in full force and effect.

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

5.2.1. in the three (3) years prior to the Call Off Commencement Date (or from when the Supplier was formed if in existence for less than three (3) years prior to the Call Off Commencement Date):

5.2.1.1. it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and

5.2.1.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

5.2.1.3. it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Call Off Contract; and

5.2.1.4. for the Call Off Contract Period that all Staff will be vetted in accordance with the Staff Vetting Procedures and Good Industry Practice;

5.2.1.5. 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;

5.2.2. it shall at all times during this Call Off Contract comply with its obligations in Clause 12 (Standards and Quality).

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

5.4. The Supplier acknowledges and agrees that:

- 5.4.1. the warranties, representations and undertakings contained in this Call Off Contract are material and are designed to induce the Customer into entering into it; and
- 5.4.2. the Customer has been induced into entering into this Call Off Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

## **6. SUPPLY OF SERVICES**

### **6.1. Provision of the Services**

- 6.1.1. The Supplier shall provide the Services in accordance with any Media Buying Brief and any other requirements of the Customer as set out in the Order Form and obligations of the Supplier in this Call Off Contract.
- 6.1.2. The Supplier shall ensure that the Services are fully compatible with any Customer's equipment described in the Order Form.
- 6.1.3. Except where otherwise provided in this Call Off Contract, the Services will be provided by the Staff at the Premises.
- 6.1.4. The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Call Off Contract.

### **6.2. Time of Delivery of the Services**

- 6.2.1. The Supplier shall provide the Services on the date(s) specified in this Call Off Contract and the Media Buying Brief.
- 6.2.2. If so specified by the Customer in the Order Form or Media Buying Brief, time of delivery in relation to the Services shall be of the essence and if the Supplier fails to Deliver the Services at the time or within the time period specified (and without Approval), the Customer may release itself from any obligation to accept and pay for the Services and/or terminate this Call Off Contract for Material Breach in either case without prejudice to any other rights and remedies of the Customer under this Call Off Contract and at Law.

### **6.3. Undelivered Services**

- 6.3.1. In the event that not all of the Services are Delivered in accordance with Clause 6.1 ("**Undelivered Services**") then the Customer shall be entitled to withhold payment of the applicable Call Off Contract Charges for any Services that were not so Delivered until such time as the Undelivered Services are Delivered. This right shall be without prejudice to any other rights and remedies the Customer has under this Call Off Contract and at Law.

### **6.4. Media Buying Brief**

- 6.4.1. The Customer shall provide the Supplier with a Media Buying Brief for each campaign and the Supplier shall comply with the terms of that Media Buying Brief.
- 6.4.2. The Customer shall ensure that the information contained in the Media Buying Brief, including in any copy or other creative material, is:

- 6.4.2.1. accurate and up to date;
  - 6.4.2.2. complies with the Law; and
  - 6.4.2.3. does not infringe any third party IPR.
- 6.4.3. The Customer shall perform any Customer Responsibilities expressly stated in the Media Buying Brief and where the Customer is reliant on a third party (including any communications planning agency and/or creative agency) appointed by it for the performance of a Customer Responsibility the Customer shall remain liable for that Customer Responsibility.

**6.5. Implementational Plan**

- 6.5.1. The Supplier shall deliver to the Customer for Approval a draft Implementational Plan which shall set out how the Supplier shall meet the requirements and objectives of the relevant Media Buying Brief within the timescales agreed in table C of Annex 1 to Part A of Schedule 6, which apply from the Call Off Commencement Date or such other date as is agreed between the Parties in writing.
- 6.5.2. The Supplier acknowledges that the Contracting Body has an obligation to secure value for money and agrees to comply with any reasonable request by the Contracting Body to ensure any approach under the Approved Implementational Plan ensures fair and appropriate competition among media owners.
- 6.5.3. Within fourteen (14) Working Days of submission of the draft Implementational Plan, the Customer shall:
- 6.5.3.1. Approve the draft Implementational Plan; or
  - 6.5.3.2. provide the Supplier with its reasons for not Approving the draft Implementational Plan and the Supplier shall revise the draft Implementational Plan and re-submit it to the Customer for Approval.
- 6.5.4. Any failure to agree the draft Implementational Plan by the Parties shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5.5. The Supplier shall comply with the Approved Implementational Plan.
- 6.5.6. The Supplier shall co-operate with all post campaign analysis required by the Customer as specified in the Media Buying Brief.

**6.6. Acquisition of Media**

- 6.6.1. The Supplier shall acquire on behalf of the Customer any media required by the Customer in accordance with this Call Off Contract, the relevant Media Buying Brief, Approved Implementational Plan and Framework Schedule 3 (Charging Structure) and the Customer shall not be liable for any costs associated with any media that is acquired by the Supplier outside of the scope of this Call Off Contract, the relevant Media Buying

Brief, the Approved Implementational Plan and Framework Schedule 3 (Charging Structure).

- 6.6.2. The Supplier shall ensure that the Approved Implementational Plan sets out a transparent and accountable process for acquiring any media.
- 6.6.3. The Supplier shall hold any media acquired by it pursuant to this Call Off Contract on behalf of the Customer.
- 6.6.4. The Supplier shall be responsible for ensuring that any media acquired by it on behalf of the Customer meets the requirements of the Customer identified in the Media Buying Brief and the Approved Implementational Plan and shall be liable for the costs associated with any media that fail to meet those requirements other than where such failing is the result of Customer Cause.
- 6.6.5. The Customer may make any changes to the media bookings permitted pursuant to Framework Schedule 1 (Services and Key Performance Indicators) in respect of the relevant channel prior to such media being delivered without incurring any additional costs.
- 6.6.6. Where the Customer makes changes to the media bookings which exceed those permitted in Framework Schedule 1 (Services and Key Performance Indicators) the Customer shall be liable for all reasonable costs which arise in respect of such change subject to the Supplier providing the Customer with such information as the Customer may reasonably require to evidence that the Supplier has incurred such costs.

**6.7. New Media**

- 6.7.1. Where the Parties agree the acquisition of a type of media which is not included in Annex A to Framework Schedule 3 the Supplier shall agree with the Customer a process for acquiring such media subject to the following:
  - 6.7.1.1. the Customer, at its sole discretion, allocating the proportion of the overall media buying budget attributable to the relevant media;
  - 6.7.1.2. the Supplier delivering the media to the Customer in a transparent and accountable manner; and
  - 6.7.1.3. the Customer shall be entitled to use exchanges and trading desks other than those linked to the Supplier for the purposes of the relevant campaign.

**7. NOT USED**

**8. NOT USED**

**B. CALL OFF CONTRACT PERFORMANCE**

**9. PROVISION AND REMOVAL OF EQUIPMENT**

- 9.1. Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Services.
- 9.2. All Equipment brought onto the Customer's Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Supplier is able to demonstrate that such loss or damage was caused by or contributed to by the Customer Cause. The Supplier shall be wholly responsible for the haulage or carriage of the Equipment to the Customer's Premises and the removal thereof when it is no longer required by the Customer and in each case at the Supplier's sole cost. Unless otherwise stated in this Call Off Contract, Equipment brought onto the Customer's Premises will remain the property of the Supplier.

## **10. PREMISES**

### **10.1. Access to Customer Premises**

- 10.1.1. The Supplier may only access the Customer's Premises at such times and on such dates and with such members of Staff as have been Approved by the Customer in advance of such access being required.
- 10.1.2. The Supplier shall (and shall ensure that the Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Customer's Premises and conduct of personnel at the Customer's Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

### **10.2. Security of Premises**

- 10.2.1. The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with the Security Policy. The Supplier shall comply and shall ensure that all Staff comply with the Security Policy and any other reasonable security requirements of the Customer while on the Customer's Premises.
- 10.2.2. The Customer shall provide the Supplier upon written request with a copy of its Security Policy and any other written security requirements and shall afford the Supplier upon request for Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

## **11. PROPERTY**

- 11.1. Where the Customer issues Property free of charge to the Supplier such Property shall be and remain the Property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and at all times the Supplier shall

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

- 11.2. The Supplier shall ensure the security of all the Property whilst in its possession, either on the Customer Premises 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.
- 11.3. The Supplier shall be liable for all loss of, or damage to the Property, (excluding fair wear and tear), unless such loss or damage was solely caused by the Customer Cause. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Property.

## **12. STANDARDS AND QUALITY**

- 12.1. The Supplier shall at all times during the Call Off Contract Period comply with the Standards and where applicable shall maintain accreditation with the relevant Standards' authorisation body.
- 12.2. To the extent that the standard to which the Services must be provided has not been specified in this Call Off Contract, the Supplier shall agree the relevant standard for the provision of the Services with the Customer prior to the commencement of the supply of the Services and, in any event, the Supplier shall perform its obligations under this Call Off Contract in accordance with the Law and Good Industry Practice.
- 12.3. The Supplier shall ensure that the Staff shall at all times during the Call Off Contract Period:
  - 12.3.1. faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Services;
  - 12.3.2. obey all lawful instructions and reasonable directions of the Customer and provide the Services to the reasonable satisfaction of the Customer; and
  - 12.3.3. apply all due skill, care, diligence and are appropriately experienced, qualified and trained to supply the Services in accordance with this Call Off Contract.
- 12.4. The Supplier shall ensure at all times during the Call Off Contract Period that:
  - 12.4.1. it performs its obligations under this Call Off Contract in a timely manner and in accordance with the date(s) specified in this Call Off Contract and any Media Buying Brief;
  - 12.4.2. it supplies the Services in conformity with the specification in Framework Schedule 1 (Services and Key Performance Indicators), the Order Form, any Media Buying Brief and in

accordance with all applicable Laws including but not limited to, as applicable, any obligation under section 2 of the Supply of Goods and Services Act 1982;

12.4.3. it supplies the Services in accordance with the Tender.

### **13. NOT USED**

### **14. SERVICE LEVELS**

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

14.2. The Supplier shall at all times during the Call Off Contract Period provide the Services to meet or exceed the performance measures of any Service Levels set out in Annex 1 to Part A of Call Off Schedule 6 (Service Levels and Performance Monitoring).

14.3. The Supplier acknowledges that any failure to meet a Service Level may have a material adverse impact on the business and operations of the Customer.

14.4. 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.

14.5. The Customer shall be entitled to review the Service Levels annually (or otherwise as required) and make such adjustments to them as the Customer deems appropriate, including adjustments and improvements resulting from improved performance capabilities, and the Parties acknowledge and agree that:

14.5.1. the Service Levels and the measurement and monitoring tools and procedures referred to in Clause 14.4 will be improved over time (including improvements and adjustments to reflect improved performance capabilities) at no extra cost to the Customer; and

14.5.2. such adjustments or improvements shall not be deemed to be subject to the Variation Procedure.

### **15. MONITORING OF IMPLEMENTATION AND PERFORMANCE**

15.1. The Supplier shall monitor its performance against the requirements of the Customer as set out in this Call Off Contract and report to the Customer on such performance in accordance with the Customer's instructions.

15.2. Any date or period mentioned in this Call Off Contract may be extended by written agreement between the Parties.

15.3. Where so specified by the Customer, time in relation to compliance with a date or period so extended shall be of the essence (and failure of the Supplier to comply with such date shall be a Material Breach) unless the Parties expressly agree otherwise.

- 15.4. 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 Performance Monitoring).
- 15.5. 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 in the Order Form.

