

FRAMEWORK SCHEDULE 4

TEMPLATE ORDER FORM AND CALL OFF TERMS

PART 1 – [TEMPLATE] ORDER FORM

Technology Expense Management 2 - Agreement RM3802 Framework Schedule 4 - Annex 1

Order Form

In this Order Form, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions), Framework Schedule 1 or the relevant Call Off Schedule in which that capitalised expression appears.

The Supplier shall provide the Services specified in this Order Form to the Customer on and subject to the terms of the Call Off Contract for the duration of the Call Off Period.

This Order Form should be used by Customers ordering Services under the Technology Expense Management 2 Framework Agreement ref. RM3802 in accordance with the provisions of Framework Schedule 5.

The Call Off Terms, referred to throughout this document, are available from the Crown Commercial Service website <http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm3802>

Section A General information

This Order Form is issued in accordance with the provisions of the Technology Expense Management Framework Agreement RM3802.

Customer details

Customer organisation name

[Click here to enter text.](#)

Billing address

Your organisation's billing address - please ensure you include a postcode

[Click here to enter text.](#)

Customer representative name

The name of your point of contact for this Order

[Click here to enter text.](#)

Customer representative contact details

Email and telephone contact details for the Customer's representative

[Click here to enter text.](#)

Supplier details**Supplier name**

The Supplier organisation name, as it appears in the Framework Agreement

[Click here to enter text.](#)

Supplier address

Supplier's registered address

[Click here to enter text.](#)

Supplier representative name

The name of the Supplier point of contact for this Order

[Click here to enter text.](#)

Supplier representative contact details

Email and telephone contact details of the supplier's representative

[Click here to enter text.](#)

Order reference number

A unique number provided by the supplier at the time of the Call Off Contract is formed.

[Click here to enter text.](#)

Section B**Overview of the requirement****Framework Lot under which this Order is being placed**

Tick one box below as applicable

- | | |
|-------------------------------------|--------------------------|
| 1. CENTRAL GOVERNMENT TEM SERVICES | ☐ |
| 2. WIDER PUBLIC SECTOR TEM SERVICES | ☐ |

Customer project reference

Please provide a project reference, this will be used in management information provided by suppliers to assist the Authority with framework management

[Click here to enter text.](#)

Call Off Commencement Date

The date on which the Call Off Contract is formed – this should be the date of the last signature on Section E of this Order Form

[Click here to enter a date.](#)

Call Off Contract Period (Term)

Call Off Initial Period Months

[Click here to enter text.](#)

Call Off Extension Period (Optional) Months

[Click here to enter text.](#)

Customer's ICT and Security Policy

Where the Supplier is required to comply with the Customer's ICT Policy and Security Policy then append to this Order Form as a clearly marked document

Security Management Plan

Where the Supplier is required to provide the Customer with the Security Management Plan then append to this Order Form as a clearly marked document

Section C

Customer Core Services Requirements

Please provide details of all Services required including the locations where the Supplier is required to provide the Services Ordered.

Services

List below or append as a clearly marked document to confirm the Services which the Supplier shall provide to the Customer (which could include the Customer's requirement)

[Click here to enter text.](#)

Location/Site(s) for provision of the Services

[Click here to enter text.](#)

Additional Clauses (see Call Off Schedule 7)

Those Additional Clauses selected below shall be incorporated into this Call Off Contract

Optional Clauses

Can be selected to apply to any Order

Tick any applicable boxes below

Security Measures ☐

NHS Additional Clauses ☐

MOD Additional Clauses ☐

Alternative Clauses

To replace default English & Welsh Law, Crown Body and FOIA subject base Call Off Clauses

Tick any applicable boxes below

Scots Law ☐

Or ☐

Northern Ireland Law ☐

Non-Crown Bodies ☐

Non-FOIA Public Bodies ☐

Licensed Software Where Software owned by a party other than the Customer is used in the delivery of the Services list product details under each relevant heading below

Supplier Software

[Click here to enter text.](#)

Third Party Software

[Click here to enter text.](#)

Include license or link to the applicable license terms

Customer Property

Items licensed by the Customer to the Supplier (including any Customer Software, Customer Assets, Customer System, Customer Background IPR and Customer Data)

List below if applicable (see Call Off Clause 19)

[Click here to enter text.](#)

Call Off Contract Charges and Payment Profile

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

List below or append as a clearly marked document (see Call Off Schedule 3)

[Click here to enter text.](#)

Undisputed Sums Limit (£)

Insert right (see Call Off Clause 30.1.1)

[Click here to enter text.](#)

Delay Period Limit (calendar days)

Insert right (see Call Off Clause 5.4.1(b)(ii))

[Click here to enter text.](#)

BCDR

Disaster Period (calendar days)

[Click here to enter text.](#)

Key Personnel & Customer Responsibilities (see Call Off Clause 15)

List below or append as a clearly marked document to include Key Roles

Key Personnel

List below or append as a clearly marked document to include Key Roles

[Click here to enter text.](#)

Customer Responsibilities

List below or append as a clearly marked document

[Click here to enter text.](#)

SERVICE LEVELS AND SERVICE CREDITS (see Part A of Call Off Schedule 6)

Service Levels

The Service Levels are as specified in Framework Schedule 26

Service Credits

Formula for calculation

$\frac{x\% \text{ (Service Level Performance Measure)} - x\% \text{ (actual Service Level performance)}}{100}$	=	x% of the Call Off Contract Charges payable to the Customer as Service Credits to be deducted from the next Valid Invoice payable by the Customer
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Worked example:

98% (e.g. Service Level Performance Measure requirement for Service Level Performance Criterion of accurate and timely billing to Customer) - 75% (e.g. actual performance achieved against this)	=	23% of the Call Off Contract Charges payable to the Customer as Service Credits to be deducted from the next Valid Invoice payable by the Customer
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Service Level Performance Criterion in a
Service Period)

Service Credit Cap

Agree and specify the Service Credit Cap in the marked areas below

In the period from the Call Off Commencement Date to the end of the first Call Off Contract Year **[xxx]**% of the Charges paid and payable; and

during the remainder of the Call Off Contract Period, **[xxx]**% of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the period of twelve (12) Months immediately preceding the Month in respect of which Service Credits are accrued.

Section D

Supplier response

Suppliers - use this section to provide any details that may be relevant in the fulfilment of the Customer Order

Commercially Sensitive information

Any information that the Supplier considers sensitive for the duration of an awarded Call Off Contract

[Click here to enter text.](#)

Total contract value

Please provide the total contract value (for the Call Off Initial Period) as detailed in your response to the Customer's statement of requirements

[Click here to enter text.](#)

Section E
Call Off Contract award

This Call Off Contract is awarded in accordance with the provisions of the Technology Expense Management 2 Framework Agreement ref. RM3802.

The Supplier shall provide the Services specified in this Order Form to the Customer on and subject to the terms of this Order Form and the Call Off Terms (together referred to as “the Call Off Contract”) for the duration of the Call Off Contract Period.

SIGNATURES

For and on behalf of the Supplier

Name	
Job role/title	
Signature	
Date	

For and on behalf of the Customer

Name	
Job role/title	
Signature	
Date	

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PART 2 –RM3802 TECHNOLOGY EXPENSE MANAGEMENT CALL OFF TERMS

TERMS AND CONDITIONS

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

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

- 1.4.1 the Framework Agreement, except Framework Schedule 22 (Tender);
- 1.4.2 the Order Form;
- 1.4.3 the Call Off Terms;
- 1.4.4 Framework Schedule 22 (Tender).
- 1.5 Any permitted changes by the Customer to the Call Off Terms and the Template Order Form under Clause 4 (Call Off Procedure) of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to them becoming the Call Off Terms and the Order Form which comprise this Call Off Contract shall prevail over the Framework Agreement.
- 1.6 Where the Tender contains provisions which are more favourable to the Customer in relation to this Call Off Contract, such provisions of the Tender shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in this context.

2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
 - 2.1.1 the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Call Off Contract;
- 2.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - 2.2.1 it has raised all relevant due diligence questions with the Customer before the Call Off Commencement Date;
 - 2.2.2 it has satisfied itself of all relevant details, including but not limited to, details relating to the following:
 - (a) suitability of the existing
 - (b) operating processes and procedures and the working methods of the Customer;
 - (c) ownership, functionality, capacity, condition and suitability for use in the provision of the Services.

3. REPRESENTATIONS AND WARRANTIES

- 3.1 Each Party represents and warranties that:
 - 3.1.1 it has full capacity and authority to enter into and to perform this Call Off Contract;
 - 3.1.2 this Call Off Contract is executed by its duly authorised representative;
 - 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Call Off Contract; and
 - 3.1.4 its obligations under this Call Off Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to

applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

3.2 The Supplier represents and warrants that:

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call Off Contract;
- 3.2.3 its execution, delivery and performance of its obligations under this Call Off Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
- 3.2.4 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract;
- 3.2.5 it has and shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Services by the Customer;
- 3.2.6 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;
- 3.2.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Contract;
- 3.2.8 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 3.2.9 for the Call Off Contract Period and for a period of twelve (12) Months after the termination or expiry of this Call Off Contract, the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Services without Approval or the prior written consent of the Customer, which shall not be unreasonably withheld.

3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or

restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.

- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party and the Authority of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.5 For the avoidance of doubt, the fact that any provision within this Call Off Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier which constitutes a material Default.

B. DURATION OF CALL OFF CONTRACT

4. CALL OFF CONTRACT PERIOD

- 4.1 This Call Off Contract shall take effect on the Call Off Commencement Date and the term of this Call Off Contract shall be the Call Off Contract Period.
- 4.2 In accordance with Framework Agreement Clause 10.3 all Call Off Contracts awarded under this Framework Agreement shall expire co-terminus with the Framework Agreement.

C. CALL OFF CONTRACT PERFORMANCE

5. CUSTOMER ON-BOARDING PLAN

5.1 Formation of Customer On-Boarding Plan

- 5.1.1 The Customer On-Boarding Plan shall be completed by the Supplier and provided to the Customer in draft for Approval within five (5) Working Days of the Call Off Commencement Date, and such decision to Approve or not shall not be unreasonably delayed or withheld.
- 5.1.2 The Supplier shall perform each of the Deliverables identified in the Customer On-Boarding Plan by the applicable date assigned to that Deliverable in the Customer On-Boarding Plan so as to ensure that each Milestone identified in the Customer On-Boarding Plan is Achieved on or before its Milestone Date.
- 5.1.3 The Supplier shall monitor its performance against the Customer On-Boarding Plan and Milestones (if any) and any other requirements of the Customer as set out in this Call Off Contract and report to the Customer and the Authority on such performance.

5.2 Control of Customer On-Boarding Plan

- 5.2.1 The Supplier shall keep the Customer On-Boarding Plan under review in accordance with the Customer's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Services.
- 5.2.2 Where so specified in the Customer On-Boarding Plan or elsewhere in this Call Off Contract, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such

date, Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

5.3 Rectification of Delay in Customer On-Boarding

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

- (a) it shall:
 - (i) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
 - (ii) include in its notification an explanation of the actual or anticipated impact of the Delay;
 - (iii) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- (b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Customer On-Boarding Plan, Clause 5.4 (Delay Payments) shall apply.