## **16. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE IN THE SUPPLY OF THE SERVICES**

- 16.1. Without prejudice to any other right or remedy which the Customer may have under this Call Off Contract or at Law, if any Services are not supplied in accordance with this Call Off Contract then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:
  - 16.1.1. at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the supply of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply Replacement 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;
  - 16.1.2. reject the Services (in whole or in part) and require the Supplier to remove them (in whole or in part) at the risk and cost of the Supplier and a full refund of any Call Off Contract Charges already paid for the Services so rejected shall be paid to the Customer forthwith by the Supplier;
  - 16.1.3. refuse to accept any further Services to be Delivered without any liability to the Customer as a result of any Loss to the Supplier arising from such refusal;
  - 16.1.4. carry out, at the Supplier's expense, any work necessary to make the supply of the Services comply with this Call Off Contract;
  - 16.1.5. without terminating this Call Off Contract, itself supply or procure a third party to supply all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Services in accordance with this Call Off Contract;
  - 16.1.6. without terminating the whole of this Call off Contract, terminate this Call Off Contract in respect of part of the Services only (whereupon a corresponding reduction in the Call Off Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services.
- 16.2. In addition to the exercise of any of its rights in Clauses 16.1.5 or 16.1.6, 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 to the extent that such costs exceed the Call Off Contract Charges which would otherwise have been payable to the Supplier for such part of the Services and provided

that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

## **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 Services and their provision to the Customer.
- 17.2. Pursuant to its obligation under Clause 17.1, the Supplier shall regularly review with the Customer the Services, including the manner in which it is providing the Services and performing against the Customer's requirements (including the Service Levels), with a view to reducing the Customer's costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Customer and as part of this review the Supplier shall consider any plan for the implementation of the Media Auditor's recommendations approved by the Authority in accordance with clause 14.15 of the Framework Agreement. Any amendments to the Services and/or their supply to the Customer and/or the Call Off Contract Charges, required by the Customer to implement or effect such improvements identified as a result of the Supplier's compliance with Clause 17.1, shall be implemented by the Supplier (subject to compliance with the Law and the Framework Agreement) and the Supplier shall implement such variation, amendment or improvement at no additional cost to the Customer.
- 17.3. The Supplier shall ensure that the information that it provides to the Customer in accordance with Clause 17.1 shall be sufficient for the Customer to decide whether any improvement to the Services and/or their provision to the Customer should be implemented. The Supplier shall provide any further information that the Customer requests in connection with any improvements to the Services and/or their provision to the Customer identified by the Supplier.
- 17.4. The benefit of any work carried out by the Supplier at any time during the Call Off Contract Period to update, improve or provide the Services, facilitate their delivery to any other Contracting Body and/or any alterations or variations to the Charges or the provision of the Services, which are identified in the Continuous Improvement Plan produced by the Supplier pursuant to Framework Schedule 7 (Value for Money) and/or any plan to implement the recommendations of a Media Auditor appointed by the Authority pursuant to clause 14.12 of the Framework Agreement, shall be implemented by the Supplier at no additional cost to the Customer.

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

- 18.1. If there is a Disaster, the Parties shall co-operate in good faith and use all reasonable endeavours to as soon as possible re-establish their capacity to fully perform their obligations under this Call Off Contract. A Disaster will only relieve a Party of its obligations to the extent it constitutes a Force Majeure Event in accordance with Clause 43 (Force Majeure).

- 18.2. Without prejudice to Clause 18.1 if there is a Disaster that damages the Equipment or otherwise reduces its operability, the Parties shall agree reasonable timescales within which the Supplier shall use all reasonable endeavours to restore the Equipment.
- 18.3. In the case of any business continuity and disaster recovery requirements of the Customer, the provisions relating to business continuity and disaster recovery shall apply as stipulated by the Customer in the Order Form.

## **19. DISRUPTION**

- 19.1. 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.
- 19.2. The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Staff or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.
- 19.3. In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods Services in accordance with its obligations under this Call Off Contract.
- 19.4. If the Supplier's proposals referred to in Clause 19.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for Material Breach.
- 19.5. 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.

## **20. EXIT PLANNING**

- 20.1. The Supplier shall, within three (3) Months after the Call Off Commencement Date, deliver to the Customer for Approval a draft of a plan which sets out the Supplier's proposed methodology for achieving orderly transition of the provision of the Services from the Supplier to the Customer and/or the Replacement Supplier on the Call Off Expiry Date or date of termination of this Call Off Contract (the "**Exit Plan**").
- 20.2. Within thirty (30) Working Days after submission of the draft Exit Plan (or any revised Exit Plan if the Customer does not Approve the draft Exit Plan) the Parties will use their reasonable endeavours to agree its content and if they are unable to reach agreement then the dispute shall be referred to the Dispute Resolution Procedure.

- 20.3. The Supplier will review and update the Exit Plan within one (1) Month of each anniversary of the Call Off Commencement Date or more often as agreed between the Parties.
- 20.4. The Supplier shall comply with the exit planning provisions as set out in Call Off Schedule 7 (Exit Planning).
- 20.5. In the case of any additional and/or alternative exit planning requirements of the Customer, the provisions relating to exit planning shall apply as stipulated by the Customer in the Order Form.

## **21. ASSISTANCE ON EXPIRY OR TERMINATION**

- 21.1. In the event that this Call Off Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Services to a Replacement Supplier.
- 21.2. Such assistance shall include as set out in the Exit Plan under Clause 20 (if applicable).

## **22. CALL OFF CONTRACT CHARGES AND PAYMENT**

### **22.1. Call Off Contract Charges**

- 22.1.1. In consideration of the Supplier's performance of 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 agreed in the Order Form and the procedure in Clause 22.2 (Payment and VAT).
- 22.1.2. The Customer shall, in addition to the Call Off Contract Charges and following delivery by the Supplier of a Valid Invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with this Call Off Contract.
- 22.1.3. Where the Supplier enters into a Sub-Contract it shall comply with Clause 42.2.5.6.
- 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. Payment and VAT**

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

- 22.2.2. The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Customer may specify):
  - 22.2.2.1. contains all appropriate references and a detailed breakdown of the Delivered Services against the applicable due and payable Call Off Contract Charges; and
  - 22.2.2.2. shows separately the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 22.2.2.3; and
  - 22.2.2.3. it is supported by any other documentation reasonably required by the Customer to substantiate that the invoice is a Valid Invoice. The Supplier shall add VAT to the Call Off Contract Charges at the prevailing rate as applicable.
- 22.2.3. The Supplier shall fully indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 22.2.3 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- 22.2.4. Without prejudice to Clause 31.4 (Termination on Default) 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). Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 22.2.5. 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.

### **22.3. Recovery of Sums Due**

- 22.3.1. Wherever under this Call Off Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Call Off Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at

any later time may become due to the Supplier under this Call Off Contract or under any other Call Off Agreement or other agreement between the Supplier and the Customer.

- 22.3.2. Any overpayment by either Party, whether of the Call Off Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 22.3.3. The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 22.3.4. All payments due shall be made within the time period set out in Clause 22.2.1 unless otherwise specified in this Call Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

**22.4. Foreign Currency**

- 22.4.1. Any requirement of Law or under this Call Off Contract to account for the Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 22.4.2. The Customer shall provide all reasonable assistance to facilitate compliance with Clause 23.4.1 by the Supplier.

**23. KEY PERSONNEL**

- 23.1. Where Key Personnel are included in the Approved Implementational Plan, the Parties have agreed to the appointment of the Key Personnel.
- 23.2. The Supplier shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.
- 23.3. Unless otherwise agreed by the Customer in writing, the Supplier shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.
- 23.4. The Customer shall not unreasonably delay or withhold its decision to Approve the removal or appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-Contractor.
- 23.5. The Supplier acknowledges and agrees that the persons designated as Key Personnel from time to time are essential to the proper provision of the Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

- 23.6. The Customer may also 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.

## **24. STAFF AND STAFFING SECURITY**

### **24.1. Staff**

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

24.1.1.1. any member of the Staff; or

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

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

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

- 24.1.3. Staff engaged within the boundaries of the Customer's Premises shall comply with such rules, regulations and requirements (including all those relating to security arrangements and the Security Policy) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Customer's Premises.

- 24.1.4. If the Supplier fails to comply with Clause 24.1.2 within three (3) weeks of the date of the request or such other reasonable period which the Customer may specify, the Customer may terminate this Call Off Contract for Material Breach, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

- 24.1.5. The decision of the Customer as to whether any person is to be refused access to the Customer's Premises and as to whether the Supplier has failed to comply with Clause 24.1.2 shall be final and conclusive.

### **24.2. Relevant Convictions**

- 24.2.1. This Clause shall apply if the Customer has so specified in the Order Form.

- 24.2.2. 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.

## **25. NOT USED**

**26. NOT USED**

**C. PROTECTION OF INFORMATION**

**27. INTELLECTUAL PROPERTY RIGHTS**

- 27.1. Save as expressly granted elsewhere under this Call Off Contract:
- 27.1.1. the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
    - 27.1.1.1. the Supplier Background IPRs;
    - 27.1.1.2. the Project Specific IPRs, and
    - 27.1.1.3. in the Supplier Software;
  - 27.1.2. the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:
    - 27.1.2.1. the Customer Background IPRs;
    - 27.1.2.2. in the Customer Data; and
    - 27.1.2.3. in the Customer Software.
- 27.2. 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 27.1, 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).
- 27.3. The Supplier shall not, and shall procure that the Staff shall not, (except when necessary for the performance of this Call Off Contract) without Approval (which the Customer shall have the sole and absolute right to grant or deny) use or disclose any of the Customer Background IPR, Customer Data or Customer Software to or for the benefit of any third party.
- 27.4. The Supplier hereby grants, or shall procure the direct grant, to the Customer (and to any Replacement Supplier) of a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty-free licence to copy, modify, disclose and use the Supplier Background IPRs, the Project Specific IPRs and the Supplier Software for any purpose connected with the receipt of the Services that is incidental to the exercise of the rights granted to the Customer under this Call Off Contract and to enable the Customer:
- 27.4.1. to receive the Services; and
  - 27.4.2. to make use of the services provided by the Replacement Supplier.
- 27.5. The Customer hereby grants to the Supplier a non-exclusive, non-assignable royalty-free licence to use the Customer Background IPRs, the Customer Data and the Customer Software during the Call Off Contract Period for the sole purpose of enabling the Supplier to perform its obligations under this Call Off Contract and provide the Services. The Customer gives no warranty as to the suitability for the Supplier's purpose of any IPRs licensed to the Supplier hereunder. Such licence:

- 27.5.1. includes the right to grant sub-licences to Sub-Contractors engaged in providing or delivering any of the Services (or part thereof) provided that any such Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 28.5 (Confidentiality) and that any such Sub-Contracts shall be non-transferable and personal to the relevant Sub-contractor; and
  - 27.5.2. is granted solely to the extent necessary for the provision of the Services in accordance with this Call Off Contract. The Supplier shall not, and shall procure that the Sub-Contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Customer;
- 27.6. On the Call Off Expiry Date or date of termination of this Call Off Contract, the licence referred to in Clause 27.5 and any sub-licence granted in accordance with Clause 27.5.1 shall terminate automatically, and the Supplier shall immediately deliver to the Customer (or destroy and confirm receipt of such destruction to the Customer) all material licensed to the Supplier pursuant to Clause 27.5 in the Supplier's possession or control in accordance with Clause 33.3 (Consequences of expiry or termination of the Call Off Contract for any reason).
- 27.7. Prior to using any third party IPRs in connection with the supply of the Services, the Supplier shall submit all details of such third party IPRs as the Customer may request to the Customer for Approval ("**Request for Approval**"). The Supplier shall provide the Customer with details of any third party licence required by the Supplier and/or the Customer in order for the Supplier to carry out its obligations under this Call Off Contract using the third party IPRs in the Request for Approval. The Customer reserves the right to withhold or deny Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
- 27.8. Where the Supplier is granted Approval to use the third party IPRs set out in a Request for Approval, the Supplier shall procure that the owner of such third party IPRs grants to the Customer a licence upon the terms informed to the Customer in the Request for Approval.
- 27.9. The Supplier shall on demand, during and after the Call Off Contract Period, fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all Losses which the Customer or the Crown may suffer or incur at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) as a result of any claim (whether actual alleged asserted and/or substantiated and including third party claims) that the rights granted to the Customer pursuant to this Call Off Contract and/or the performance by the Supplier of the provision of the Services and/or the possession or use by the Customer of the Services (as appropriate) infringes or allegedly infringes a third party's IPRs (the "**Claim**") except where the Claim arises from:
  - 27.9.1. designs supplied by the Customer; or

- 27.9.2. the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of this Call Off Contract.
- 27.10. The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
  - 27.10.1. shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 27.10.2. shall take due and proper account of the interests of the Customer;
  - 27.10.3. shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
  - 27.10.4. shall not settle or compromise the Claim without Approval (such decision to Approve or not shall not be unreasonably withheld or delayed).
- 27.11. If a Claim is made in connection with this Call Off Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to Approval (such decision to Approve or not to be unreasonably withheld or delayed), use its best endeavours to:
  - 27.11.1. modify the relevant part of the Services and/or the Deliverables without reducing the functionality or performance of the same, or substitute alternative services and/or deliverables of equivalent functionality or performance, so as to avoid the infringement or the alleged infringement, provided that:
    - 27.11.1.1. the provisions herein shall apply with any necessary changes to such modified services and/or deliverables or to the substitute services and/or deliverables; and
    - 27.11.1.2. such substitution shall not increase the burden on the Customer; and
    - 27.11.1.3. the replaced or modified service and/or deliverable does not have an adverse effect on any other Services and/or Deliverables; and
    - 27.11.1.4. there is no additional cost to the Customer; and
    - 27.11.1.5. such modified or substituted services and/or deliverables shall be acceptable to the Customer (such decision to accept or not shall not be unreasonably withheld); or
  - 27.11.2. procure a licence to use and supply the Services and/or Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer; and
  - 27.11.3. in relation to the performance of the Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations

and in the event that the Supplier is unable to comply with Clauses 27.11.1 or 27.11.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate this Call Off Contract for Material Breach and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Service and/or Deliverable that is subject to the Claim.

- 27.12. The Supplier's compliance with Clause 27.11 shall be at its own expense and the Supplier shall be liable for all costs and expenses that the Customer may incur resulting from the Customer's compliance with Clause 27.11.
- 27.13. In the event that a modification or substitution in accordance with Clause 27.11.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 27.11.2, the Customer, without prejudice to any other rights of remedies under this Call Off Contract or at Law, shall be entitled to delete the relevant Service and/or Deliverable from this Call Off Contract.
- 27.14. If the Supplier elects to modify or replace the Service and/or Deliverable pursuant to Clause 27.11.1 or to procure a licence in accordance with Clause 27.11.2, but this has not avoided or resolved the Claim, then the Customer may terminate this Call Off Contract for Material Breach and, without prejudice to the indemnity set out in Clause 27.9, the Supplier shall, be liable for all reasonable and unavoidable costs of the substitute services and/or deliverables including the additional costs of procuring and implementing the substitute services.
- 27.15. The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without prior Approval.
- 27.16. The Customer shall have full ownership of any audience data generated during its campaigns and grants to the Supplier a non-exclusive, non-assignable royalty-free licence to use the audience data during the Call Off Contract Period for the sole purpose of enabling the Supplier to perform its obligations under this Call Off Contract and provide the Services. The Supplier shall ensure that no other advertiser shall benefit from or have access to audience data generated by the Customer's campaigns.

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

### **28.1. Security Requirements**

- 28.1.1. The Supplier shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Management Plan (if any) and the Supplier shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 28.1.2. The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 28.1.3. 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 notify the Customer. In doing so, the Supplier must support its request by

providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call Off Contract Charges shall then be subject to the Variation Procedure.

- 28.1.4. 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.

## 28.2. **Malicious Software**

- 28.2.1. The Supplier shall, as an enduring obligation throughout the Call Off Contract Period where any Software is used in the provision of the Services or the performance of this Call Off Contract, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).

- 28.2.2. Notwithstanding Clause 28.2.1, 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.

- 28.2.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 28.2.1 shall be borne by the Parties as follows:

- 28.2.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and

- 28.2.3.2. by the Customer if the Malicious Software originates from the Customer Software or the Customer Data (whilst the Customer Data was under the control of the Customer).

## 28.3. **Customer Data**

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

- 28.3.2. 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.

- 28.3.3. 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.

- 28.3.4. To the extent that Customer Data is held and/or Processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 28.3.5. The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 28.3.6. The Supplier shall ensure that any system on which the Supplier holds any Customer Data which is protectively marked shall be accredited using such accreditation policy or system as specified by the Customer (such as the HMG Security Policy Framework and Information Assurance Policy, taking into account guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems, and/or relevant HMG Information Assurance Standard(s), as in force from time to time) and, where the Call Off Contract Period exceeds one year, the Supplier shall review such accreditation status at least once in each year to assess whether material changes have occurred which could alter the original accreditation decision. If any such changes have occurred then the Supplier shall resubmit such system for accreditation.
- 28.3.7. If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Supplier's Default so as to be unusable, the Customer may:
- 28.3.7.1. require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Customer Data and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
- 28.3.7.2. itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so.
- 28.3.8. If at any time the Supplier suspects or has reason to believe that the Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 28.3.9. The Supplier shall, at all times during and after the Call Off Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under this Clause 28.3 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

#### **28.4. Protection of Personal Data**

- 28.4.1. Where any Personal Data are Processed with respect to the Parties' rights and obligations under this Call Off Contract, the

Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor.

28.4.2. The Supplier shall:

- 28.4.2.1. Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Call Off Contract or as otherwise notified by the Customer to the Supplier during the Call Off Contract Period);
- 28.4.2.2. Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law;
- 28.4.2.3. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 28.4.2.4. take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
- 28.4.2.5. obtain Approval in order to transfer the Personal Data to any Sub-Contractors or Affiliates for the provision of the Services;
- 28.4.2.6. ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 28.4;
- 28.4.2.7. ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;
- 28.4.2.8. notify the Customer (within five (5) Working Days) if it receives:
  - 28.4.2.8.a. a request from a Data Subject to have access to that person's Personal Data; or
  - 28.4.2.8.b. a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 28.4.2.9. provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
  - 28.4.2.9.a. providing the Customer with full details of the complaint or request;
  - 28.4.2.9.b. complying with a data access request within the relevant timescales set out in the Data

Protection Legislation and in accordance with the Customer's instructions;

- 28.4.2.9.c. providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
- 28.4.2.9.d. providing the Customer with any information requested by the Customer;
- 28.4.2.10. permit the Customer or the Customer Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Call Off Contract;
- 28.4.2.11. provide a written description of the technical and organisational methods employed by the Supplier for Processing Personal Data (within the timescales required by the Customer); and
- 28.4.2.12. not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Call Off Commencement Date, the Supplier (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:
  - 28.4.2.12.a. the Supplier shall submit a request for Variation to the Customer which shall be dealt with in accordance with the Variation Procedure and paragraphs 28.4.2.12.b.i to 28.4.2.12.b.iv below;
  - 28.4.2.12.b. the Supplier shall set out in its request for a Variation details of the following:
    - 28.4.2.12.b.i. the Personal Data which will be Processed and/or transferred outside the European Economic Area;
    - 28.4.2.12.b.ii. the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
    - 28.4.2.12.b.iii. any Sub-Contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
    - 28.4.2.12.b.iv. how the Supplier will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the

Customer's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;

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

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

28.4.2.12.d.i. incorporating standard and/or model Clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Call Off Contract or a separate data processing agreement between the parties; and

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

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

28.4.4. The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal

Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

- 28.4.5. The Supplier shall, at all times during and after the Call Off Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under this Clause 28.4 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

## 28.5. Confidentiality

- 28.5.1. Except to the extent set out in this Clause 28.5 or where disclosure is expressly permitted elsewhere in this Call Off Contract, each Party shall:
  - 28.5.1.1. treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - 28.5.1.2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 28.5.2. Clause 28.5.1 shall not apply to the extent that:
  - 28.5.2.1. such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 28.7 (Freedom of Information);
  - 28.5.2.2. such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 28.5.2.3. such information was obtained from a third party without obligation of confidentiality;
  - 28.5.2.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call Off Contract; or
  - 28.5.2.5. such information is independently developed without access to the other Party's Confidential Information.
- 28.5.3. The Supplier may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality in Clause 28.5.
- 28.5.4. The Supplier shall not, and shall procure that the Staff shall not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Call Off Contract.

- 28.5.5. At the written request of the Customer, the Supplier shall procure that those members of Staff identified in a Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Call Off Contract.
- 28.5.6. In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Call Off Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Supplier is taking appropriate steps to comply with this Clause 28.5, including copies of any written communications to and/or from Staff, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.
- 28.5.7. Nothing in this Call Off Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under Clause 12 of the Framework Agreement):
- 28.5.7.1. to any Crown body or any other Contracting Body. All Crown bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Body;
  - 28.5.7.2. to any consultant, contractor or other person engaged by the Customer or any person conducting a Cabinet Office gateway review (formerly known as Office of Government Commerce gateway review);
  - 28.5.7.3. for the purpose of the examination and certification of the Customer's accounts; or
  - 28.5.7.4. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 28.5.8. The Customer shall use all reasonable endeavours to ensure that any Crown body, Contracting Body, employee, third party or Sub-

Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 28.5.7 is made aware of the Customer's obligations of confidentiality.

- 28.5.9. Nothing in this Clause 28.5 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 28.5.10. The Supplier shall, at all times during and after the Call Off Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under Clauses 28.5.1 to 28.5.6 except and to the extent that such liabilities have resulted directly from the Customer's instructions.
- 28.5.11. In the event that the Supplier fails to comply with Clauses 28.5.1 to 28.5.6, the Customer reserves the right to terminate this Call Off Contract for Material Breach.
- 28.5.12. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Call Off Contract, the Supplier shall comply with the Call Off Contract (including the Security Policy) and, in any event, undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

**28.6. Official Secrets Acts 1911 to 1989, section 182 of the Finance Act 1989**

- 28.6.1. The Supplier shall comply with and shall ensure that the Staff comply with, the provisions of:
  - 28.6.1.1. the Official Secrets Acts 1911 to 1989; and
  - 28.6.1.2. Section 182 of the Finance Act 1989.
- 28.6.2. In the event that the Supplier or the Staff fail to comply with this Clause 28.6, the Customer reserves the right to terminate this Call Off Contract for Material Breach.