5.4 Delay Payments

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

- (a) the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to Achieve the corresponding Milestone;
- (b) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
 - (i) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 34 (Customer Termination Rights) except Clause 34.2 (Termination Without Cause); or
 - (ii) the Delay exceeds the number of days ("the "Delay Period Limit") specified in the Customer On-Boarding Plan for the purposes of this sub-Clause, commencing on the relevant Milestone Date;
- (c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved;
- (d) no payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments or be deemed to be a

waiver of the right of the Customer to recover any such damages unless such waiver complies with Clause 41 (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Customer's rights to claim Delay Payments; and

- (e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 5.4.1 and Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 29 (Liability).

6. SERVICES

6.1 Provision of the Services

- 6.1.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Call Off Contract.
- 6.1.2 The Supplier shall ensure that the Services:
 - (a) comply in all respects with any description of the Services in this Call Off Contract; and
 - (b) are supplied in accordance with the provisions of this Call Off Contract Tender.
- 6.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:
 - (a) all applicable Law;
 - (b) Good Industry Practice;
 - (c) the Standards;
 - (d) the Security Policy;
 - (e) the Quality Plans; and
 - (f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 6.1.3(a) to 6.1.3(e).
- 6.1.4 The Supplier shall:
 - (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Call Off Contract;
 - (b) subject to Clause 17.1 (Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
 - (c) ensure that:
 - (i) the release of any new Supplier Software or Upgrade complies with the interface requirements of the Customer and (except in relation to new Software or Upgrades which

- are released to address Malicious Software) shall notify the Customer three (3) Months before the release of any new Supplier Software or Upgrade;
- (ii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (iii) any products or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Customer;
 - (iv) the Supplier System and Supplier Assets will be free of all encumbrances and will be Euro Compliant; and
 - (v) the Services are fully compatible with any Customer Software, Customer System, Customer Property or Customer Assets described in Part B of Call Off Schedule 4 (Customer On-Boarding Plan, Customer Responsibilities and Key Personnel) (or elsewhere in this Call Off Contract) or otherwise used by the Supplier in connection with this Call Off Contract;
- (d) minimise any disruption to the Sites Services, the ICT Environment and/or the Customer's operations when providing the Services;
 - (e) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the Call Off Expiry Date for any reason, to enable the timely transition of the supply of the Services (or any of them) to the Customer and/or to any Replacement Supplier;
 - (g) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
 - (h) provide the Customer with such assistance as the Customer may reasonably require during the Call Off Contract Period in respect of the supply of the Services;
 - (i) deliver the Services in a proportionate and efficient manner;

- (j) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and
 - (k) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.
- 6.1.5 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

7. SERVICES

7.1 Time of Delivery of the Services

- 7.1.1 The Supplier shall provide the Services on the date(s) specified in the Order Form (or elsewhere in this Call Off Contract) and the Milestone Dates (if any).

7.2 Location and Manner of Delivery of the Services

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

7.3 Undelivered Services

- 7.3.1 In the event that any of the Services are not Delivered in accordance with Clauses 6.1 (Provision of the Services), 7 (Time of Delivery of the Services) and 7.2 (Location and Manner of Delivery of the Services) ("Undelivered Services"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.
- 7.3.2 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 6.1, (Provision of the Services) and/or 7 (Time of Delivery of the Services) and/or 7.2 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

7.4 Specially Written Software warranty

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

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

- 7.5.1 Subject to Clauses 26.12 and 26.13 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 7.3.2 (Undelivered Services) and 31 (Customer Remedies for Default)), the Supplier shall, where practicable:
 - (a) remedy any breach of its obligations in Clauses 6 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and

- (b) meet all the costs of, and incidental to, the performance of such remedial work.

7.6 Continuing Obligation to Provide the Services

- 7.6.1 The Supplier shall continue to perform all of its obligations under this Call Off Contract and shall not suspend the provision of the Services, notwithstanding:
 - (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
 - (b) the existence of an unresolved Dispute; and/or
 - (c) any failure by the Customer to pay any Charges,
 - (d) unless the Supplier is entitled to terminate this Call Off Contract under Clause 35.1 (Termination on Customer Cause for Failure to Pay) for failure by the Customer to pay undisputed Charges.

8. STANDARDS AND QUALITY

- 8.1 The Supplier shall at all times during the Call Off Contract Period comply with Framework Clause 13 (Standards and Quality).

9. TESTING

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

10. SERVICE LEVELS AND SERVICE CREDITS

- 10.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Call Off Schedule 6 (Service Credit Regime).
- 10.2 The Supplier shall at all times during the Call Off Contract Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
- 10.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to the rights set out in Part A of Call Off Schedule 6 (Service Credit Regime) including the right to any Service Credits.
- 10.4 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 10.5 A Service Credit shall be the Customer's exclusive financial remedy for a Service Level Failure except where:
 - 10.5.1 the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;
 - 10.5.2 the Service Level Failure:
 - (a) exceeds the relevant Service Level Threshold;
 - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and

- (c) results in:
 - (i) the corruption or loss of any Customer Data (in which case the remedies under Clause 27.3.7 (Protection of Customer Data) shall also be available); and/or
 - (ii) the Customer being required to make a compensation payment to one or more third parties; and/or

10.5.3 the same Service Level Failure has occurred on three (3) or more consecutive occasions and shall constitute a material Default; and/or the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 34 (Customer Termination Rights) except Clause 34.2 (Termination Without Cause).

11. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 11.1 The Supplier shall comply with the Framework Clause 32 (Business Continuity and Disaster Recovery).

12. DISRUPTION

- 12.1 The Supplier shall comply with Framework Clause 19 (Disruption) and failure to comply shall be a material Default under this Call Off Contract.

13. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

- 13.1 Without prejudice to any other obligations of the Supplier in this Call Off Contract to notify the Customer and the Authority in respect of a specific Customer Cause (including the notice requirements under Clause 35.1.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall notify the Customer and the Authority as soon as reasonably practicable ((and in any event within two (2) Working Days of the Supplier becoming aware)) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:
 - 13.1.1 the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Call Off Contract; and
 - 13.1.2 any steps which the Customer and/or the Authority can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
 - 13.1.3 use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

D. CALL OFF CONTRACT GOVERNANCE

14. PERFORMANCE MONITORING

- 14.1 The Supplier shall comply with the monitoring requirements set out in Part B of Framework Schedule 26 (Service Levels and Performance Monitoring).

15. REPRESENTATIVES

- 15.1 Each Party shall have a representative for the duration of this Call Off Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Call Off Contract.
- 15.2 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 17.1 (Variation Procedure).
- 15.3 The Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Call Off Commencement Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.

16. RECORDS

- 16.1 The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Customer.
- 16.2 The Supplier shall:
- 16.2.1 keep the records and accounts referred to in Clause 16.1 in accordance with Good Industry Practice and Law.
- 16.3 The Authority has rights to audit the Supplier's performance of services under the Framework Agreement and related records, including in respect of the Services provided hereunder as described in Framework Clause 22.

17. CHANGE

17.1 Variation Procedure

- 17.1.1 Except as otherwise permitted by this Call Off Contract, no change to the terms of this Call Off Contract shall be effective unless it is in writing and signed by or on behalf of both Parties.
- 17.1.2 Subject to the provisions of this Clause 17 and of Call Off Schedule 3 (Charges, Payment and Invoicing), either Party may request a Variation to this Call Off Contract provided that such Variation:
- (a) does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law; and
- (b) is restricted to adjustment of the metrics in relation to the Services (for example notification of additions to the Customer's relevant inventory) and other procedural notifications.

17.1.3 Such a change once implemented is hereinafter called a "**Variation**".

17.2 Legislative Change

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

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

17.2.2 Any Specific Change in Law which occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 17.2.1(b)) shall be addressed by the Supplier and Authority pursuant to, and in accordance with, Framework Clause 23.2.2 any change in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 17.2.1(b)) shall be implemented in accordance with the Variation Procedure.

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

18. CHARGES AND PAYMENT

18.1 Charges

- 18.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Services, the Customer shall pay the undisputed Charges in accordance with the pricing and payment profile and the invoicing procedure in Call Off Schedule 3 (Charges, Payment and Invoicing).
- 18.1.2 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 8 (Testing), 16 (Records), 27.6 (Freedom of Information), 27.7 (Protection of Personal Data).
- 18.1.3 If the Customer fails to pay any undisputed Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 18.1.4 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 Charges for such Services under this Call Off Contract by the same amount.

18.2 VAT

- 18.2.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a Valid Invoice.
- 18.2.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time (whether before or after the

making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 18.2 (VAT) shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

18.3 Retention and Set Off

- 18.3.1 The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Call Off Contract or under any other agreement between the Supplier and the Customer.
- 18.3.2 If the Customer wishes to exercise its right pursuant to Clause 18.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Charges.
- 18.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

18.4 Foreign Currency

- 18.4.1 Any requirement of Law to account for the Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 18.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 18.4.1 by the Supplier.

18.5 Income Tax and National Insurance Contributions

- 18.5.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call Off Contract, the Supplier shall:
 - (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Personnel.
- 18.5.2 In the event that any one of the Supplier Personnel is a Worker who receives consideration relating to the Services, then, in addition to its obligations under Clause 18.5.1, the Supplier shall ensure that its contract with the Worker contains the following requirements:
 - (a) that the Customer may, at any time during the Call Off Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements in Clause 18.5.1, or why those

requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided;

- (b) that the Worker's contract may be terminated at the Customer's request if:
 - (i) the Worker fails to provide the information requested by the Customer within the time specified by the Customer under Clause 23.5.2(a); and/or
 - (ii) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with Clauses 18.5.1(a) and 18.5.1(b) or confirms that the Worker is not complying with those requirements; and
- (c) that the Customer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

19. KEY PERSONNEL

- 19.1 This Clause 19 shall apply where the Customer has specified Key Personnel in the Order Form.
- 19.2 The Order Form lists the key roles ("Key Roles") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Call Off Commencement Date.
- 19.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Call Off Contract Period.
- 19.4 The Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 19.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Framework Clause 43.7 (Exit Management)) unless:
 - 19.5.1 requested to do so by the Customer;
 - 19.5.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 19.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
 - 19.5.4 the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 19.6 The Supplier shall:

- 19.6.1 notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
- 19.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
- 19.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;
- 19.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and
- 19.6.5 ensure that any replacement for a Key Role:
 - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced: and
- 19.6.6 shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.
- 19.7 The Customer may require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

20. SUPPLIER PERSONNEL

20.1 Supplier Personnel

- 20.1.1 The Supplier shall comply with Framework Clause 28

21. STAFF TRANSFER

- 21.1 The Parties agree that:

- 21.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Framework Schedule 16 (Staff Transfer) shall apply as follows:
 - (a) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Framework Schedule 16 (Staff Transfer) shall apply;
 - (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Framework Schedule 16 (Staff Transfer) shall apply;
 - (c) where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Framework Schedule 16 (Staff Transfer) shall apply; and
 - (d) Part C of Framework Schedule 16 (Staff Transfer) shall not apply;

- 21.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Framework Schedule 16 (Staff Transfer) shall apply and Parts A and B of Framework Schedule 16 (Staff Transfer) shall not apply; and
 - 21.1.3 Part D of Framework Schedule 16 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.
- 21.2 The Supplier shall both during and after the Call Off Contract Period indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

22. SUPPLY CHAIN RIGHTS AND PROTECTION

22.1 Appointment of Key Sub-Contractors and Sub-Contractors

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

22.2 Retention of Legal Obligations

- 22.2.1 Notwithstanding the Supplier's right to Sub-Contract pursuant to Clause 22 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.
- 22.2.2 The Authority will manage the appointment of Key Sub-Contractors in line with Framework Clause 29.1.