**28.7. Freedom of Information**

- 28.7.1. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 28.7.2. The Supplier shall and shall procure that its Sub-Contractors shall:
  - 28.7.2.1. transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

- 28.7.2.2. provide the Customer with a copy of all Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
- 28.7.2.3. provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 28.7.3. The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Call Off Contract or any other Call Off Agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 28.7.4. In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 28.7.5. The Supplier acknowledges that (notwithstanding the provisions of Clause 28.5 (Confidentiality)) the Customer may, acting in accordance with the Ministry of Justice' (formerly Department of Constitutional Affairs') Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
  - 28.7.5.1. in certain circumstances without consulting the Supplier; or
  - 28.7.5.2. following consultation with the Supplier and having taken their views into account,provided always that where Clause 28.7.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 28.7.6. The Supplier shall ensure that all Information relating to this Call Off Contract is retained for disclosure in accordance with the provisions of this Call Off Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.
- 28.7.7. The Supplier acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 28.7.5.

## 28.8. **Transparency**

- 28.8.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Contract is not Confidential

Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of this Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA.

- 28.8.2. Notwithstanding any other term of this Call Off Contract, the Supplier hereby gives his consent for the Customer to publish this Call Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Call Off Contract, to the general public.
- 28.8.3. The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 28.8.4. The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Call Off Contract.

#### **D. LIABILITY**

#### **29. LIABILITY**

- 29.1. Neither Party excludes or limits its liability for:
  - 29.1.1. death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable); or;
  - 29.1.2. bribery or Fraud by it or its employees; or
  - 29.1.3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 29.1.4. any other liability to the extent it cannot be excluded or limited by Law.
- 29.2. Subject to Clause 29.1, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Call Off Contract as a result of defaults by the other Party shall in no event exceed:
  - 29.2.1. in relation to any defaults occurring to the end of the first Call Off Contract Year, the higher of two million pounds (£2,000,000) or a sum equal to one hundred and twenty-five per cent (125%) of the Estimated Year 1 Call Off Contract Charges;
  - 29.2.2. in relation to any defaults occurring in each Call Off Contract Year that commences during the remainder of the Call Off Contract Period, the higher of two million pounds (£2,000,000) in each such Call Off Contract Year or a sum equal to one hundred and twenty five per cent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
  - 29.2.3. 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 two million pounds (£2,000,000) in each such Call Off Contract Year or a sum equal to one hundred and twenty five per cent (125%) of the Call Off Contract Charges payable to the

Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period,

unless a different aggregate limit or percentage under this Clause 29.2 is stipulated by the Customer.

- 29.3. Subject to Clause 29.1, in no event shall either Party be liable to the other for any:
  - 29.3.1. loss of profits;
  - 29.3.2. loss of business;
  - 29.3.3. loss of revenue;
  - 29.3.4. loss of or damage to goodwill;
  - 29.3.5. loss of savings (whether anticipated or otherwise); and/or
  - 29.3.6. any indirect, special or consequential loss or damage.
- 29.4. Subject to Clauses 29.2, and notwithstanding Clause 29.3, 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:
  - 29.4.1. the additional operational and/or administrative costs and expenses arising from any Material Breach;
  - 29.4.2. any wasted expenditure or charges;
  - 29.4.3. the cost of procuring, implementing and operating any alternative or replacement services to the Services for the remainder of the Call Off Contract Period following termination of this Call Off Contract as a result of a Default;
  - 29.4.4. any compensation or interest paid to a third party by the Customer;
  - 29.4.5. any regulatory losses, fines, expenses or other Losses arising from a breach by the Supplier of any Law.
- 29.5. Where the Supplier is a company, no individual nor any service company of the Supplier employing that individual shall have any personal liability to the Customer for the Services supplied by that individual on behalf of the Supplier and the Customer shall not bring any claim under this Call Off Contract against that individual or such service company in respect of the Services save in the case of bribery, Fraud or any liability for death or personal injury.
- 29.6. No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by or on behalf of the Customer to any document or information provided by the Supplier in its provision of the Services, and no failure of the Customer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to carry out all the obligations of a professional supplier employed in a client/customer relationship.
- 29.7. Save as otherwise expressly provided, the obligations of the Customer under this Call Off Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in this Call Off Contract shall operate as an obligation upon, or in any other way fetter or constrain the

Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under this Call Off Contract (howsoever arising) on the part of the Customer to the Supplier.

- 29.8. 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).
- 29.9. Nothing in this Clause 29 shall act to reduce or affect a Party's general duty to mitigate its loss.
- 29.10. Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 29.2.

### **30. NOT USED**

## **E. TERMINATION**

### **31. TERMINATION EVENTS**

#### **31.1. Termination on Insolvency**

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

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

- 31.2.1. The Supplier shall notify the Customer immediately if the Supplier undergoes a Change of Control and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate this Call Off Contract by notice in writing with immediate effect within six (6) Months of:
  - 31.2.1.1. being notified in writing that a Change of Control has occurred or is planned or in contemplation; or
  - 31.2.1.2. where no notification has been made, the date that the Customer becomes aware of the Change of Control, but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

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

- 31.3.1. The Customer may terminate this Call Off Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
  - 31.3.1.1. adversely impacts on the Supplier's ability to supply the Services under this Call Off Contract; or
  - 31.3.1.2. could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Call off Contract.

#### 31.4. **Termination on Default**

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

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

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

31.4.2. If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay including specifying the Customer Cause, detailing the overdue amount, explaining why the undisputed sums are due and requiring the failure to be remedied. If the Customer fails to pay such and so notified undisputed sums within ninety (90) days from the date of receipt by the Customer of such written notice (the "**Undisputed Sums Time Period**"), the Supplier may terminate this Call Off Contract in writing, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 0 (Recovery of Sums Due).

#### 31.5. **Termination without cause**

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

#### 31.6. **Termination of Framework Agreement**

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

#### 31.7. **Not Used**

#### 31.8. **Termination for continuing Force Majeure Event**

31.8.1. Either Party may, by written notice to the other, terminate this Call Off Contract if, in accordance with Clause 43 (Force Majeure), a Force Majeure Event endures for a continuous period of more than one hundred and twenty (120) days.

#### 31.9. **Termination in relation to Variation**

- 31.9.1. The Customer may terminate this Call Off Contract for failure of the Parties to agree or the Supplier to implement a Variation under Clause 47.3.2.2.

## **32. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION**

- 32.1. Where the Customer has the right to terminate this Call Off Contract, the Customer is entitled to terminate or suspend all or part of this Call Off Contract pursuant to this Clause 32.1 provided always that the parts of this Call Off Contract not terminated or suspended can, in the Customer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Call Off Contract.
- 32.2. Any suspension under Clause 32.1 shall be for such suspension period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

## **33. CONSEQUENCES OF EXPIRY OR TERMINATION**

- 33.1. **Consequences of termination under Clauses 31.3 (Financial Standing) or 31.4 (Termination on Default)**
  - 33.1.1. Where the Customer terminates this Call Off Contract under Clauses 31.3 (Financial Standing), 31.4 (Termination on Default), and 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. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where this Call Off Contract is terminated under Clauses 31.3 or 31.4, 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.
- 33.2. **Consequences of termination under Clause 31.5 (Termination without Cause)**
  - 33.2.1. Where the Customer terminates this Call Off Contract under Clause 31.5 (Termination without Cause) or elects to partially terminate or suspend or partially suspend this Call Off Contract without cause under Clauses 31.5 and 32, the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 31.5 (Termination without Cause).
  - 33.2.2. The Customer shall not be liable under Clause 33.2.1 to pay any sum which:

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

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

- 33.3.1. At the end of the Call Off Contract Period (howsoever arising), the Supplier shall:
  - 33.3.1.1. immediately return to the Customer all Customer Data;
  - 33.3.1.2. cease to use the Customer Data and, at the direction of the Customer, provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Supplier;
  - 33.3.1.3. except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or twelve (12) Months after the Call Off Expiry Date or date of termination of this Call Off Contract, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.
  - 33.3.1.4. immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under Clause 0 (Property). Such Property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);
  - 33.3.1.5. assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and /or the completion of any work in progress in accordance with the Exit Plan;
  - 33.3.1.6. transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the contracts listed in the Exit Plan as are notified to the Supplier and/or by the Customer in return for payment of the costs set out in the Exit Plan in respect of such contracts;

- 33.3.1.7. return to the Customer any sums prepaid in respect of the Services not provided by the Call Off Expiry Date or date of termination of this Call Off Contract (howsoever arising); and
  - 33.3.1.8. promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence; and
  - 33.3.1.9. in the event that media acquired by the Supplier on behalf of the Customer has yet to be utilised by the Customer on the termination or expiry of this Call Off Contract, the Supplier shall ensure that the media owner continues to hold that media for the Customer after the termination or expiry of this Call Off Contract.
- 33.3.2. If the Supplier fails to comply with Clauses 33.3.1.1 to 33.3.1.9, the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its servants, consultants, agents or Sub-Contractors where any such items may be held.
- 33.3.3. Where the end of the Call Off Contract Period arises due to termination of this Call Off Contract by reason of a Supplier's Default under Clause 31.4 (Termination on Default), the Supplier shall provide all assistance under Clauses 33.3.1.5 to 33.3.1.9 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.
- 33.3.4. At the end of the Call Off Contract Period (howsoever arising) the licence granted pursuant to Clause 10.1.1 (Licence to occupy Premises) shall automatically terminate without the need to serve notice.
- 33.3.5. Save as otherwise expressly provided in this Call Off Contract:
- 33.3.5.1. termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
  - 33.3.5.2. termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 0 (Payment and VAT), 0 (Recovery of Sums Due), 27 (Intellectual Property Rights), 28.4 (Protection of Personal Data), 28.5 (Confidentiality), 28.6 (Official Secrets Acts 1911 to 1989), 28.7 (Freedom of Information), 29 (Liability),

33 (Consequences of Expiry or Termination), 37 (Prevention of Bribery and Corruption), 38 (Records and Audit Access), 40 (Prevention of Fraud), 45 (Cumulative Remedies), 51 (Conflicts of Interest), 53 (The Contracts (Rights of Third Parties) Act 1999), 56 (Governing Law and Jurisdiction) and, without limitation to the foregoing, any other provision of this Call off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of this Call Off Contract.

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

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

- 34.1. The Supplier shall not make any press announcements or publicise this Call Off Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, Sub-Contractors, suppliers, professional advisors and consultants comply with this Clause 34. Any such press announcements or publicity proposed under this Clause 34.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.
- 34.2. Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise this Call Off Contract in accordance with any legal obligation upon the Customer, including any examination of this Call Off Contract by the Auditor(s).
- 34.3. The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute. The Customer may terminate this Call Off Contract for Material Breach, in the event that, in the sole opinion of the Customer, the Supplier causes, permits, contributes or is in any way connected to material adverse publicity relating to or affecting the Customer and/or this Call Off Contract.

### **35. HEALTH AND SAFETY**

- 35.1. Throughout the Call Off Contract Period the Supplier shall not, in the performance of its obligations under this Call Off Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.
- 35.2. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under this Call Off Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Supplier in the performance of its obligations under this Call Off Contract.

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

## **36. ENVIRONMENTAL REQUIREMENTS**

- 36.1. The Supplier shall, when working on the Premises, perform its obligations under this Call Off Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 36.2. The Customer shall provide a copy of its written environmental policy (if any) to the Supplier upon the Supplier's written request.