G. PROPERTY MATTERS

23. CUSTOMER PREMISES

23.1 Security of Customer Premises

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

24. CUSTOMER PROPERTY

- 24.1 Where the Customer issues Customer Property free of charge to the Supplier such Customer Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Customer Property.
- 24.2 The Supplier shall not in any circumstances have a lien or any other interest on the Customer Property and at all times the Supplier shall possess the Customer Property as fiduciary agent and bailee of the Customer.
- 24.3 The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Customer Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Customer Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.
- 24.4 The Customer Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.
- 24.5 The Supplier shall maintain the Customer Property in good order and condition (excluding fair wear and tear) and shall use the Customer Property solely in connection with this Call Off Contract and for no other purpose without Approval.
- 24.6 The Supplier shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.
- 24.7 The Supplier shall be liable for all loss of, or damage to the Customer Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Customer Cause. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Customer Property.

25. SUPPLIER EQUIPMENT

- 25.1 Unless otherwise stated in the Order Form (or elsewhere in this Call Off Contract), the Supplier shall provide all the Supplier Equipment necessary for the provision of the Services.
- 25.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.
- 25.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Call Off Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.
- 25.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Supplier's property located on Customer Premises which is due to the negligent act or omission of the Customer.
- 25.5 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Call Off Contract, including the Service Level Performance Measures.
- 25.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.
- 25.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
 - 25.7.1 remove from the Customer Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Call Off Contract; and
 - 25.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.
- 25.8 Where Supplier Equipment or any component part of Supplier Equipment fails and such failure would or does detrimentally affect the provision of the Services, the Supplier shall proactively replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced). Where any such replacement would directly impact the Customer's receipt of the Services the Supplier shall first notify the Customer in writing and seek the Customer's Approval to proceed (acting reasonably).

H. INTELLECTUAL PROPERTY AND INFORMATION

26. INTELLECTUAL PROPERTY RIGHTS

26.1 Allocation of title to IPR

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

26.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 26.1, 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).

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

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

- 26.2.1 The Supplier hereby grants to the Customer, or shall procure the direct grant to the Customer of, a perpetual, royalty-free, irrevocable, non-exclusive licence to use:
- (a) the Documentation, Source Code and the Object Code of the Specially Written Software (including any Supplier Background IPR or Third Party IPR that are embedded in or which are an integral part of the Specially Written Software) which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate such Specially Written Software;
 - (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “**Software Supporting Materials**”); and

- (c) the Project Specific IPR including but not limited to the right to copy, adapt, publish (including on the ICT Environment) and distribute such Project Specific IPR.

26.2.2 The Supplier shall:

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

26.2.3 The Supplier acknowledges and agrees that the ownership of the media referred to in Clause 26.2.2(b) shall vest in the Customer upon their receipt by the Customer.

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

26.3.1 The Supplier hereby grants to the Customer a perpetual, royalty-free and non-exclusive licence to use:

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

26.3.2 At any time during the Call Off Contract Period or following the Call Off Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Software or the Supplier Background IPR under Clause 26.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Customer Cause which constitutes a material breach of the terms of Clauses 26.3.1(a) or 26.3.1(b) (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.

26.3.3 In the event the licence of the Supplier Software or the Supplier Background IPR is terminated pursuant to Clause 26.3.2), the Customer shall:

- (a) immediately cease all use of the Supplier Software or the Supplier Background IPR (as the case may be);
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Software and/or the

Supplier Background IPR, provided that if the Supplier has not made an election within six (6) Months of the termination of the licence, the Customer may destroy the documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR (as the case may be); and

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

26.4 Customer's right to sub-license

26.4.1 The Customer shall be freely entitled to sub-license the rights granted to it pursuant to Clause 26.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR).

26.4.2 The Customer may sub-license:

- (a) the rights granted under Clause 26.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-license is on terms no broader than those granted to the Customer; and
 - (ii) the sub-license only authorises the third party to use the rights licensed in Clause 26.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and
- (b) the rights granted under Clause 26.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPR provided that the sub-license is on terms no broader than those granted to the Customer.

26.5 Customer's right to assign/novate licences

26.5.1 The Customer:

- (a) shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 26.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR); and
- (b) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 26.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to:
 - (i) a Central Government Body; or
 - (ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.

- (c) Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 26.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 26.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR). If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 26.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and Clause 26.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR).
- (d) If a licence granted in Clause 26.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 26.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) is novated under Clause 26.5.1(b) or there is a change of the Customer's status pursuant to Clause 26.5.1(c) (both such bodies being referred to as the "Transferee"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

26.6 Third Party IPR and Third Party Software

- 26.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR and any Third Party Software which is not commercial off-the-shelf software grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 26.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) and Clause 26.5.1(b) (Customer's right to assign/novate licences). If the Supplier cannot obtain for the Customer a licence materially in accordance with the licence terms set out in Clause 26.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) and Clause 26.5.1(b) (Customer's right to assign/novate licences) in respect of any such Third Party IPR and/or Third Party Software, the Supplier shall:
- (a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
 - (b) only use such Third Party IPR and/or Third Party Software if the Customer Approves the terms of the licence from the relevant third party.
- 26.6.2 The Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Customer on terms no less favourable than such software is usually made available.

26.7 Licence granted by the Customer

- 26.7.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call Off Contract Period to use the Customer Software, the Customer Background IPR and the Customer Data solely to the extent necessary for providing the Services in accordance with this Call Off Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 27.4 (Confidentiality); and

- (b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

26.8 Termination of licenses

- 26.8.1 Subject to Clauses 26.3.2 and/or 26.3.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR), all licences granted pursuant to this Clause 26 (Intellectual Property Rights) (other than those granted pursuant to Clause 26.6.2 (Third Party IPR and Third Party Software) and 26.7.1 (Licence granted by the Customer)) shall survive the Call Off Expiry Date.
 - 26.8.2 The Supplier shall, if requested by the Customer in accordance with Framework Schedule 15 (Exit Management), grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPR, Third Party IPR and/or Third Party Software on terms equivalent to those set out in Clause 26.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 26.9 The licence granted pursuant to Clause 26.7.1 (Licence granted by the Customer) and any sub-licence granted by the Supplier in accordance with Clause 26.7.1 (Licence granted by the Customer) shall terminate automatically on the Call Off Expiry Date and the Supplier shall:
- (a) immediately cease all use of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be);
 - (b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data, provided that if the Customer has not made an election within six Months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Customer Software, Customer Background IPR and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Customer Software, Customer Background IPR and/or Customer Data.

26.10 IPR Indemnity

- 26.11 The Supplier shall during and after the Call Off Contract Period, on written demand indemnify the Customer against all Losses incurred by, awarded against or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 26.12 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
 - (a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:

- (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;
 - (iii) there is no additional cost to the Customer; and
 - (iv) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Services.
- 26.13 If the Supplier elects to procure a licence in accordance with Clause 26.12(a) or to modify or replace an item pursuant to Clause 26.12(b), but this has not avoided or resolved the IPR Claim, then:
- (a) the Customer may terminate this Call Off Contract by written notice with immediate effect; and
 - (b) without prejudice to the indemnity set out in Clause 26.11, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute services including the additional costs of procuring, implementing and maintaining the substitute items.
- 26.13.2 The provisions of Clauses 26.11 to 26.13 (inclusive) shall not apply to the extent that any IPR Claim is caused by any use by or on behalf of the Customer of the Software, or the use of the Customer Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Call Off Contract or in a manner not reasonably to be inferred from the description of the Services in Framework Agreement Schedule 2 (Services and Key Performance Indicators); or the provisions of this Call Off Contract.

27. SECURITY AND PROTECTION OF INFORMATION

27.1 Security Requirements

27.1.1 The Supplier shall comply with Framework Clause 31.1.

27.2 Malicious Software

27.2.1 The Supplier shall comply with Framework Clause 33.

27.3 Protection of Customer Data

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

27.3.2 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.

27.3.3 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.

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

27.3.5 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in

accordance with any BCDR Plan or otherwise. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).

- 27.3.6 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer and the Authority immediately and inform the Customer and the Authority of the remedial action the Supplier proposes to take.
- 27.3.7 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Framework Schedule 28 (Business Continuity and Disaster Recovery) or as otherwise required by the Customer, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
 - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Framework Schedule 28 (Business Continuity and Disaster Recovery) or as otherwise required by the Customer.

27.4 Confidentiality

- 27.4.1 For the purposes of this Clause 27.4, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 27.4.2 Except to the extent set out in this Clause 27.4 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call Off Contract or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 27.4.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 27.6 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;
 - (ii) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Services provided under this Call Off Contract; or
 - (iii) the conduct of a Central Government Body review in respect of this Call Off Contract; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

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

27.4.5 Subject to Clauses 27.4.2 and 27.4.7, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:

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

27.4.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 27.4.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.

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

- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 27.4.7(a)

(including any benchmarking organisation) for any purpose relating to or connected with this Call Off Contract;

(e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or

(f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer,

and for the purposes of the foregoing, references to disclosure 27.4.5 on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause 27.4.5.

27.4.8 Nothing in this Clause 27.4 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

27.4.9 In the event that the Supplier fails to comply with Clauses 27.4.2 to 27.4.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

27.5 Transparency

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

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

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

27.6 Freedom of Information

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

(a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;

(b) transfer to the Customer all Requests for Information relating to this Call Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

- (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

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

27.7 Protection of Personal Data

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

27.7.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Customer and the Authority to perform its obligations under this Call Off Contract;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in Framework Clause 31.1 (Security Requirements) and 27.1 (Protection of Customer Data);
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer and the Authority (save where such disclosure or transfer is specifically authorised under this Call Off Contract)
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under this Clause 27.7.2 and Framework Clause 32.1 (Security Requirements), 27.1 (Protection of Customer Data) and 27.4 (Confidentiality);
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third

party unless directed in writing to do so by the Authority and Customer or as otherwise permitted by this Call Off Contract; and

- (iii) have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in the DPA);
- (e) notify the Customer and the Authority within five (5) Working Days if it receives:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Customer and the Authority with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint, communication or request made (as referred to at Clause 27.7.2(e)), including by promptly providing:
 - (i) the Customer and the Authority with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Customer and/or the Authority to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Customer and/or the Authority, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 27.7.2 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

27.7.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "**Restricted Countries**").

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

28. PUBLICITY AND BRANDING

28.1 The Supplier shall not:

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

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

28.1.3 without:

(a) Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed); and

(b) Authority Approval (the decision of the Authority to approve or not shall not be unreasonably withheld or delayed).

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

I. LIABILITY AND INSURANCE

29. LIABILITY

29.1 **Unlimited Liability**

29.2 Neither Party excludes or limits its liability for:

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

(b) bribery or Fraud by it or its employees;

(c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(d) any liability to the extent it cannot be excluded or limited by Law.

29.2.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 26.10 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

29.3 **Financial Limits**

29.3.1 Subject to Clause 29.2 (Unlimited Liability), the Supplier's total aggregate liability in respect of all Service Credits incurred in any rolling period of twelve (12) Months shall be subject in aggregate to the Service Credit Cap;

29.3.2 Subject to Clause 29.2 (Unlimited Liability), the Supplier's total aggregate liability in respect of all other Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed in relation to any Defaults occurring in each Call Off Contract Year, the higher of one hundred thousand pounds (£100,000) and a sum equal to one hundred and fifty per cent (150%) of the Charges paid and payable by the Customer in that Call Off Contract Year.

29.3.3 Subject to Clauses 29.2 (Unlimited Liability) and 29.3.1 (Financial Limits) and without prejudice to its obligation to pay the undisputed Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to in relation to any Customer Causes occurring in any Call Off Contract Year, a sum equal to the Charges paid and payable by the Customer in that Call Off Contract Year.

29.4 Non-recoverable Losses

29.4.1 Subject to Clause 29.2 (Unlimited Liability) neither Party shall be liable to the other Party for any:

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

29.5 Recoverable Losses

29.5.1 Subject to Clause 29.3.1 (Financial Limits), and notwithstanding Clause 29.4.1 (Non-recoverable Losses), the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

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

29.6 Miscellaneous

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

29.6.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 29.3.1 (Financial Limits).

29.6.3 Subject to any rights of the Customer under this Call Off Contract (including in respect of an IPR Claim), any claims by a third party where an indemnity is sought by that third party from a Party to this Call Off Contract shall be dealt with in accordance with the provisions of Framework Schedule 21 (Conduct of Claims).

30. INSURANCE

- 30.1 The Supplier shall ensure that it maintains the policy or policies of insurance as are stipulated in Framework Clause 38 (Insurance).
- 30.2 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under this Clause 30, the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 30.3 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 30.4 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

J. REMEDIES AND RELIEF

31. CUSTOMER REMEDIES FOR DEFAULT

31.1 Remedies

- 31.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising (including under Call Off Schedule 6 (Service Credit Regime)) and subject to the exclusive financial remedy provisions in Clauses 10.5 (Service Levels and Service Credits) and 5.4.1(b) (Delay Payments), if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:
 - (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Customer's instructions;
 - (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Call Off Contract;
 - (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):

- (i) instruct the Supplier to comply with the Rectification Plan Process; or
- (ii) suspend this Call Off Contract (whereupon the relevant provisions of Clause 0 (Partial Termination, Suspension and Partial Suspension) shall apply) whereby the Authority may either step-in itself to supply or procure a third party to supply (in whole or in part) the Services; or
- (iii) without terminating or suspending the whole of this Call Off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 0 (Partial Termination, Suspension and Partial Suspension) shall apply) whereby the Authority may step-in itself to supply or procure a third party to supply (in whole or in part) the Services;

31.1.2 Where the Authority exercises any of the step-in rights described at Clauses 31.1.1(c)(ii) or 31.1.1(c)(iii) the provisions of Framework Clauses 41 to 43 will apply, as appropriate.

31.2 Rectification Plan Process

31.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 31.1.1(c)(i):

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

31.2.2 The Supplier shall promptly provide to the Customer and the Authority any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 7 of Framework Schedule 19 (Dispute Resolution Procedure).

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

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;

- (c) will not prevent reoccurrence of the Default; and/or
- (d) will rectify the Default but in a manner which is unacceptable to the Customer.

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

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

32. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

32.1 If the Supplier has failed to:

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

(each a "Supplier Non-Performance"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 13 (Supplier Notification of Customer Cause)):

- (a) the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (b) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 34 (Customer Termination Rights) except Clause 34.2 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
 - (ii) if the Customer, acting reasonably, considers it appropriate, the Customer On-Boarding Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;
 - (iii) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and/or

- (d) where the Supplier Non-Performance constitutes a Service Level Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits; and
 - (ii) the Supplier shall be entitled to invoice for the Charges for the provision of the relevant Services affected by the Customer Cause,

in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Customer Cause.
- 32.2 In order to claim any of the rights and/or relief referred to in Clause 32.1, the Supplier shall:
 - 32.2.1 comply with its obligations under Clause 13 (Notification of Customer Cause); and
 - 32.2.2 within ten (10) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer and the Authority notice (a “**Relief Notice**”) setting out details of:
 - (a) the Supplier Non-Performance;
 - (b) the Customer Cause and its effect on the Supplier’s ability to meet its obligations under this Call Off Contract; and
 - (c) the relief claimed by the Supplier.
- 32.3 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief, consulting with the Supplier and the Authority where necessary.
- 32.4 Without prejudice to Clauses 7.6 (Continuing obligation to provide the Services), if a Dispute arises as to:
 - 32.4.1 whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or
 - 32.4.2 the nature and/or extent of the relief claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 32.5 Any Variation that is required to the Customer On-Boarding Plan or to the Charges pursuant to this Clause 32 shall be implemented in accordance with the Variation Procedure.

33. FORCE MAJEURE

- 33.1 Subject to the remainder of this Clause 33 (and, in relation to the Supplier, subject to its compliance with its obligations in Framework Clause 32 (Business Continuity and Disaster Recovery)), a Party may claim relief under this Clause 33 from liability for failure to meet its obligations under this Call Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from a failure or delay by an agent, Sub-Contractor

or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

- 33.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 33.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 33 to the extent that consequences of the relevant Force Majeure Event:
- 33.3.1 are capable of being mitigated by any of the provision of any Services including the BCDR Services, but the Supplier has failed to do so; and/or
 - 33.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Call Off Contract.
- 33.4 Subject to Clause 33.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 33.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 33.6 Where, as a result of a Force Majeure Event:
- 33.6.1 an Affected Party fails to perform its obligations in accordance with this Call Off Contract, then during the continuance of the Force Majeure Event:
 - (a) the other Party shall not be entitled to exercise any rights to terminate this Call Off Contract in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
 - (b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Cause arising as a result of such failure;
 - 33.6.2 the Supplier fails to perform its obligations in accordance with this Call Off Contract:
 - (a) the Customer shall not be entitled:
 - (i) to receive Delay Payments pursuant to Clause 5.4 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (ii) to receive Service Credits or withhold and retain any of the Charges to the extent that a Service Level Failure has been caused by the Force Majeure Event; and

- (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.
- 33.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract.
- 33.8 Relief from liability for the Affected Party under this Clause 33 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract and shall not be dependent on the serving of notice under Clause 33.7.

K. TERMINATION AND EXIT MANAGEMENT

34. CUSTOMER TERMINATION RIGHTS

34.1 Termination on Material Default

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

- (a) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clause 29.3.1 (Liability);
- (b) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: 7.3.2 (Services), 16 (Records), 27.4.9 (Confidentiality), Framework Clause 48 (Prevention of Fraud and Bribery), Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Framework Schedule 16: Staff Transfer;
- (c) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Customer, capable of remedy; and/or
- (d) the Supplier commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer in accordance with the Rectification Plan Process;

34.1.2 For the purpose of Clause 34.1.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

34.2 Termination for breach of Regulations

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

34.3 Termination Without Cause

34.3.1 The Customer shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving written notice of at least ninety (90) days.

34.4 Termination in Relation to Framework Agreement

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

34.5 Termination in Relation to Variation

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

35. SUPPLIER TERMINATION RIGHTS

35.1 Termination on Customer Cause for Failure to Pay

35.1.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call Off Contract if the Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract which in aggregate exceeds the amount stipulated in the Order Form for the purposes of this Clause 35.1.1 (the '**Undisputed Sums Limit**'), and the said undisputed sum due remains outstanding for forty (40) Working Days (the "**Undisputed Sums Time Period**") after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

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

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 18.3 (Retention and Set off).

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

36. TERMINATION BY EITHER PARTY

36.1 Termination for continuing Force Majeure Event

36.1.1 Either Party may, by issuing a Termination Notice to the other Party terminate this Call Off Contract in accordance with Clause 33.6.1(a) (Force Majeure).

37. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

- 37.1 Where the Customer has the right to terminate this Call Off Contract, the Customer shall be entitled to terminate or suspend all or part of this Call Off Contract provided always that, if the Customer elects to terminate or suspend this Call Off Contract in part, the parts of this Call Off Contract not terminated or suspended can, in the Customer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Call Off Contract.
- 37.2 Any suspension of this Call Off Contract under Clause 37.1 shall be for such period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.
- 37.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Charges, provided that the Supplier shall not be entitled to:
- 37.3.1 an increase in the Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 34 (Customer Termination Rights) except Clause 34.2 (Termination Without Cause); and
- 37.3.2 reject the Variation.

38. CONSEQUENCES OF EXPIRY OR TERMINATION

- 38.1 Consequences of termination under Clauses 34.1 (Termination on Material Default), 34.4 (Termination in Relation to Framework Agreement) and 34.5 (Termination in Relation to Variation)
- 38.1.1 Where the Customer:
- (a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 38.1; and
 - (b) then makes other arrangements for the supply of the Services,
the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period provided that Customer shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.
- 38.2 Consequences of termination under Clauses 34.2 (Termination without Cause) and 35.1 (Termination on Customer Cause for Failure to Pay)
- 38.2.1 Where:
- (a) the Customer terminates (in whole or in part) this Call Off Contract under Clause 34.2 (Termination without Cause); or
 - (b) the Supplier terminates this Call Off Contract pursuant to Clause 35.1 (Termination on Customer Cause for Failure to Pay),

the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 34.2 (Termination without Cause).

38.2.2 The Customer shall not be liable under Clause 38.2.1 to pay any sum which:

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

38.3 Consequences of termination under Clause 36.1 (Termination for Continuing Force Majeure Event)

38.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause 36.1 (Termination for Continuing Force Majeure Event).

38.4 Consequences of Termination for Any Reason

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

- (a) termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 16 (Records), 26 (Intellectual Property Rights), 27.4 (Confidentiality), 27.6 (Freedom of Information) 27.7 (Protection of Personal Data), 29 (Liability), 38 (Consequences of Expiry or Termination), 44 (Severance), 46 (Entire Agreement), 47 (Third Party Rights) 49 (Dispute Resolution) and 50 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Charges, Payment and Invoicing), Framework Schedule 15 (Exit Management), Framework Schedule 16 (Staff Transfer), Framework Schedule 19 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

L. MISCELLANEOUS AND GOVERNING LAW

39. COMPLIANCE

- 39.1 The Supplier shall comply with Framework Clause 44.