## **37. PREVENTION OF BRIBERY AND CORRUPTION**

- 37.1. The Supplier shall not commit and shall procure that all Staff or any person acting on the Supplier's behalf shall not commit, in connection with this Call Off Contract, any Prohibited Act.
- 37.2. The Supplier shall:
  - 37.2.1. in relation to this Call Off Contract, act in accordance with the Ministry of Justice Guidance;
  - 37.2.2. immediately notify the Customer and the Authority if it suspects or becomes aware of any breach of this Clause 37;
  - 37.2.3. respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 37 and the Supplier shall co-operate with any investigation and allow the Customer to audit the Supplier's books, records and any other relevant documentation in connection with the breach;
  - 37.2.4. if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are

supplying the Services in connection with this Call Off Contract compliance with this Clause 37. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request;

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

37.3. If the Supplier, the Staff or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches this Clause 37 the Customer shall be entitled to terminate this Call Off Contract for Material Breach.

37.4. Without prejudice to its other rights and remedies under this Clause 37, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer (whether before or after the making of a demand pursuant to the indemnity hereunder) in full from and against:

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

37.4.2. any other Loss sustained by the Customer in consequence of any breach of this Clause 37.

### **38. RECORDS AND AUDIT ACCESS**

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

38.2. The Supplier shall keep the Records and accounts referred to in Clause 38.1 above in accordance with Good Industry Practice and generally accepted accounting principles.

38.3. The Supplier shall and the Supplier shall procure that any Affiliate, group buying company, buying club or Sub-Contractor supplying the Services shall afford the Customer and/or the Customer's representatives (including any Media Auditor) and/or the National Audit Office and/or an auditor appointed by the Audit Commission (each of whom shall for the purposes of this Clause 38 be an "**Auditor**") access to the records and accounts referred to in Clause 38.1 at the Supplier's premises and/or provide copies of such Records and accounts (including copies of the Supplier's published accounts), as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 38.1, in order that the Auditor(s) may carry out an inspection including for the following purposes:

38.3.1. to verify the accuracy of the Call Off Contract Charges (and proposed or actual variations to them in accordance with this Call Off Contract), all expenditure incurred by the Supplier which is

reimbursable by the Customer under this Call Off Contract (including any discounts, rebates or other packages applied to that expenditure), and/or the costs to the Supplier (including Sub-Contractors) of the Services;

- 38.3.2. to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;
  - 38.3.3. to review the Supplier's compliance with the Data Protection Legislation in accordance with this Call Off Contract and any other Laws;
  - 38.3.4. to review the Supplier's compliance with its continuous improvement obligations set out in Framework Schedule 7 (Value for Money) and Clause 17 (Continuous Improvement) of this Call Off Contract;
  - 38.3.5. to review the Supplier's compliance with its security obligations set out in Clause 28 (Security and Protection of Information);
  - 38.3.6. to review any books of account kept by the Supplier in connection with the provision of the Services;
  - 38.3.7. to carry out an examination pursuant to Section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
  - 38.3.8. to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date;
  - 38.3.9. to audit a specific campaign by carrying out a full and detailed review of all aspects to determine the delivery of the campaign and the appropriateness of the audience; and/or
  - 38.3.10. to ensure that the Supplier is complying with its obligations under this Call Off Contract.
- 38.4. The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the 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.
- 38.5. Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 38.5.1. all reasonable information requested by the Customer within the scope of the audit;
  - 38.5.2. reasonable access to sites controlled by the Supplier and to any Equipment used in the provision of the Services ; and
  - 38.5.3. access to the Staff.
- 38.6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 38, unless the audit reveals a Material Breach by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

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

### **39. DISCRIMINATION**

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

39.2. The Supplier shall take all reasonable steps to secure the observance of Clause 39.1 by all Staff engaged or employed in the execution of this Call Off Contract.

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

### **40. PREVENTION OF FRAUD**

40.1. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier (including its shareholders, members and directors) and any Staff in connection with the receipt of monies from the Customer.

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

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

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

40.3.2. recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full for any Loss sustained by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in consequence of any breach of this Clause 40 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period.

### **41. PROMOTING TAX COMPLIANCE**

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

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

- 41.1.2. promptly provide to the Customer:
  - 41.1.2.1. details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and
  - 41.1.2.2. such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonable require.
- 41.2. The Supplier acknowledges and agrees that failure to comply with Clauses 5.2.1.5 and/or 41.1 shall be a Material Breach of this Call Off Contract.

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

### **42.1. Transfer rights**

- 42.1.1. Subject to Clause 42.1.2, the Supplier shall not assign, novate, Sub-Contract or in any other way dispose of this Call Off Contract or any part of it without Approval. The Customer has consented to the engagement of the Sub-Contractors listed in Framework Schedule 2 (Sub-Contractors).
- 42.1.2. The Supplier may assign to a third party ("the Assignee") the right to receive payment of the Call Off Contract Charges or any part thereof due to the Supplier under this Call Off Contract (including any interest which the Customer incurs under Clause 22.2.4). Any assignment under this Clause shall be subject to:
  - 42.1.2.1. reduction of any sums in respect of which the Customer exercises its right of recovery under Clause 0 (Recovery of Sums Due);
  - 42.1.2.2. all related rights of the Customer under this Call Off Contract in relation to the recovery of sums due but unpaid; and
  - 42.1.2.3. the Customer receiving notification under both Clauses 42.1.3 and 42.1.4.
- 42.1.3. In the event that the Supplier assigns the right to receive the Call Off Contract Charges under Clause 42.1.2, the Supplier or the Assignee shall notify the Customer in writing of the assignment and, including a reasonable notice period, of the date upon which the assignment becomes effective.
- 42.1.4. The Supplier shall ensure that the Assignee notifies the Customer of the Assignee's contact information and bank account details to which the Customer shall make payment.
- 42.1.5. The provisions of Clause 0 shall continue to apply in all other respects after the assignment and shall not be amended.
- 42.1.6. Subject to Clause 42.1.8, the Customer may assign, novate or otherwise dispose of its rights and obligations under this Call Off Contract or any part thereof to:
  - 42.1.6.1. any other Contracting Body; or
  - 42.1.6.2. any other body established by the Crown or under statute in order substantially to perform any of the

functions that had previously been performed by the Customer; or

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

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Call Off Contract.

42.1.7. Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 42.1.8, affect the validity of this Call Off Contract. In such circumstances, this Call Off Contract shall bind and continue to take effect to the benefit of any successor body to the Customer.

42.1.8. If the rights and obligations under this Call Off Contract are assigned, novated or otherwise disposed of pursuant to Clause 42.1.6 to a body which is not a Contracting Body or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Body (in the remainder of this Clause both such bodies being referred to as "**the Transferee**"):

42.1.8.1. the rights of termination of the Customer in Clauses 31.1 (Termination on Insolvency) 31.2 (Termination on Change of Control) and 31.4 (Termination on Default) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and

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

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

42.1.10. For the purposes of Clause 42.1.8 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Call Off Contract.

## 42.2. **Subcontracting**

42.2.1. The Supplier shall not sub-contract any Services other the Non-Core Services.

- 42.2.2. The Supplier shall not substitute or remove a Sub-Contractor or appoint an additional Sub-Contractor without the Approval of the Authority and the Customer. Notwithstanding any permitted Sub-Contract in accordance with this Clause 42.2, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that the Staff also do, or refrain from doing, such act or thing.
- 42.2.3. The performance of any part of this Call Off Contract by a Sub-Contractor shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Call Off Contract. The Supplier shall supply such information about proposed Sub-Contractors as the Customer may reasonably require in order to enable the Customer to consider whether to grant Approval.
- 42.2.4. Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 42.2.5. The Customer may, at its sole discretion, require the Supplier to ensure that each Sub-Contract shall include:
  - 42.2.5.1. a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that Sub-Contract as if it were the Supplier;
  - 42.2.5.2. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Customer;
  - 42.2.5.3. a provision requiring the Sub-Contractor to enter into a direct confidentiality agreement with the Customer on the same terms as set out in Clause 28.5 (Confidentiality);
  - 42.2.5.4. a provision requiring the Sub-Contractor to comply with protection of data requirements pursuant to Clauses 28.3 (Customer Data) and 28.4 (Protection of Personal Data);
  - 42.2.5.5. a provision requiring the Sub-Contractor to comply with the anti-corruption and anti-bribery requirements pursuant to Clause 37 (Prevention of Bribery and Corruption);
  - 42.2.5.6. a provision requiring the Supplier to pay any undisputed sum due to the relevant Sub-Contractor within a specified period that does not exceed thirty (30) days from the date the Supplier receives the Sub-Contractor's invoice;
  - 42.2.5.7. a provision restricting the ability of the Sub-Contractor to further Sub-Contract elements of the service provided to the Supplier without first seeking the prior written consent of the Customer and the Authority; and

42.2.5.8. a provision restricting the ability of the Sub-Contractor to effect the removal or replacement of any Key Personnel during the Call Off Contract Period without Approval.

42.2.6. If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier in the supply of the Services, then the Customer may require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Customer in respect of the relevant item.

42.2.7. If the Customer exercises the option pursuant to Clause 42.2.6, then the Call Off Contract Charges shall be reduced by an amount that is agreed subject to the Variation Procedure.

#### **43. FORCE MAJEURE**

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

43.2. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from any failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded, as in the case of an Affected Party, by a Force Majeure Event from complying with an obligation to the Supplier.

43.3. If either Party becomes aware of a Force Majeure Event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 43.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

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

43.5. The Supplier shall not have the right to any payment from the Customer under this Call Off Contract where the Supplier is unable to provide the Services because of a Force Majeure Event. However if the Customer

directs the Supplier to use a replacement supplier pursuant to Clause 43.4, then the Customer will pay the Supplier (a) the Call Off Contract Charges; and (b) the difference between the Call Off Contract Charges and the new supplier's costs if, in respect of the Services that are subject to a Force Majeure Event, the new provider's costs are greater than the Call Off Contract Charges.

#### **44. WAIVER**

- 44.1. The failure of either Party to insist upon strict performance of any provision of this Call Off Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Call Off Contract.
- 44.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 54 (Notices). Such waiver shall only be operative with regard to the specific circumstances referred to.
- 44.3. A waiver by either Party of any right or remedy arising from a breach of this Call Off Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Call Off Contract.

#### **45. CUMULATIVE REMEDIES**

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

#### **46. FURTHER ASSURANCES**

- 46.1. 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.

#### **47. VARIATION**

- 47.1. Subject to the provisions of this Clause 47, each Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 47.2. A Party may request a Variation by completing and sending the variation form set out in Call Off Schedule 1 (Variation Form) ("**the Variation Form**") to the other Party giving sufficient information for the receiving Party to assess the extent of the Variation and any additional cost that may be incurred. 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.

47.3. In the event that:

47.3.1. the Supplier is unable to agree to or provide the Variation; and/or

47.3.2. 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:

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

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

47.4. 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.

#### **48. SEVERABILITY**

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

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

#### **49. MISTAKES IN INFORMATION**

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

#### **50. SUPPLIER'S STATUS**

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

#### **51. CONFLICTS OF INTEREST**

- 51.1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of this Call Off Contract.
- 51.2. The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 51.1 above arises or is reasonably foreseeable.
- 51.3. The Customer reserves the right to terminate this Call Off Contract for Material Breach and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of this Call Off Contract. The actions of the Customer pursuant to this Clause 51.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

## **52. ENTIRE AGREEMENT**

- 52.1. This Call Off Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) between the Parties in relation to such matters.
- 52.2. Each of the Parties acknowledges and agrees that in entering into this Call Off Contract it does not rely on, and shall have no remedy in respect of, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as expressly set out in this Call Off Contract.
- 52.3. The Supplier acknowledges and agrees that it has:
  - 52.3.1. entered into this Call Off Contract in reliance on its own due diligence alone; and
  - 52.3.2. received sufficient information required by it in order to determine whether it is able to provide the Services in accordance with the terms of this Call Off Contract.
- 52.4. Nothing in Clauses 52.1 to 52.3 shall operate to exclude any liability for (or remedy in respect of) Fraud.