40. ASSIGNMENT AND NOVATION

- 40.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Call Off Contract or any part of it without Approval.
- 40.2 The Customer may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Call Off Contract or any part thereof to:
- 40.2.1 any other Contracting Authority; or
- 40.2.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
- 40.2.3 any private sector body which substantially performs the functions of the Customer,
- and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 40.2.
- 40.3 A change in the legal status of the Customer shall not, subject to Clause **Error! Reference source not found.** affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.

41. WAIVER AND CUMULATIVE REMEDIES

- 41.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 48 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Call Off Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of.
- 41.2 Unless otherwise provided in this Call Off Contract, rights and remedies under this Call Off Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

42. RELATIONSHIP OF THE PARTIES

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

43. PREVENTION OF FRAUD AND BRIBERY

- 43.1 The Supplier shall comply with Framework Clause 48.

44. SEVERANCE

- 44.1 If any provision of this Call Off Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Call Off Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call Off Contract shall not be affected.
- 44.2 In the event that any deemed deletion under Clause 44.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract or materially alters the balance of risks and rewards in this Call Off Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.
- 44.3 If the Parties are unable to resolve the Dispute arising under this Clause 44 within twenty (20) Working Days of the date of the notice given pursuant to Clause 44.2, this Call Off Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Contract is terminated pursuant to this Clause 44.

45. FURTHER ASSURANCES

- 45.1 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.

46. ENTIRE AGREEMENT

- 46.1 This Call Off Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 46.2 Neither Party has been given, nor entered into this Call Off Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call Off Contract.
- 46.3 Nothing in this Clause 46 shall exclude any liability in respect of misrepresentations made fraudulently.

47. THIRD PARTY RIGHTS

- 47.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part D of Framework Schedule 16 (Staff Transfer) and the provisions of paragraph 9 of Framework Schedule 15 (Exit Management) (together "Third Party Provisions") confer benefits on persons named in such provisions other than the Parties (each such person

a "Third Party Beneficiary") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

- 47.2 Subject to Clause 47.1, a person who is not a Party to this Call Off Contract has no right under the CRTPA to enforce any term of this Call Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 47.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.
- 47.4 Any amendments or modifications to this Call Off Contract may be made, and any rights created under Clause 47.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

48. NOTICES

- 48.1 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 48, an e-mail is accepted as being "in writing".
- 48.2 Subject to Clause 48.3, the following table sets out the method by which notices may be served under this Call Off Contract and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 48.3 and 48.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 48.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 48.2:
- 48.3.1 any Termination Notice (Clause 34 (Customer Termination Rights)),
- 48.3.2 any notice in respect of:
- (a) partial termination, suspension or partial suspension (Clause 0 (Partial Termination, Suspension and Partial Suspension)),
 - (b) waiver (Clause 41 (Waiver and Cumulative Remedies))
 - (c) Default or Customer Cause; and
- 48.3.3 any Dispute Notice.
- 48.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 48.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 48.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 48.5 This Clause 48 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).
- 48.6 For the purposes of this Clause 48, the address and email address of each Party shall be the address and email address set out in the Order Form.

49. DISPUTE RESOLUTION

- 49.1 The Parties shall resolve Disputes arising out of or in connection with this Call Off Contract in accordance with Framework Schedule 19 (Dispute Resolution Procedure).
- 49.2 The Supplier shall continue to provide the Services in accordance with the terms of this Call Off Contract until a Dispute has been resolved.

50. GOVERNING LAW AND JURISDICTION

- 50.1 This Call Off Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 50.2 Subject to Clause 49 (Dispute Resolution) and Framework Schedule 19 (Dispute Resolution Procedure) (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.

CALL OFF SCHEDULE 1: DEFINITIONS

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

"Achieve"	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Strategy Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "Achieved" , "Achieving" and "Achievement" shall be construed accordingly;
"Acquired Rights Directive"	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Additional Clauses"	means the additional Clauses in Call Off Schedule 7 (Alternative and/or Additional Clauses) and any other additional Clauses set out in the Order Form or elsewhere in this Call Off Contract;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Alternative Clauses"	means the alternative Clauses in Call Off Schedule 7 (Alternative and/or Additional Clauses) and any other alternative Clauses set out in the Order Form or elsewhere in this Call Off Contract;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Approved Sub-Licensee"	means any of the following: a) a Central Government Body; b) any third party providing services to a Central Government Body; and/or c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;
"Authority"	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at Rosebery Court, St Andrews Business Park, Norwich NR7 0HS;
"BCDR Plan"	means the plan prepared pursuant to paragraph 2 of Framework Schedule 28 (Business Continuity and Disaster Recovery), as may be amended from time to time;

"BCDR Services"	means the business continuity services and disaster recovery services as described in Framework Schedule 28;
"Call Off Commencement Date"	means the date of commencement of this Call Off Contract set out in Section B of the Order Form;
"Call Off Contract"	means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Order Form and the Call Off Terms;
"Call Off Contract Period"	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date, which shall comply with Schedule 5 Call Off Procedure, Clause 5.2, which states 'The maximum length of a Call-Off Contract will be three (3) to four (4) years, if it was let at the start of the Framework Agreement and dependant on the Framework Agreement being extended to four (4) years.'
"Call Off Contract Year"	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;
"Call Off Expiry Date"	means: a) the end date of the Call Off Initial Period or any Call Off Extension Period; or b) if this Call Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call Off Contract;
"Call Off Extension Period"	means the extension term of this Call Off Contract from the end date of the Call Off Initial Period to the end date of the extension period stated in the Order Form;
"Call Off Initial Period"	means the initial term of this Call Off Contract from the Call Off Commencement Date to the end date of the initial term stated in the Order Form;
"Call Off Schedule"	means a schedule to this Call Off Contract;
"Call Off Terms"	means the terms applicable to and set out in Part 2 of this Call Off Contract;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;

"Change in Law"	means any change in Law which impacts on the supply of the Services and performance of the Call Off Contract which comes into force after the Call Off Commencement Date;
"Charges"	means the charges raised under or in connection with this Call Off Contract from time to time, which shall be calculated in a manner that is consistent with the Charging Structure;
"Charging Structure"	means the structure to be used in the establishment of the charging model which is applicable to the Call Off Contract, which is set out in Framework Schedule 3 (Charges and Charging Structure);
"Commercially Sensitive Information"	means the Confidential Information listed in the Order Form (if any) comprising of commercially sensitive information relating to: - (a) the pricing of the Services; (b) details of the Supplier's IPR; (c) the Supplier's business and investment plans; and/or (d) the Supplier's trade secrets, which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
"Contracting Authority"	means the Authority, the Customer and any other bodies listed in Schedule 2 Annex 3 of the Framework Agreement;
"Control"	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
"Crown"	means the Government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, Government ministers and Government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown Body"	means any department, office or executive agency of the Crown;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Customer"	means the customer(s) identified in the Order Form;
"Customer Assets"	means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed

	or leased to the Customer and which is or may be used in connection with the provision of the Services;
"Customer Background IPR"	means: a) IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, software, processes and procedures; b) IPRs created by the Customer independently of this Call Off Contract; and/or c) Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract; but excluding IPRs owned by the Customer subsisting in the Customer Software;
"Customer Cause"	means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Customer is liable to the Supplier;
"Customer Data"	means: a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which: i) are supplied to the Supplier by or on behalf of the Customer; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or b) any Personal Data for which the Authority and/or the Customer is the Data Controller;
"Customer On-Boarding Plan"	means the plan detailing the activities to be undertaken by the Parties enabling the provision of the Services;
"Customer Premises"	means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for the provision of the Services (or any of them);
"Customer Property"	means the property, other than real property and IPR, including the Customer System, any equipment issued or made available to the Supplier by the Customer in connection with this Call Off Contract;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to this Call Off Contract;
"Customer Responsibilities"	means the responsibilities of the Customer set out in the Part B of Call Off Schedule 4 (Customer On-Boarding Plan, Customer

	Responsibilities and Key Personnel) and any other responsibilities of the Customer in the Order Form or agreed in writing between the Parties from time to time in connection with this Call Off Contract;
"Customer Software"	means any software identified as such in the Order Form together with all other software which is not identified as such in the Order Form but which is owned by or licensed to the Customer and which is or will be used by the Supplier for the purposes of providing the Services;
"Customer System"	means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Call Off Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the Services;
"Customer's Confidential Information"	means: a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Customer (including all Customer Background IPR and Project Specific IPR); b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Customer's attention or into the Customer's possession in connection with this Call Off Contract; and c) information derived from any of the above;
"Data Controller"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Processor"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Protection Legislation" or "DPA"	means the Data Protection Act 1998, as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;

"Deductions"	means all Service Credits, Delay Payments or any other deduction which the Customer is paid or is payable under this Call Off Contract;
"Default"	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;
"Defect"	means any of the following: a) any error, damage or defect in the manufacturing of a Deliverable; or b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract; or d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract;
"Delay"	means: a) a delay in the Achievement of a Milestone by its Milestone Date; or b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Customer On-Boarding Plan;
"Delay Payments"	means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified in the Customer On-Boarding Plan;
"Delay Period Limit"	shall be the number of days specified in Part A of Call Off Schedule 4 (Customer On-Boarding Plan, Customer Responsibilities and Key Personnel), for the purposes of 5.4.1(b)(ii);

"Deliverable"	means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Customer On-Boarding Plan (if any) or at any other stage during the performance of this Call Off Contract;
"Delivery"	means delivery in accordance with the terms of this Call Off Contract as confirmed by the issue by the Customer of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Call Off Contract and accepted by the Customer and "Deliver" and "Delivered" shall be construed accordingly;
"Disaster"	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Order Form or elsewhere in the Call Off Contract (for the purposes of this definition the "Disaster Period");
"Disclosing Party"	means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient;
"Dispute"	means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Framework Schedule 19 (Dispute Resolution Procedure);
"Documentation"	means descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) as: a) is required to be supplied by the Supplier to the Customer under this Call Off Contract; b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services; c) is required by the Supplier in order to provide the Services; and/or

	d) has been or shall be generated for the purpose of providing the Services;
"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"Due Diligence Information"	means any information supplied to the Supplier by or on behalf of the Customer prior to the Call Off Commencement Date;
"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; g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"Employment Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
"Environmental Information Regulations" or "EIRs"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
"Estimated Year 1 Charges"	means the sum in pounds estimated by the Customer to be payable by it to the Supplier as the total aggregate Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year stipulated in the Order Form or elsewhere in this Call Off Contract;
"Euro Compliant"	means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Customer's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data): a) be able to perform all such functions in any number of currencies and/or in Euros; b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations; c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro; d) incorporate protocols for dealing with rounding and currency conversion; e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and f) permit the input of data in euro and display an outcome in euro where such data, supporting the Customer's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;
"Expedited Dispute Timetable"	means the timetable set out in paragraph Error! Reference source not found. of Framework Schedule 19 (Dispute Resolution Procedure);

"FOIA"	means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Force Majeure"	means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from: a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Call Off Contract; b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of the Crown, local government or Regulatory Bodies; d) fire, flood or any disaster; and e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and any failure of delay caused by a lack of funds;
"Force Majeure Notice"	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Former Supplier"	means a supplier supplying the services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
"Framework Agreement"	means the framework agreement between the Authority and the Supplier referred to in the Order Form;
"Framework Clause"	means a clause to the Framework Agreement;
"Framework Commencement Date"	means the date of commencement of the Framework Agreement as stated in the Call Off Schedule 1 (Definitions);

"Framework Period"	means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;
"Framework Price(s)"	means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Charges and Charging Structure);
"Framework Schedule"	means a schedule to the Framework Agreement;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"General Anti-Abuse Rule"	means (a) the legislation in Part 5 of the Finance Act 2013 and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	means Her Majesty's Revenue and Customs;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"ICT Environment"	means the Customer's System and the Supplier's System
"Insolvency Event"	means, in respect of the Supplier or Framework Guarantor (as applicable): a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a

	resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or h) where the Supplier or Framework Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;
"Intellectual Property Rights" or "IPR"	means a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights having equivalent or similar effect in any country or jurisdiction;
"IPR Claim"	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Goods and/or

	Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of its obligations under this Call Off Contract;
"Key Performance Indicators" or "KPIs"	means the performance measurements and targets in respect of the Supplier's performance of the Framework Agreement set out in Part B of Framework Schedule 2 (Services and Key Performance Indicators);
"Key Personnel"	means the individuals (if any) identified as such in Part C of Call Off Schedule 4 (Customer On-Boarding Plan, Customer Responsibilities and Key Personnel);
"Key Role(s)"	has the meaning given to it in Clause 19.1 (Key Personnel);
"Key Sub-Contractor"	means any Sub-Contractor: a) listed in Framework Schedule 7 (Key Sub-Contractors); b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Call Off Contract;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;
"Law"	means any 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;
"Licensed Software"	means all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Customer for the purposes of or pursuant to this Call Off Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;

"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;
"Milestone"	means an event or task described in the Customer On-Boarding Plan which, if applicable, must be completed by the relevant Milestone Date;
"Milestone Date"	means the target date set out against the relevant Milestone in the Customer On-Boarding Plan by which the Milestone must be Achieved;
"Milestone Payment"	means a payment identified in the Customer On-Boarding Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"New Release"	means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Open Source"	means computer software, computer program, Source Code and any other material that is published for use, with rights to access and modify, by any person for free under a generally recognised open source licence;
"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 order form 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 and which, together with the Call Off Terms forms this Call Off Contract;
"Other Supplier"	means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the

	Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Customer or the Supplier and "Parties" shall mean both of them;
"Performance Monitoring Reports"	has the meaning given to it in paragraph Error! Reference source not found. of Part B of Schedule 6 (Service Level, Service Credit and Performance Monitoring);
"Personal Data"	has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
"Processing"	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
"Prohibited Act"	means any of the following: a) to directly or indirectly offer, promise or give any person working for or engaged by a Contracting Authority or any other public body a financial or other advantage to: i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; c) committing any offence: i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or ii) under legislation or common law concerning fraudulent acts; or iii) defrauding, attempting to defraud or conspiring to defraud a Contracting Authority or other public body; or iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
"Project Specific IPR"	means: a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or

	b) IPR in or arising as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same; but shall not include the Supplier Background IPR or the Specially Written Software;
"Quality Plans"	shall have the meaning given in Framework Clause 13 (Standards and Quality);
"Recipient"	means the Party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party;
"Rectification Plan"	means the rectification plan pursuant to the Rectification Plan Process;
"Rectification Plan Process"	means the process set out in Clause 31.2 (Rectification Plan Process);
"Registers"	has the meaning given to in Call Off Schedule 9 (Exit Management);
"Regulations"	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Relief Notice"	has the meaning given to it in Clause 32.2.2 (Supplier Relief Due to Customer Cause);
"Replacement Services"	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the Call Off Expiry Date, whether those services are provided by the Customer internally and/or by any third party;
"Replacement Sub-Contractor"	means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"Replacement Supplier"	means any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;
"Request for Information"	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Goods and/or Services or an apparent request for such information under the FOIA or the EIRs;

"Restricted Countries"	means a country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;
"Satisfaction Certificate"	means the certificate materially in the form of the document contained in Call Off Schedule 5 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;
"Security Policy"	means the Customer's security policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
"Service Credit Cap"	a) has the meaning given to it in Paragraph 4 of Part A of Call Off Schedule 6 (Service Credit Regime);
"Service Credits"	means any service credits specified in Annex 1 to Part A of Call Off Schedule 6 (Service Credit Regime) being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Failure"	means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future;
"Service Level Failure"	means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
"Service Level Performance Criteria"	has the meaning given to it in paragraph Error! Reference source not found. of Part A of Call Off Schedule 6 (Service Credit Regime);
"Service Level Performance Measure"	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Credit Regime);
"Service Level Threshold"	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Credit Regime);
"Service Levels"	means any service levels applicable to the provision of the Services under this Call Off Contract as specified in Framework Schedule 26.
"Service Period"	has the meaning given to in paragraph 2.1 of Call Off Schedule 6 (Service Credit Regime);
"Service Transfer"	means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
"Service Transfer Date"	means the date of a Service Transfer;
"Services"	means the services to be provided by the Supplier to the Customer as referred to the Order Form.

"Sites"	means: a) any premises (including the Customer Premises, the Supplier's premises or third party premises): i) from, to or at which: (1) the Services are (or are to be) provided; or (2) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or ii) where: any part of the Supplier System is situated; or b) any physical interface with the Customer System takes place;
"Software"	means Specially Written Software, Supplier Software and Third Party Software;
"Software Supporting Materials"	has the meaning given to it in Clause 26.2.1(b) (Licences granted by the Supplier: Specially Written Software and Project Specific IPR);
"Source Code"	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract, including any modifications, configuration, customisation, or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Call Off Contract;
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
"Staffing Information"	has the meaning give to it in Framework Schedule 16 (Staff Transfer);
"Standards"	means any: a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;

	b) standards detailed in the specification in Framework Schedule 2 (Services and Key Performance Indicators); c) standards agreed between the Parties from time to time; d) relevant Government codes of practice and guidance applicable from time to time.
"Sub-Contract"	means any contract or agreement (or proposed contract or agreement) to which a third party: a) provides the Services (or any part of them); b) provides facilities or Services necessary for the provision of the Services (or any part of them); and/or c) is responsible for the management, direction or control of the provision of the Services (or any part of them);
"Sub-Contractor"	means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Supplier"	means the person, firm or company with whom the Customer enters into this Call Off Contract as identified in the Order Form;
"Supplier Assets"	means all assets and rights used by the Supplier to provide the Services in accordance with this Call Off Contract but excluding the Customer Assets;
"Supplier Background IPR"	means a) Intellectual Property Rights owned by the Supplier before the Call Off Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or b) Intellectual Property Rights created by the Supplier independently of this Call Off Contract, but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;
"Supplier Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Call Off Contract;
"Supplier Equipment"	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Call Off Contract;
"Supplier Non-Performance"	has the meaning given to it in Clause 32.1 (Supplier Relief Due to Customer Cause);

"Supplier Representative"	means the representative appointed by the Supplier named in the Order Form;
"Supplier Software"	means any software which is proprietary to the Supplier (or an Affiliate of the Supplier) and identified as such in the Order Form together with all other such software which is not identified in the Order Form but which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for the Customer to receive the benefit of and/or make use of the Services;
"Supplier System"	means the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer System);
"Supplier's Confidential Information"	means a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier; b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Call Off Contract; c) information derived from any of the above.
"Template Order Form"	means the Template Order Form in Annex 1 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
"Tender"	means the tender submitted by the Supplier to the Authority and annexed to or referred to in Framework Schedule 22;
"Test" and "Testing"	means any Tests required to be carried out pursuant to this Call Off Contract as set out in the Test Strategy Plan or elsewhere in this Call Off Contract and "Tested" shall be construed accordingly;
"Test Issue"	means any variance or non-conformity of the Services or Deliverables from their requirements as set out in this Call Off Contract;
"Testing Strategy Plan"	means a plan: a) for the Testing of the Deliverables; and

	b) setting out other agreed criteria related to the achievement of Milestones, as described further in paragraph 1.1 of Call Off Schedule 6;
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Call Off Contract on a specified date and setting out the grounds for termination;
"Third Party IPR"	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party Software"	means any software identified as such in the Order Form together with all other software which is not listed in the Order Form which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source which is or will be used by the Supplier for the purposes of providing the Services);
"Undelivered Services"	has the meaning given to it in Clause 7.3.1 (Supply of Services);
"Undisputed Sums Time Period"	has the meaning given to it Clause 35.1.1 (Termination of Customer Cause for Failure to Pay);
"Update"	means in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
"Upgrade"	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a supplier of Third Party Software (or any Affiliate of the Supplier or any third party) releases during the Call Off Contract Period;
"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph 6 (Invoicing Procedure) of Call Off Schedule 3 (Charges, Payment and Invoicing);
"Variation"	has the meaning given to it in Clause 17.1 (Variation Procedure);
"Variation Procedure"	means the procedure set out in Clause 17.1 (Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Worker"	means any one of the Supplier Personnel which the Customer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 07/12 – Tax Arrangements of Public Appointees https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees applies in respect of the Services.

"Working Day"	means any Day of 7.5 hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day, other than a Saturday or Sunday or public holiday in England and Wales.
"Working Hours"	means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;

CALL OFF SCHEDULE 3: CHARGES, PAYMENT AND INVOICING

1. DEFINITIONS

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

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

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

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

2. GENERAL PROVISIONS

2.1 This Call Off Schedule details:

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

3. CHARGES

3.1 The Charges which are applicable to this Call Off Contract are set out in Framework Schedule 3.

3.2 The Supplier acknowledges and agrees that:

- 3.2.1 In accordance with paragraph 2 (General Provisions) of Framework Schedule 3 (Charges and Charging Structure), the Charges can in no event exceed the Framework Prices set out in Annex 3 to Framework Schedule 3 (Charges and Charging Structure); and
- 3.2.2 subject to paragraph 7 of this Call Off Schedule (Adjustment of Charges), the Charges cannot be increased during the Call Off Contract Period.

4. COSTS AND EXPENSES

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

5. PAYMENT TERMS/PAYMENT PROFILE

- 5.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Customer in paragraph 6.3 of this Call Off Schedule and in accordance with the provisions of this Call Off Contract.

6. INVOICING PROCEDURE

- 6.1 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Customer may specify):
 - 6.1.1 contains:
 - (a) all appropriate references, including the unique Order reference number set out in the Order Form; and
 - (b) where an item relating to Operational Deliverables is being invoiced, it shall be subject always to Paragraph 4 above.
 - (c) a detailed breakdown of the Delivered Services, including the Milestone(s) (if any) and Deliverable(s) within this Call Off Contract to which the Delivered Services relate, against the applicable due and payable Charges; and
 - 6.1.2 shows separately:
 - (a) any Service Credits due to the Customer; and
 - (b) the VAT added to the due and payable Charges in accordance with Clause 18.2.1 of this Call Off Contract (VAT) and the tax point date relating to the rate of VAT shown; and
 - 6.1.3 it is supported by any other Documentation reasonably required by the Customer to substantiate that the invoice is a Valid Invoice.