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

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

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

## 54. NOTICES

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

54.2. Subject to Clause 54.3, the following table sets out the method by which notices may be served under this Call Off Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clause 54.3)	9.00am on the first Working Day after sending	Dispatched in an emailed pdf form to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	properly addressed and delivered as evidenced by signature of a delivery receipt
Recorded delivery or other next working day delivery service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

54.3. Any notices from either Party relating to termination (Clause 31), partial termination, suspension or partial suspension (Clause 32), waiver (Clause 44) Default or Customer Cause and any dispute under the Dispute Resolution Procedure (Clause 57) may not be served by email.

54.4. For the purposes of Clause 54.2, the address and email address of each Party shall be the address and email address set out in the Order Form.

54.5. Either Party may change its address for service by serving a notice in accordance with this Clause 54.

54.6. This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **55. LEGISLATIVE CHANGE**

55.1. 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:

55.1.1. General Change in Law;

55.1.2. Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Call Off Commencement Date.

55.2. If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than those referred to in Clause 55.1.2), the Supplier shall notify the Customer of the likely effects of that change.

55.3. As soon as practicable after any notification in accordance with Clause 55.2 the parties shall discuss and agree the matters referred to in that clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:

55.3.1. providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;

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

55.3.3. giving evidence as to how the Specific Change in Law has affected the cost of supplying the Services; and

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

55.4. Any increase in the Call Off Contract Charges or relief from any of the Supplier's obligations under this Call Off Contract agreed by the Parties pursuant to Clauses 55.2 and 55.3 above shall be implemented in accordance with Clause 47 (Variation).

## **G. DISPUTES AND LAW**

### **56. GOVERNING LAW AND JURISDICTION**

56.1. This Call Off Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with this Call Off Contract including, without limitation, any dispute relating to any contractual or non-contractual obligation and the existence, validity or termination of this Call Off Contract.

## 57. DISPUTE RESOLUTION

- 57.1. Immediately upon either Party notifying the other of a dispute, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Call Off Contract and such efforts shall involve the escalation of the dispute to the level of representative of each Party agreed in writing.
- 57.2. Nothing in this Dispute Resolution Procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 57.3. If the dispute cannot be resolved by the Parties pursuant to Clause 57.1 within twenty (20) Working Days or such other period that the Customer may specify or Approve, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 57.5 unless:
  - 57.3.1. the Customer considers that the dispute is not suitable for resolution by mediation; or
  - 57.3.2. the Supplier does not agree to mediation.
- 57.4. Without prejudice to any other rights of the Customer under this Call Off Contract, the obligations of the Parties under this Call Off Contract shall not be suspended, cease or be delayed by the reference of a dispute submitted to mediation and the Supplier and the Staff shall comply fully with the requirements of this Call Off Contract at all times.
- 57.5. The procedure for mediation is as follows:
  - 57.5.1. a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice of the Mediator to either Party that that person is unable or unwilling to act, apply to the mediation provider or to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator;
  - 57.5.2. the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with the Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the mediation provider specified in Clause 57.5.1 to provide guidance on a suitable procedure;

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

## GLOSSARY TO CALL OFF FORM AND MEDIA BUYING CALL OFF TERMS

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

<b>"Acquired Rights Directive"</b>	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;
<b>"Affected Party"</b>	means the party seeking to claim relief in respect of a Force Majeure;
<b>"Affiliates"</b>	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Additional Clauses"</b>	means the additional Clauses in Call Off Schedule 8 (Alternative and Additional Clauses) and any other additional Clauses stipulated by the Customer in the Order Form;
<b>"Alternative Clauses"</b>	means the alternative Clauses in Call Off Schedule 8 (Alternative and Additional Clauses) and any other alternative Clauses stipulated by the Customer in the Order Form;
<b>"Approval"</b>	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
<b>"Approved Implementational Plan"</b>	means the Implementational Plan approved by the Customer under Clause 6.5.3.1;
<b>"Auditor"</b>	has the meaning in Clause 38;
<b>"Authority"</b>	<b>Redacted Text</b>
<b>"Call Off Agreement"</b>	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Commencement Date"</b>	means the date of commencement of the Call Off Contract set out in the Order Form;
<b>"Call Off Contract"</b>	means this Call-Off Agreement between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Order Form and the Call-Off Terms;
<b>"Call Off Contract Charges"</b>	means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract, as set out in Framework Schedule

	3 (Charging Structure) and the Media Buying Brief, for the full and proper performance by the Supplier of its obligations under the Call Off Contract less any Deductions;
<b>"Call Off Expiry Date"</b>	means the date of expiry of the Call Off Contract set out in the Order Form;
<b>"Call Off Contract Period"</b>	means the period, which shall in no event exceed four (4) years, from the Call Off Commencement Date until the Call Off Expiry Date or earlier date of termination (including completion) of this Call Off Contract in accordance with Clause 4;
<b>"Call Off Contract Year"</b>	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;
<b>"Call Off Execution Date"</b>	means the date of execution of this Call Off Contract in accordance with the procedure described in the Order Form and Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Schedules"</b>	means the schedules to this Call Off Contract;
<b>"Call-Off Terms"</b>	means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Services, together with the Call Off Schedules hereto;
<b>"Change in Law"</b>	means any change in Law which impacts on the supply of the Services and performance of the Call-Off Terms which comes into force after the Call Off Commencement Date;
<b>"Change of Control"</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	means the charges raised under or in connection with a Call-Off Agreement from time to time, which charges shall be calculated in a manner which is consistent with the Charging Structure;
<b>"Charging Structure"</b>	means the structure to be used in the establishment of the charging model which is applicable to each Call-Off Agreement, which structure is set out in Framework Schedule 3 (Charging Structure);
<b>"Code"</b>	has the meaning given to it in Clause 28.7.5 (and a copy of which can be found at <a href="http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice">http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice</a> );
<b>"Commercially Sensitive Information"</b>	means the Confidential Information listed in the Order Form (if any) comprising of a commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;

<b>“Comparable Supply”</b>	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
<b>"Confidential Information"</b>	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
<b>"Continuous Improvement Plan"</b>	means a plan for improving the provision of the Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 7 (Value for Money);
<b>“Contracting Body”</b>	means the Authority and any other bodies listed in paragraph VI.3 of the OJEU Notice;
<b>"Control"</b>	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
<b>"Conviction"</b>	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);
<b>"Crown"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Customer"</b>	means the customer(s) identified in the Order Form;
<b>"Customer Background IPRs"</b>	shall mean: <ul style="list-style-type: none"> <li>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;</li> </ul>

- 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 by the Customer of its obligations under this Call Off Contract any Customer Responsibilities (unless caused or contributed to by the Supplier or as the result of any act or omission by the Customer to which the Supplier has given its prior consent);

**"Customer Data"**

means:

- 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, and which:
  - i. are supplied to the Supplier by or on behalf of the Customer; and/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 Responsibilities"**

means the responsibilities of the Customer set out in the Order Form, any Media Buying Brief and any other responsibilities of the Customer agreed in a between the Parties in writing from time to time;

**"Customer Representative"**

means the representative appointed by the Customer from time to time in relation to the Call Off Contract;

**"Customer's Confidential Information"**

means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Customer, including all IPR (including all Customer Background IPRs), together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked

	"confidential") or which ought reasonably be considered to be confidential;
<b>"Customer Software"</b>	means software which is owned by or licensed to the Customer, including software which is or will be used by the Supplier for the purposes of providing the Services but excluding the Supplier Software;
<b>"Customer's Premises"</b>	means the Premises identified in the Order Form and which are to be made available by the Customer for use by the Supplier for the provision of the Services on the terms set out in this Call Off Contract and any other Premises made available by the Customer from time to time for use by the Supplier in connection with this Call Off Contract;
<b>"Data Controller"</b>	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
<b>"Data Processor"</b>	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
<b>"Data Protection Legislation" or "DPA"</b>	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Data Subject"</b>	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
<b>"Deductions"</b>	means any deduction which the Customer is paid or payable under this Call Off Contract;
<b>"Default"</b>	means any breach of the obligations of the Supplier (including but not limited to Material Breach) or any other default, act, omission, negligence or negligent statement of the Supplier or the Staff in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;
<b>"Deliverable"</b>	means an item or feature delivered or to be delivered by the Supplier at any stage during the performance of this Call Off Contract;
<b>"Delivery"</b>	means the time at which the Services have been provided or performed by the Supplier in accordance with this Call Off Contract and accepted by the Customer and "Deliver" and "Delivered" shall be construed accordingly;
<b>"Disaster"</b>	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 twenty (20) days or which is reasonably anticipated will mean that the Services or a material part thereof will be unavailable for that period;

**"Dispute Resolution Procedure"**

means the dispute resolution procedure set out in Clause 57;

**"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;

**"Employee Liabilities"**

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:

- 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;

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;

**"Environmental Information Regulations"**

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

**"Equipment"**

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

**"ERG"**

means the Cabinet Office Efficiency and Reform Group;

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

means the sum of £ 14,000,000 pounds estimated by the Customer to be payable by it to the Supplier as the total aggregate Call Off Contract Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year;

**"Exit Plan"**

has the meaning set out in Clause 20;

**"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 the 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 Staff (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.

<b>"Framework Agreement"</b>	means the framework agreement between the Authority and the Supplier referred to in the Order Form;
<b>"Framework Price(s)"</b>	means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Charging Structure);
<b>"Fraud"</b>	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;
<b>"General Anti-Abuse Rule"</b>	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;
<b>"General Change in Law"</b>	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;
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Government"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Halifax Abuse Principle"</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	means Her Majesty's Revenue and Customs;
<b>"Holding Company"</b>	shall have the meaning given to it in section 1159 of the Companies Act 2006;
<b>"Implementational Plan"</b>	means the plan developed by the Supplier in accordance with the terms of this Call Off Contract, containing detailed recommendations for each channel (e.g. specific press titles, radio stations, TV Channels, online sites etc), costed at the Supplier's Pricing Guarantees, to meet the requirements of the Media Buying Brief, including the budgets and target audiences provided with relevant metrics (such as reach / coverage, frequency, timeframes, period of placement, location etc) included;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>"Insolvency Event"</b>	means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable): <ul style="list-style-type: none"> <li>a. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a</li> </ul>

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 "IPRs"**

means

- a. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography

rights, trade marks, rights in Internet domain names and website addresses and other rights in trade 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;

**“Key Performance Indicators” or “KPIs”**

means the performance measurements and targets set out in Part B of Framework Schedule 1 (Services and Key Performance Indicators);

**"Key Personnel"**

means the individuals (if any) identified as such in the Approved Implementational Plan;

**"Know-How"**

means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;

**"Law"**

means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

**“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;

**"Management Information" or “MI”**

means the management information specified in Framework Schedule 8 (Management Information);

**"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;

**"Material Breach"**

means:

- a. a breach by the Supplier referred to by this term in any of the following Clauses: Clause 5 (Warranties and Representations), Clause 6.2 (Time of Delivery of Services), Clause 15 (Monitoring of Implementation and Performance), Clause 17 (Continuous Improvement), Clause 19 (Disruption), Clause 24 (Staff and Staff Security), Clause 27 (IPR), Clause 28.4 (Protection of Personal Data), Clause 28.5 (Confidentiality), Clause 34 (Publicity, Media and Official Enquiries), Clause 28.6 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), Clause 37 (Prevention of Bribery and Corruption), Clause 40 (Prevention of Fraud), Clause 41 (Promoting Tax Compliance) and Clause 51 (Conflicts of Interest);
- b. any material breach of this Call Off Contract under the Law;
- c. a breach which prevents the Customer from discharging a statutory duty.