- 6.2 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Call Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- 6.3 The Supplier shall submit invoices directly to the Customer's billing address set out in the Order Form.

7. ADJUSTMENT OF CHARGES

- 7.1 The Call Off Contract Charges shall only be varied by agreement between CCS and the Supplier, and then only varied in accordance with Clause 18.1.4 of this Call Off Contract (Charges and Payment) where all or part of the Charges are reduced as a result of a reduction in the Framework Prices, or change of volume in the Framework Agreement affecting the Charge rate.

8. IMPLEMENTATION OF ADJUSTED CHARGES

- 8.1 Variations in accordance with the provisions of this Call Off Schedule to all or part the Charges (as the case may be) shall be made by the Customer to take effect:
- 8.1.1 in accordance with Clause 18.1.4 of this Call Off Contract (Charges and Payment) where an adjustment to the Charges is made in accordance with paragraph 7.1 of this Call Off Schedule.

ANNEX 1: CHARGES

[]

[Guidance Note: Prior to the commencement of this Call Off Contract, the Customer will incorporate here the Supplier's tendered Charges including any discounts e.g. volume discounts]

Milestone Payments

If the Provider has specified a Pre-Operational Delivery Charge, then the following Milestone payments schedule shall apply.

The Milestones shall be distributed as follows:

Milestone	Deliverable	Amount released
1	[To be described]	[To be described]
2	[To be described]	[To be described]
3	[To be described]	[To be described]
4	Customer and CCS Sign-Off of Testing	Balance

Charges

[This table will be completed by CCS following discussions to agree which modules and commercial models are being used]

Module Description		Commercial Model		Charge Table Reference
[Insert module name]		[Insert Commercial model title]		[Insert number of charging table that related to this combination of module and commercial model]

[INSERT COMMERCIAL MODEL DESCRIPTORS HERE]

[INSERT PRICE TABLES BY MODULE AND COMMERCIAL MODEL HERE]

CALL OFF SCHEDULE 4: CUSTOMER ON-BOARDING PLAN, CUSTOMER RESPONSIBILITIES AND KEY PERSONNEL

1. INTRODUCTION

1.1 This Call Off Schedule specifies:

- 1.1.1 In Part A, the On-Boarding Plan in accordance with which the Supplier shall provide the Services;
- 1.1.2 In Part B, the Customer Responsibilities in respect of facilitating the Supplier's achievement of the Customer On-Boarding Plan; and
- 1.1.3 In Part C, The Key Personnel and their Key Roles assigned by the Supplier to this Call Off Contract in accordance with Clause 19.1 of this Call Off Contract (Key Personnel).

PART A: CUSTOMER ON-BOARDING PLAN

2. GENERAL

2.1 The Customer On-Boarding Plan is set out below:

PART B: THE CUSTOMER RESPONSIBILITIES

1. GENERAL

- 1.1 The Customer Responsibilities identified in the Customer On-Boarding Plan, if any, are set out in the Order Form.

PART C: KEY PERSONNEL

1. GENERAL

- 1.1 The Supplier has assigned the Key Personnel to this Call Off Contract in the Key Roles detailed in the Order Form:

CALL OFF SCHEDULE 5: TESTING

[Guidance Note: Consider the Guidance Note on Testing in the Template Order Form and Clause 8 of the Template Call Off Terms. This Call Off Schedule is more likely to be relevant in the context of procuring complex, high value and/or high importance ICT Services where there is a need to test the Services. Switch all paragraphs and Annexes 1 and 2 to "Not Used" if not required. However, retain Annex 3 (Satisfaction Certificate) for use in respect of Achievement of any Milestones in an Implementation Plan (if any)]

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

2. INTRODUCTION

- 2.1 This Call Off Schedule (Testing) sets out the approach to Customer On-Boarding Testing and the different Customer On-Boarding Testing activities to be undertaken.

3. RISK

- 3.1 The issue of a Test Certificate, a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:
 - 3.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Customer's requirements for that Deliverable or Milestone; or
 - 3.1.2 affect the Customer's right subsequently to reject:
 - (a) all or any element of the Deliverables to which a Test Certificate relates; or
 - (b) any Milestone to which the Satisfaction Certificate relates.
- 3.2 Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that:
 - 3.2.1 the Services are implemented in accordance with this Call Off Contract; and
 - 3.2.2 each Service Level is met.

4. TESTING OVERVIEW

- 4.1 All Tests conducted by the Supplier shall be conducted in accordance with the Testing Plans.
- 4.2 The Supplier shall not submit any Deliverable for Testing:
 - 4.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - 4.2.2 until the Customer has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
- 4.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Customer On-Boarding Plan for the commencement of Customer On-Boarding Testing in respect of the relevant Deliverable.
- 4.4 Any Disputes between the Supplier and the Customer regarding this Testing shall be referred to the Dispute Resolution Procedure.

5. CUSTOMER ON-BOARDING TEST PLAN AND TEST SUCCESS CRITERIA

- 5.1 The Test Plan is detailed in Annex 1 (Customer On-Boarding Test Plans and On Boarding Criteria)

6. TESTING

- 6.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality Control measures.
- 6.2 The Supplier shall provide to the Customer in relation to each Test:
 - 6.2.1 the Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 6.3 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
 - 6.3.1 an overview of the Testing conducted;
 - 6.3.2 identification of the relevant Test Success Criteria that have been satisfied;
 - 6.3.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
- 6.4 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 6.5 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Customer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 6.6 If the Supplier successfully completes the requisite Tests, the Customer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Services are provided in accordance with this Call Off Contract.

7. OUTCOME OF TESTING

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

costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

8. ISSUE OF SATISFACTION CERTIFICATE

- 8.1 The Customer shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:
 - 8.1.1 the issuing by the Customer of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - 8.1.2 performance by the Supplier to the reasonable satisfaction of the Customer of any other tasks identified in the Customer Onboarding Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 8.2 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Customer Onboarding Plan and Schedule 3 (Call Off Contract Charging, Payment and Invoicing).
- 8.3 If a Milestone is not Achieved, the Customer shall promptly issue a report to the Supplier setting out:
 - 8.3.1 the applicable Test Issues; and
 - 8.3.2 any other reasons for the relevant Milestone not being Achieved.
- 8.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Customer shall issue a Satisfaction Certificate.
- 8.5 If there is one or more Material Test Issue(s), the Customer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Customer's other rights and remedies, such failure shall constitute a material Default.
- 8.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Customer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
 - 8.6.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Customer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for Approval by the Customer within 10 Working Days of receipt of the Customer's report pursuant to paragraph 7.3 of this Call Off Schedule); and
 - 8.6.2 where the Customer issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: CUSTOMER ON-BOARDING TEST PLAN AND TEST SUCCESS CRITERIA

[Insert Customer on-Boarding Test Plan and Test Success Criteria]

ANNEX 2: TEST CERTIFICATE

To: [insert name of Supplier]

From: [insert name of Customer]

[insert Date dd/mm/yyyy]

Dear Sirs,

TEST CERTIFICATE

Deliverables:

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

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

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

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

[OR]

[This Test Certificate is issued pursuant to paragraph 7.1 of Call Off Schedule 5 (Testing) of this Call Off Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[*Guidance Note: delete as appropriate]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

ANNEX 3: SATISFACTION CERTIFICATE

To: [insert name of Supplier]

From: [insert name of Customer]

[insert Date dd/mm/yyyy]

Dear Sirs,

SATISFACTION CERTIFICATE

Milestone:

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

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

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

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

[OR]

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

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

[*Guidance Note: delete as appropriate]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

CALL OFF SCHEDULE 6: SERVICE CREDIT REGIME SCOPE

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

PART A: SERVICE LEVELS AND SERVICE CREDITS

1. GENERAL PROVISIONS

1.1 The Service Levels are as specified in Framework Schedule 26.

2. SERVICE CREDITS

- 2.1 Annex 1 to this Part A of this Call Off Schedule sets out the formula used to calculate a Service Credit payable to the Customer as a result of a Service Level Failure in a given Service Period which, for the purpose of this Call Off Schedule, shall be a recurrent period of one Month during the Call Off Contract Period (the “**Service Period**”).
- 2.2 Annex 1 to this Part A of this Call Off Schedule includes details of each Service Credit available to each Service Level Performance Criterion if the applicable Service Level Performance Measure is not met by the Supplier. **[Guidance Note: please populate the table in Annex 1 to this Part A of this Call Off Schedule]**
- 2.3 The Customer shall use the Performance Monitoring Reports supplied by the Supplier under Part B (Performance Monitoring) of this Call Off Schedule to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
- 2.4 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in Annex 1 of Part A of this Call Off Schedule.

3. NATURE OF SERVICE CREDITS

- 3.1 The Supplier confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Charges. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

4. SERVICE CREDIT CAP

- 4.1 For the purposes of this Call Off Contract the **Service Credit Cap** means:
- 4.1.1 In the period from the Call Off Commencement Date to the end of the first Call Off Contract Year **[xxx]**% of the Charges paid and payable by the Customer; and
- 4.1.2 during the remainder of the Call Off Contract Period, **[xxx]**% of the Charges paid and payable to the Supplier under this Call Off Contract in the period of twelve (12) Months immediately preceding the Month in respect of which Service Credits are accrued.

[Guidance Note: please populate the yellow boxes above in this paragraph 7 with appropriate percentages. Please refer to Clause 10.5.1 of the Template Call Off Terms]

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

Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
Availability of the TEM System.	Customer Satisfaction	≥ 99% during Service Hours in any Service Period		The number of Service Days and Service Hours in a given month is calculated to establish the 99% threshold. E.g. September 2017 has 21 working days, so 210 hours (10 hour working day). 99% of 210 hours is 207 hours 54 mins. Service Credits will be applied as a Service Day rate up to the 10 Service Hours below the threshold. E.g. if the System is not available for 1 minute below the threshold, 1 day rate of Service Credit will be applied. For 10 hours 1 minute, 2 day rates of Service Credit will be applied. Each Day Rate Service Credit will be worked out as the total TEM charge divided by the number of Service Days rounded to 2 decimal places e.g. rounded £1000 TEM charge / 21 Service Days = £47.62 day rate Service Credit
				For Gainshare model the principle of total TEM charge divided by Service Days applies. However, the TEM charge will be calculated on agreed savings for the month in question.

CALL OFF SCHEDULE 7: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION

- 1.1 This Call Off Schedule 7 specifies the range of Alternative Clauses and Additional Clauses that may be requested in the Order Form and, if requested in the Order Form, shall apply to this Call Off Contract.

2. CLAUSES SELECTED

- 2.1 The Customer may, in the Order Form, request the following Alternative Clauses:
 - 2.1.1 Scots Law (see paragraph 4.1 of this Call Off Schedule);
 - 2.1.2 Northern Ireland Law (see paragraph 4.2 of this Call Off Schedule)
 - 2.1.3 Non-Crown Bodies (see paragraph 4.3 of this Call Off Schedule);
 - 2.1.4 Non-FOIA Public Bodies (see paragraph 4.4 of this Call Off Schedule);
 - 2.1.5 Financial Limits (see paragraph 4.5 of this Call off Schedule);
- 2.2 The Customer may, in the Order Form, request the following Additional Clauses should apply:
 - 2.2.1 Security Measures (see paragraph 5 of this Call Off Schedule);
 - 2.2.2 NHS Additional Clauses (see paragraph 6 of this Call Off Schedule).
 - 2.2.3 MOD ("Ministry of Defence") Additional or Alternative Clauses (see paragraph 8 of this Call Off Schedule);

3. IMPLEMENTATION

- 3.1 The appropriate changes have been made in this Call Off Contract to implement the Alternative and/or Additional Clauses specified in paragraph 2.1 of this Call Off Schedule and the Additional Clauses specified in paragraphs 2.2 and 2.2.3 of this Call Off Schedule shall be deemed to be incorporated into this Call Off Contract.

4. ALTERNATIVE CLAUSES

4.1 SCOTS LAW

- 4.1.1 Law and Jurisdiction (Clause 50)
 - (a) References to "England and Wales" in the original Clause 50 of this Call Off Contract (Law and Jurisdiction) shall be replaced with "Scotland".
 - (b) Where legislation is expressly mentioned in this Call Off Contract, the adoption of Clause 4.1.1(a) shall have the effect of substituting the equivalent Scots legislation.

4.2 NORTHERN IRELAND LAW

- 4.2.1 Law and Jurisdiction (Clause 50)
 - (a) References to "England and Wales" in the original Clause 50 of this Call Off Contract (Law and Jurisdiction) shall be replaced with "Northern Ireland".

- (b) Where legislation is expressly mentioned in this Call Off Contract, the adoption of Clause 4.2.1(a) shall have the effect of substituting the equivalent Northern Ireland legislation.

4.2.2 Insolvency Event

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

4.3 NON-CROWN BODIES

[Guidance Note: only where the Customer is not a Crown Body]

- 4.3.1 Framework Clause 45.4 shall not be applicable to this Call Off Contract.

4.4 NON-FOIA PUBLIC BODIES

[Guidance Note: only where the Customer is not a public body for the purposes of FOIA]

Replace Clause 27.6 of this Call Off Contract (Freedom of Information) with "The Customer has notified the Supplier that the Customer is exempt from the provisions of FOIA and EIR."

4.5 FINANCIAL LIMITS

In Clause 29.3.1 remove the monetary amount and the percentage stated therein and replace respectively with:

[enter monetary amount in words] [£ X]

[enter percentage in words] [£ X]

5. ADDITIONAL CLAUSES: GENERAL

5.1 Security Measures

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

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

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

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

- 5.2 The following new Clause [59] shall apply:

[Guidance Note: the intention is for the clause to follow after the last clause in the T&Cs. Please adjust the clause numbering below to the correct new Clause number]

5.3 [SECURITY MEASURES]

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

- (a) without the prior consent in writing of the Customer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;
- (b) disclosed to or acquired by a person as respects whom the Customer has given to the Supplier a notice in writing which has not been cancelled stating that the Customer requires that secret matters shall not be disclosed to that person;
- (c) without the prior consent in writing of the Customer, disclosed to or acquired by any person who is not a servant of the Supplier; or
- (d) disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Call Off Contract that such person shall have the information.

5.3.2 Without prejudice to the provisions of Clause 5.3.1, the Supplier shall, both before and after the completion or termination of this Call Off Contract, take all reasonable steps to ensure:

- (a) no such person as is mentioned in Clauses 5.3.1, 5.3.1(a) or 5.3.1(b) hereof shall have access to any item or document under the Control of the Supplier containing information about a secret matter except with the prior consent in writing of the Customer;
- (b) that no visitor to any premises in which there is any item to be supplied under this Call Off Contract or where Services are being supplied shall see or discuss with the Supplier or any person employed by him any secret matter unless the visitor is authorised in writing by the Customer so to do;
- (c) that no photograph of any item to be supplied under this Call Off Contract or any portions of the Services shall be taken except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;
- (d) that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and
- (e) that if the Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such document, model or item as is mentioned in Clause (c), that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.

5.3.3 The decision of the Customer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 5.3 shall be final and conclusive.

- 5.3.4 If and when directed by the Customer, the Supplier shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 5.3.5 If and when directed by the Customer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Call Off Contract.
- 5.3.6 If, at any time either before or after the expiry or termination of this Call Off Contract, it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Call Off Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Customer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.
- 5.3.7 The Supplier shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by Clauses 5.3.1 and 5.3.2 and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause 5.3 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.
- 5.3.8 The Supplier shall, if directed by the Customer, include in the Sub-Contract provisions in such terms as the Customer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Clause 5.3, but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:
- (a) give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this Clause 5.3 into operation in such cases and to such extent as the Customer may direct;
 - (b) if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Clause 5.3, notify such breach forthwith to the Customer; and

- (c) if and when so required by the Customer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause 5.3.11.
- 5.3.9 The Supplier shall give the Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer that the obligations imposed by or under the foregoing provisions of this Clause 5.3 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Customer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Call Off Contract or in which there is or will be any item to be supplied under this Call Off Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Call Off Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.
- 5.3.10 Nothing in this Clause 5.3 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.
- 5.3.11 If the Customer shall consider that any of the following events has occurred:
 - (a) that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause 5.3; or
 - (b) that the Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Customer, or with any department or person acting on behalf of the Crown; or
 - (c) that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in (b), information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the Customer, ought not to have such information;

and shall also decide that the interests of the State require the termination of this Call Off Contract, the Customer may by notice in writing terminate this Call Off Contract forthwith.
- 5.3.12 A decision of the Customer to terminate this Call Off Contract in accordance with the provisions of Clause 5.3.11 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Customer's decision is based.
- 5.3.13 Supplier's notice
 - (a) The Supplier may within five (5) Working Days of the termination of this Call Off Contract in accordance with the provisions of Clause 5.3.11, give the Customer notice in writing requesting the Customer to state whether the event upon which the Customer's decision to terminate was based is an event mentioned in Clauses 5.3.11, 5.3.11(a) or 5.3.11(b) and to give particulars of that event; and

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

5.3.14 Matters pursuant to termination

- (a) The termination of this Call Off Contract pursuant to Clause 5.3.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;
- (b) The Supplier shall be entitled to be paid for any work or thing done under this Call Off Contract and accepted but not paid for by the Customer at the date of such termination either at the price which would have been payable under this Call Off Contract if this Call Off Contract had not been terminated, or at a reasonable price;
- (c) The Customer may take over any work or thing done or made under this Call Off Contract (whether completed or not) and not accepted at the date of such termination which the Customer may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of this Clause 5.3 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Customer, deliver any work or thing taken over under this Clause, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this Clause; and
- (d) Save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination of this Call Off Contract

5.3.15 If, after notice of termination of this Call Off Contract pursuant to the provisions of 5.3.11:

- (a) the Customer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in Clause 58.13.1; or
- (b) the Customer shall state in the statement and particulars detailed in Clause 58.13.2. that the event upon which the Customer's decision to terminate this Call Off Contract was based is an event mentioned in Clause 58.11.3,
the respective rights and obligations of the Supplier and the Customer shall be terminated in accordance with the following provisions:

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

5.3.17 the Supplier shall prepare and deliver to the Customer within an agreed period or in Default of agreement within such period as the Customer may specify, a list of

all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Customer and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;

- 5.3.18 the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Call Off Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract;
- 5.3.19 if hardship to the Supplier should arise from the operation of this Clause 58.15 it shall be open to the Supplier to refer the circumstances to the Customer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this Clause shall be final and conclusive; and
- 5.3.20 subject to the operation of Clauses 58.15.3, 58.15.4, 58.15.5 and 58.15.6 termination of this Call Off Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

6. NHS ADDITIONAL CLAUSES

6.1 The following new Clause [xx] shall apply:

[Guidance Note: the intention is for the clause to follow after the last clause in the T&Cs. Please adjust the clause numbering below to the correct new Clause number]

7. [CODING REQUIREMENTS]

- 7.1 Unless otherwise confirmed and/or agreed by the Customer in writing and subject to Clause 7.2, the Supplier shall ensure comprehensive product information relating to each category of the Goods shall be placed by the Supplier into a GS1 certified data pool within the following timescales:
 - 7.1.1 Prior to or on the Commencement Date, in relation to all categories of Goods to be provided as part of the Call Off Contract as at the Commencement Date; or
 - 7.1.2 Where further categories of Goods are to be supplied in accordance with any Variation, prior to or on the date of implementation of such Variation.
- 7.2 Where it is not practical for whatever reason for the Supplier to comply with its obligations under Clause 7.1 within the timescales stated, the Supplier shall provide an implementation plan and suggested timetable within which the Supplier shall achieve such compliance. The implementation plan and suggested timetable must be submitted by the Supplier for agreement by the Customer prior to the first Delivery of relevant Goods under the Call Off Contract (such agreement not to be unreasonably withheld or delayed). Any failure by the Parties to agree such a timetable and implementation plan shall be referred to and resolved in accordance with Framework Schedule 19 (Dispute Resolution Procedure). Once a timetable and implementation plan have been agreed by the Customer, the Supplier shall comply with such timetable and plan as a condition of this Call Off Contract.

- 7.3 Once product information relating to the Goods is placed by the Supplier into a GS1 certified data pool, the Supplier shall, during the Call Off Contract Period, keep such information updated with any changes to the product data relating to the Goods.

8. MOD ADDITIONAL CLAUSES

[Guidance Note: The Ministry of Defence to select and refine during the Further Competition Procedure]

- 8.1 The definition of Call Off Contract in Call Off Schedule 1 (Definitions) to the Call Off Terms shall be replaced with the following:
- 8.1.1 **"Call Off Contract"** means this written agreement between the Customer and the Supplier consisting of the Order Form and the Call Off Terms and the MoD Terms and Conditions.
- 8.2 The following definitions shall be inserted into in Call Off Schedule 1 (Definitions) to the Call Off Terms:
- 8.2.1 **"MoD Terms and Conditions"** means the contractual terms and conditions listed in Schedule [...] which form part of the Call Off Terms **[Guidance Note: read with the Guidance Note below]**
- 8.2.2 **"Site"** shall include any of Her Majesty's Ships or Vessels and Service Stations.
- 8.2.3 **"Officer in charge"** shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.
- 8.3 The following clauses shall be inserted into Clause 2 of this Call Off Contract (Due Diligence):
- 8.3.1 The Supplier confirms that it has had the opportunity to review the MoD Terms and Conditions and has raised all due diligence questions in relation to those documents with the Customer prior to the Commencement Date.
- 8.3.2 Where required by the Customer, the Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Supplier.
- 8.4 The following new Clause [xx] shall apply:

[Guidance Note: the intention is for the clause to follow after the last clause in the T&Cs. Please adjust the clause numbering below to the correct new Clause number]

9. [ACCESS TO MOD SITES]

- 9.1 In this Clause [xx]:
- 9.1.1 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.
- 9.1.2 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.

- 9.1.3 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.
- 9.1.4 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.
- 9.1.5 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.
- 9.1.6 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.
- 9.1.7 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.

- 9.1.8 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.