**"Media Auditor"**

means a media auditor appointed by the Authority pursuant to clause 14 of the Framework Agreement or a media auditor appointed by the Customer;

**"Ministry of Justice Guidance"**

means Ministry of Justice Guidance in relation to Section 9 of the Bribery Act 2010 available at <http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf>;

**"Media Buying Brief"**

means a competed media buying brief in the form set out in Appendix 1 or Appendix 2 of the Order Form (as applicable) which has been Approved by the Customer;

**"Month"**

means a calendar month and "Monthly" shall be interpreted accordingly;

**"Non-Core Services"**

means the international services set out in paragraph 5.3 of Part B of Schedule 1 (Services and Key Performance Indicators), the regional services set out in paragraph 5.4 of Part B of Schedule 1 (Services and Key Performance Indicators), the out of home

services set out under the general requirements of paragraph 5.2 of Schedule 1 (Services and Key Performance Indicators) and the digital services set out in paragraph 12.1 of Part B of Schedule 1 (Services and Key Performance Indicators) of the Framework Agreement;

**"Occasion of Tax Non Compliance"**

means:

- 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:
  - 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 the DOTAS or any equivalent or similar regime in any jurisdiction; and/or

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;

**"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;

**"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;
<b>"Party"</b>	means the Customer or the Supplier and "Parties" shall mean both of them;
<b>"Personal Data"</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>"Premises"</b>	means the location where the Services are to be supplied as set out in the Order Form;
<b>"Processing"</b>	has the meaning given to "processing" under the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
<b>"Prohibited Act"</b>	means: <ul style="list-style-type: none"> <li>a. to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority a financial or other advantage to: <ul style="list-style-type: none"> <li>i. induce that person to perform improperly a relevant function or activity; or</li> <li>ii. reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>b. committing any offence: <ul style="list-style-type: none"> <li>i. under the Bribery Act 2010; or</li> <li>ii. under legislation creating offences concerning Fraud; or</li> <li>iii. at common law concerning Fraud;</li> </ul> </li> <li>c. committing or attempting or conspiring to commit Fraud;</li> </ul>
<b>"Project Specific IPRs"</b>	means: <ul style="list-style-type: none"> <li>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</li> <li>b. Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Call Off Contract;</li> </ul>

but shall not include the Supplier Background IPRs;

<b>"Property"</b>	means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with this Call Off Contract;
<b>"Records"</b>	means the full and accurate records and accounts of the operation of this Call Off Contract, including: <ul style="list-style-type: none"><li>(a) the Services provided pursuant to this Call Off Contract;</li><li>(b) the amounts paid by the Customer under this Call Off Contract;</li><li>(c) all records and accounts which relate to the Supplier's expenditure which is reimbursable by the Customer including ledgers and accounting documents, complete access to all AVB (both cash and non cash) and other discount related data including deal letters, service level agreements and any other contracts entered into by the Supplier with media vendors on its own behalf and also by the Supplier on behalf of the Customer; and</li><li>(d) all timesheet records which support the remuneration of the Supplier under this Call Off Contract;</li></ul>
<b>"Regulations"</b>	means the Public Contracts Regulations 2006 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
<b>"Related Supplier"</b>	means any person who provides services to the Customer which are related to the Services from time to time;
<b>"Relevant Conviction"</b>	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 the Call Off Contract;
<b>"Relevant Tax Authority"</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return;
<b>"Replacement Supplier"</b>	means any third party provider of Replacement Services appointed by the Customer from time to time or where the Customer is providing Replacement

	Services for its own account, shall also include the Customer;
<b>"Replacement Sub-Contractor"</b>	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);
<b>"Replacement Services"</b>	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 expiry or termination of this Call Off Contract, whether those services are provided by the Customer internally and/or by any third party;
<b>"Request for Information"</b>	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the Environmental Information Regulations;
<b>"Security Management Plan"</b>	means the Supplier's security management plan prepared pursuant to paragraph 3 of Call Off Schedule 2 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 3.2 of Call Off Schedule 2 (Security) and as updated from time to time;
<b>"Security Policy"</b>	means the Customer's security policy and procedures in force from time to time, including any specific security requirements set out in Annex 1 to Call Off Schedule 2 (Security);
<b>"Service Failure"</b>	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;
<b>"Service Levels"</b>	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 Performance Monitoring);
<b>"Service Transfer"</b>	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;
<b>"Services"</b>	means the services to be supplied as referred to in the Order Form;
<b>"Software"</b>	means the Supplier Software and Customer Software;
<b>"Specific Change in Law"</b>	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
<b>"Staff"</b>	means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all

persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors) used in the performance of its obligations under this Call Off Contract;

**"Staff Vetting Procedures"**

means any Customer's procedures and departmental policies for the vetting of personnel as set out by the Customer in the Order Form or elsewhere in the Call Off Contract;

**"Standards"**

means:

- a. any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
- b. any standards detailed in the specification in Framework Schedule 1 (Services and Key Performance Indicators);
- c. any standards detailed by the Customer in this Call Off Contract or agreed between the Parties from time to time;
- d. any 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;

**"Sub-Contractor"**

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

**"Supplier"**

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

<b>“Supplier Background IPRs”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>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</li> <li>b. Intellectual Property Rights created by the Supplier independently of this Call Off Contract,</li> </ul> <p>but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
<b>"Supplier Software"</b>	<p>means the means any software identified as such in the Order Form together with all other software which is not listed in the Order Form but which is or will be used by the Supplier or any Sub-Contractor for the 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;</p>
<b>"Supplier's Confidential Information"</b>	<p>means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;</p>
<b>“Template Call Off Terms”</b>	<p>means the template terms and conditions in Part 2 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);</p>
<b>“Template Order Form”</b>	<p>means the template form in Part 1 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);</p>
<b>"Tender"</b>	<p>means the tender submitted by the Supplier to the Authority on 24/04/2014 and annexed to Framework Schedule 17;</p>
<b>"TUPE"</b>	<p>means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive;</p>
<b>“Undelivered Services”</b>	<p>shall have the meaning given in Clause 6.3;</p>
<b>"Undisputed Sums Time Period"</b>	<p>has the meaning given in Clause 31.4.2;</p>

<b>"Valid Invoice"</b>	means an invoice issued by the Supplier to the Customer that complies with Clause 22.2.1 and Framework Schedule 3 (Charging Structure);
<b>"Variation"</b>	has the meaning given in Clause 47.1;
<b>"Variation Procedure"</b>	means the procedure set out in Clause 47;
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Working Day"</b>	means any Day other than a Saturday or Sunday or public holiday in England and Wales.

**CALL OFF SCHEDULE 1: VARIATION FORM**

No of Order Form being varied:

.....

Variation Form No:

.....

**BETWEEN:**

**The Ministry of Defence ("the Customer")**

and

**Carat, a Trading Division of Dentsu Aegis Uk Ltd Redacted Text ("the Supplier")**

1. The Call Off Contract is varied as follows and shall take effect on the date signed by both Parties:
2. Words and expressions in this Variation shall have the meanings given to them in the Call Off Contract.
3. The 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 2: SECURITY

In this Call Off Schedule (Security) the following provisions shall have the meanings given to them below:

<b>"Breach of Security"</b>	in accordance with the security requirements in Annex 1 to this Call Off Schedule (Security) and the Security Policy, the occurrence of: <ul style="list-style-type: none"><li>a. any unauthorised access to or use of the Services, the Premises, the Sites, the Supplier System 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/or</li><li>b. the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Call Off Contract;</li></ul>
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### 1. INTRODUCTION

- 1.1 This Call Off Schedule covers:
  - 1.1.1 principles of protective security to be applied in delivering the Services;
  - 1.1.2 the creation and maintenance of the Security Management Plan; and
  - 1.1.3 obligations in the event of actual, potential or attempted breaches of security.

### 2. PRINCIPLES OF SECURITY

- 2.1 The Supplier acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on security.
- 2.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
  - 2.2.1 is in accordance with Good Industry Practice, Law and this Call Off Contract;
  - 2.2.2 complies with the Security Policy;
  - 2.2.3 complies with the security requirements as set out in Annex 1 to this Call Off Schedule; and
  - 2.2.4 complies with the Customer's ICT standards.

- 2.3 Subject to Clause 12 (Standards and Quality), the references to standards, guidance and policies set out in paragraph 2.2 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, from time to time.
- 2.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Customer's Representative of such inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

### **3. SECURITY MANAGEMENT PLAN**

#### **3.1 Introduction**

- 3.1.1 If the Customer has so stipulated in the Order Form, the Supplier shall develop and maintain a Security Management Plan in accordance with this Call Off Schedule to apply during the Call Off Contract Period.
- 3.1.2 The Supplier shall comply with its obligations set out in the Security Management Plan and any other provision of the Framework Agreement relevant to security.
- 3.1.3 The Security Management Plan shall, unless otherwise specified by the Customer, aim to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Premises, the Sites, the Supplier System and any ICT, information and data (including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract.
- 3.1.4 The Supplier is responsible for monitoring and ensuring that it is aware of changes to the Security Policy. The Supplier shall keep the Security Management Plan up-to-date with the Security Policy as amended from time to time.

#### **3.2 Development of the Security Management Plan**

- 3.2.1 Within twenty (20) Working Days after the Call Off Commencement Date (or such other period otherwise agreed by the Parties in writing) and in accordance with paragraph 3.4 (Amendment and Revision), the Supplier will prepare and deliver to the Customer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan. If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 3.4 (Amendment and Revision), is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan.

3.2.2 If the Security Management Plan is not Approved the Supplier shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Customer pursuant to this paragraph 3.2.2 may be unreasonably withheld or delayed. However a refusal by the Customer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 3.3 shall be deemed to be reasonable.

### **3.3 Content of the Security Management Plan**

3.3.1 The Security Management Plan will 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 shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Call Off Contract (including this Call Off Schedule, the principles set out in paragraph 2.2 and any other elements of this Call Off Contract relevant to security or any data protection guidance produced by the Customer).

3.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Call Off Contract and Annex 1 to this Call Off Schedule.

3.3.3 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the provision of the Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise specified in this Call Off Schedule.

### **3.4 Amendment and Revision of the Security Management Plan**

3.4.1 The Security Management Plan will be fully reviewed and updated by the Supplier annually, or from time to time to reflect:

3.4.1.1 emerging changes in Good Industry Practice;

3.4.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;

3.4.1.3 any new perceived or changed security threats;

3.4.1.4 any reasonable request by the Customer.

- 3.4.2 The Supplier will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Customer. The results of the review should include, without limitation:
  - 3.4.2.1 suggested improvements to the effectiveness of the Security Management Plan;
  - 3.4.2.2 updates to the risk assessments; and
  - 3.4.2.3 suggested improvements in measuring the effectiveness of controls.
- 3.4.3 On receipt of the results of such reviews, the Customer will consider any amendments or revisions to the Security Management Plan for Approval in accordance with the process set out at paragraph 3.2.2.
- 3.4.4 Any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a Customer request or change to the requirements set out in Annex 1 to this Call Off Schedule or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved by the Customer.

#### **4. BREACH OF SECURITY**

- 4.1 Either party shall notify the other in accordance with the agreed security incident management process as defined by the Security Management Plan upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 4.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 4.1, the Supplier shall:
  - 4.2.1 immediately take all reasonable steps necessary to:
    - 4.2.1.1 remedy such breach or protect the integrity of the Customer against any such potential or attempted breach or threat; and
    - 4.2.1.2 prevent an equivalent breach in the future; and
  - 4.2.2 ensure that:
    - 4.2.2.1 such steps shall include any action or changes reasonably required by the Customer. In the event that such action is taken in response to a breach that is determined by the Customer acting reasonably not to be covered by the obligations of the Supplier under this Call Off Contract, then the Supplier shall be entitled to refer the matter to the Variation Procedure; and

4.2.2.2 as soon as reasonably practicable provide to the Customer full details of the Breach of Security or the potential or attempted Breach of Security.

## ANNEX 1: SECURITY

Not used

**CALL OFF SCHEDULE 3: NOT USED**

**CALL OFF SCHEDULE 4: NOT USED**

**CALL OFF SCHEDULE 5: NOT USED**

## **CALL OFF SCHEDULE 6: SERVICE LEVELS PERFORMANCE MONITORING**

### **1. SCOPE**

- 1.1 This Call Off Schedule (Service Levels Performance Monitoring) sets out the Service Levels which the Supplier is required to achieve when providing the Services, the mechanism by which failures to achieve Service Levels 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;
  - 1.2.2 Annex 1 to Part A - Service Levels Table;
  - 1.2.3 Part B: Performance Monitoring; and
  - 1.2.4 Annex 1 to Part B: Performance Monitoring

## **PART A: SERVICE LEVELS**

### **1. GENERAL PROVISIONS**

- 1.1 The Supplier shall provide a proactive account manager to ensure that all Service Levels and KPIs (Key Performance Indicators) are met to the highest standard throughout the Term of the Framework Agreement and Call-Off Agreement.
- 1.2 The Supplier shall provide support and advice through the provision of a dedicated account manager, where required, on matters relating to:
  - 1.2.1 Supply performance including cost;
  - 1.2.2 Quality of Services;
  - 1.2.3 Customer Support including complaints handling and continuous improvement; and
  - 1.2.4 Responsiveness and timeliness, including accurate and timely invoices.

### **2. PRINCIPAL POINTS**

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

### **3. SERVICE LEVELS**

- 3.1 The Annex 1 to Part A of this Call Off Schedule sets out Service Levels the performance of which the Parties have agreed to measure.
- 3.2 The Supplier shall monitor its performance of the provision by it of the Services by reference to the relevant Performance Criteria for achieving the Service Level(s) shown in Annex 1 to Part A of this Call Off Schedule and shall send the Customer a report detailing the level of service which was achieved in accordance with the provisions of Part B of this Call Off Schedule.
- 3.3 The Supplier shall, at all times, provide the Services in such a manner that the Service Levels are achieved.
- 3.4 If the level of performance of the Supplier of any element of the provision by it of the Services during the Call Off Contract Period fails to or is likely to fail to achieve a Service Level, the Supplier shall immediately notify the Customer in

writing and the Customer, in its absolute discretion and without prejudice to any other of its rights under the Call Off Contract or in Law, may:

- 3.4.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a failure of a Service Level taking place or recurring; and
  - 3.4.2 if the action taken under paragraph 3.4.1 above has not already prevented or remedied the failure of a Service Level, provide the Customer with a correction plan (the "**Correction Plan**") within five (5) Working Days (or such other period as the Parties agree in writing) from the day the Supplier notifies the Customer under paragraph 3.4 above. The Supplier will set out in the Correction Plan the action that it will take to prevent the failure of a Service Level or rectify and prevent the failure of a Service Level from recurring. The Supplier will obtain the Customer's Approval of such Correction Plan (such Approval not to be unreasonably withheld or delayed) and carry out the Approved Correction Plan in accordance with its terms. 31.4.
- 3.5 Approval and implementation of any Correction Plan by the Customer shall not relieve the Supplier of any responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation.

#### **ANNEX 1 TO PART A: SERVICE LEVELS TABLE**

**Redacted Text**

**Table A - Clash Management**

Redacted Text

**Table B - Post Campaign Analysis**

Redacted Text

**Table C – Supplier Response Times**

Redacted Text

**PART B: PERFORMANCE MONITORING**

**4. PRINCIPAL POINTS**

- 4.1 Part B to this Call Off Schedule provides the methodology for monitoring the provision of the Services:
  - 4.1.1 to ensure that the Supplier is complying with the Service Levels; and
  - 4.1.2 for identifying any failures to achieve Service Levels in the contractual performance of the Supplier including the provision of the Services ("**Performance Monitoring System**").
- 4.2 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.

**5. REPORTING OF SERVICE FAILURES**

- 5.1 The Customer shall report all failures to achieve Service Levels to the Customer in accordance with the processes agreed in paragraph 4.2 above.

**6. PERFORMANCE MONITORING AND PERFORMANCE REVIEW**

- 6.1 The Supplier shall provide the Customer with reports in accordance with the process and timescales agreed pursuant to paragraph 4.2 above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
  - 6.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
  - 6.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
  - 6.1.3 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence; and

- 6.1.4 such other details as the Customer may reasonably require from time to time including details of any Service Failures.
- 6.2 The Parties shall attend meetings to discuss Service Level 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):
  - 6.2.1 take place within one (1) week of the reports referred to in paragraph 6.1 above being issued by the Supplier;
  - 6.2.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
  - 6.2.3 be attended by the Supplier's Representative and the Customer's Representative; and
  - 6.2.4 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.
- 6.3 The Customer shall be entitled to raise any additional questions and/or request any further information including regarding any failure to achieve Service Levels.
- 6.4 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 for any specified Service Period.

## 7. **SATISFACTION SURVEYS**

- 7.1 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.
- 7.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with the Call Off Contract.
- 7.3 All other suggestions for improvements to the Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 17.

## **ANNEX 1 TO PART B: PERFORMANCE MONITORING**

## **CALL OFF SCHEDULE 7: EXIT PLANNING**

### **1. INTRODUCTION**

- 1.1 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 expiry or termination (howsoever arising) (including partial termination) of this Call Off Contract and the transfer of service provision to a Replacement Supplier.
- 1.2 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 a Replacement Supplier at the termination (howsoever arising) (including partial termination) or expiry of this Call Off Contract.

### **2. EXIT PLANNING AND SERVICE TRANSFER ARRANGEMENTS**

- 2.1 The Supplier agrees to indemnify and keep the Customer fully indemnified for itself and on behalf of any Replacement Supplier in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) from the provision of incorrect information provided to the Customer by the Supplier, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Services.

### **3. EXIT PLAN**

- 3.1 Further to Clause 20 (Exit Planning), the Customer shall review the draft Exit Plan within twenty (20) Working Days of receipt from the Supplier and shall notify the Supplier of any suggested revisions to the draft Exit Plan. In this respect, the Customer will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days. The agreed Exit Plan shall be signed within thirty (30) Working Days after submission by the Supplier to the Customer of the draft Exit Plan, as provided for in Clause 20.2.
- 3.2 The Exit Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the provision of the Services. The Supplier shall ensure that the Exit Plan shall include as a minimum:
  - 3.2.1 a detailed description of how the provision of the Services will be ceased and transferred to the Customer and/or the Replacement Supplier as the case may be;
  - 3.2.2 details of the management structure to be employed by the Supplier to effectively transfer the provision of the Services to the Customer and/or Replacement Supplier as the case may be;
  - 3.2.3 details of how relevant knowledge will be transferred to the Customer and/or the Replacement Supplier; and

- 3.2.4 details of contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon expiry or termination of the Call Off Contract 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);
  - 3.2.5 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 expiry or termination (howsoever arising) of this Call Off Contract charged at rates agreed between the Parties at that time;
  - 3.2.6 proposals for providing the Customer or a Replacement Supplier copies of all documentation:
    - 3.2.6.1 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
    - 3.2.6.2 relating to the use and operation of the Services;
  - 3.2.7 proposals for the methods of transfer of the provision of the Services to the Customer or a Replacement Supplier;
  - 3.2.8 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;
  - 3.2.9 proposals for the identification and return of all Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
  - 3.2.10 proposals for the disposal of any redundant Services and materials;
  - 3.2.11 how the Supplier shall meet its obligations in respect of any media space that has been acquired but not utilised on the termination or expiry of this Call Off Contract; and 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.
- 3.3 The Exit Plan shall be reviewed and updated by the Supplier in accordance with Clause 20.3. The revised Exit Plan shall be reviewed and agreed in accordance with the provisions of paragraph 3.1 of this Call Off Schedule.

#### **4. ASSISTANCE ON EXPIRY OR TERMINATION**

- 4.1 In the event that this Call Off Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Services to a Replacement Supplier including as set out in the Exit Plan.

## CALL OFF SCHEDULE 8: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

### 1. INTRODUCTION

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

### 2. CLAUSES SELECTED

- 2.1 The Customer, in the Order Form, requested that the following MOD ("**Ministry of Defence**") Additional or Alternative Clauses should apply:
- 2.1.1 DEFCON 5J (Edition 07/08), DEFCON 129J (Edition 07/08) and DEFCON 522J (Edition 05/03).

### 3. IMPLEMENTATION

- 3.1 The Additional Clauses specified shall be deemed to be incorporated into this Call Off Contract.

### 4. MOD ADDITIONAL CLAUSES

- 4.1 The definition of Call Off Contract in the Glossary to the Call Off Terms shall be replaced with the following:

**"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.

- 4.2 The following definitions shall be inserted into in the Glossary to the Call Off Terms:

4.2.1 **"MoD Terms and Conditions"** means the contractual terms and conditions listed in Schedule [8...] which form part of the Call Off Terms.

4.2.2 **"Site"** shall include any of Her Majesty's Ships or Vessels and Service Stations.

4.2.3 **"Officer in charge"** shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.

- 4.3 The following clauses shall be inserted into Clause 1.3 (Due Diligence):

2.2 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.

2.3 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.

4.4 The following new Clause 58 shall apply:

**58. ACCESS TO MOD SITES**

58.1. In this Clause 58:

58.1.1. 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.

58.1.2. 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.

58.1.3. 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.

58.1.4. 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.

- 58.1.5. 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.
- 58.1.6. 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.
- 58.1.7. 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.
- 58.1.8. 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.

The following MOD DEFCONs and DEFFORMs form part of this Call Off Contract:

**DEFCONs**

<u>DEFCON No</u>	<u>Version</u>	<u>Description</u>
<b>DEFCON 5J</b>	<b>Edition 07/08</b>	<b>Unique Identifiers</b>
<b>DEFCON 129J</b>	<b>Edition 07/08</b>	<b>The Use Of The Electronic DEFCON 129J Edition 07/08 Business Delivery Form</b>

Guidance Note: the above documents can be found at  
<https://sts.defencegateway.mod.uk/register.aspx>