



BPDTS Ltd

**ANNEX E**

**ORDER FORM AND CALL OFF TERMS**

**LOT 1 – INSURANCE AND ASSOCIATED SUPPORT SERVICES**

**Part 1: Letter of Appointment**

Zurich Insurance PLC

[REDACTED]

Dear Sirs

**Contract for the provision of insurance provided or procured and associated support services by Zurich Insurance PLC, [REDACTED] as Supplier to BPDTS Ltd, [REDACTED] as Contracting Authority pursuant to the Insurance Services II Framework Agreement (RM3731) dated 25/02/2016 between the Minister for the Cabinet Office acting through Crown Commercial Service as the Authority (1) and the Supplier (2).**

1. We refer to the above Insurance Services II Framework Agreement (the “**Framework Agreement**”) for the purposes of this Letter of Appointment:
  - capitalised terms and expressions used in this Letter of Appointment have the same meanings given to them in or pursuant to Clause 1.1 of the Call Off Terms attached to this Letter of Appointment unless the context otherwise requires;
  - where capitalised terms and expressions used in this Letter of Appointment or the Call Off Terms are not defined in the Call Off Terms attached to this Letter of Appointment then they shall have the same meanings given to them in or pursuant to the Framework Agreement;
  - references to Appendix 1 are references to the appendix to this Letter of Appointment; and
  - Appendix 1 shall form part of this Letter of Appointment.
2. This Letter of Appointment constitutes an Order issued in accordance with paragraph 7 of Schedule 5 (Call Off Procedure) of the Framework Agreement. The Supplier in their capacity as a Direct Dealing Insurer agrees to supply the Contract Services specified in Appendix 1 in accordance with the terms of this Order and the Call Off Terms annexed hereto for the Call Off Contract Period.
3. The Call Off Commencement Date shall be 01/12/2016.
4. Subject to paragraph 5 below Call Off Expiry Date shall be 30/11/2017.
5. The period of this agreement is 12 months from 1<sup>st</sup> December 2016 with the option to extend to a further 12 months on giving the supplier no less than 30 working days’ notice.
6. The Supplier’s Representative with overall responsibility for the supply of the Contract Services and for the purposes of this Call-Off Contract is [REDACTED]
7. The Contracting Authority’s Representative for the purpose of the Call Off Contract is [REDACTED]

8. The Contracting Authority confirms that the applicable law for this contract shall be the law of England & Wales. Where the laws of Scotland/Northern Ireland have been stipulated, all references hereafter in this Letter of Appointment or in the attached Call Off Terms to legislation or regulations shall be read as if mention had been made of the Scottish/Northern Irish equivalent. Further, this Letter of Appointment and the attached Call Off Terms shall be construed as closely to the intention of the original wording as the chosen law so permits.
9. The Supplier shall:
  - (i) supply the Contract Services to the Contracting Authority in accordance with the provisions of this Call Off Contract for the Call Off Contract Period;
  - (ii) comply with all reasonable instructions given to the Supplier by the Contracting Authority in relation to provision of the Contract Services;
  - (iii) immediately report to the Contracting Authority's Representative any matters which involve or could potentially involve a conflict of interest;
  - (iv) ensure that neither it, nor any of its Affiliates, embarrasses the Contracting Authority or otherwise brings the Contracting Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Contracting Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract;
  - (v) co-operate with the Contracting Authority and the Contracting Authority's staff; and
  - (vi) comply with the Contracting Authority's internal policies in each case as notified to the Supplier in writing by the Contracting Authority and procedures and Government and FCA codes and practices in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) and in each case notified to the Supplier in writing by the Contracting Authority. Notwithstanding the above, the Supplier shall comply with the relevant principles of any Contracting Authority policy requirements which are notified to the Supplier by the Contracting Authority (a) to the extent that these requirements are reasonable, proportionate and relevant to the performance of this Call Off Contract and (b) in accordance with and subject to the Supplier's duty to exercise reasonable skill and care in the performance of this Call Off Contract.
10. The Supplier shall not:
  - (i) incur any expenditure which would result in any estimated figure for any element of the Contract Services being exceeded without approval; or
  - (ii) engage in any conduct which in the reasonable opinion of the Contracting Authority is prejudicial to the Contracting Authority.
11. Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises.
12. No variation of this Call Off Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
13. Each Party shall acknowledge and shall comply with the confidentiality provisions set out in Clause 27.2 of the Framework Agreement in relation to this Call Off Contract where applicable.
14. The Supplier acknowledges that the Contracting Authority is subject to the requirements of the FOIA and the EIRs and shall assist and cooperate with the Contracting Authority to enable the Contracting Authority to comply with its Information disclosure obligations as set out in Clause 27.4 of the Framework Agreement in relation to this Call Off Contract where applicable.
15. The Parties acknowledge and will comply with the transparency requirements set out in Clause 27.3 of the Framework Agreement in relation to this Contract where applicable.
16. The Supplier shall not, and shall procure that its Sub-Contractors, staff and professional advisors shall not, make any press announcements or publicise this Call Off Contract in any way without first obtaining written approval from the Contracting Authority.

17. Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Contracting Authority shall be entitled to publicise this Call Off Contract in accordance with any legal obligation upon the Contracting Authority including any examination of this Call Off Contract by the Auditors.
18. For the purposes of the definition of Restricted Countries in Clause 1 of this Call Off Contract, the Contracting Authority confirms that the UK is a non-Restricted Country.
19. For the purposes of this Call Off Contract, the address of each Party is:
  - for the Contracting Authority:  
BPDTS Limited  
[REDACTED]
  - for the Supplier:  
Zurich Insurance PLC  
[REDACTED]

**BY SIGNING AND RETURNING THIS LETTER OF APPOINTMENT (which may be done by electronic means) the Supplier agrees to enter a Call Off Contract with the Contracting Authority to provide the Contract Services.**

**The Parties hereby acknowledge and agree that they have read the Letter of Appointment and the Call Off Terms and by signing below agree to be bound by this Call Off Contract.**

**Please sign and return the attached duplicate of this Letter of Appointment with the acknowledgement signed by an authorised representative of the Supplier.**

Yours faithfully

[REDACTED]

BPDTS Limited CEO

For and on behalf of BPDTS Limited as an authorised signatory of the Contracting Authority.

[REDACTED]

## Appendix 1 – Contract Services

1. The supplier's response to the Statement of Requirements contained in the Further Competition Procedure carried out in accordance with Framework Schedule 5 (call off procedure).

[REDACTED]

2. Copy/s of the agreed cover note policy of insurance and agreed amendments and/or variations;

[REDACTED]

3. Supplementary terms and conditions

Statement that requires adding – advice from Security Commercials

The Supplier shall comply with Baseline Personnel Security Standard / Government Staff Vetting Procedures in respect of all persons who are employed or engaged by the supplier in provision of this Call-Off Agreement. This is not a security check as such but a package of pre-employment checks covering identity, employment history, nationality/immigration status and criminal records designed to provide a level of assurance. A Guide for DWP Suppliers' had been prepared and attached below.



HMG BPSS\_Guide for  
DWP Contractors

4. Price as set out in the Response to the Further Competition.

[REDACTED]

**Part 2 – Call Off Terms**

**CONTENTS**

1.	DEFINITIONS AND INTERPRETATION .....	6
2.	TERMINATION.....	12
3.	CONSEQUENCES OF EXPIRY OR TERMINATION.....	13
4.	SUPPLY CHAIN RIGHTS AND PROTECTION .....	14
5.	PREVENTION OF FRAUD AND BRIBERY .....	17
6.	CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING .....	18
7.	WAIVER.....	20
8.	SEVERABILITY.....	20
9.	SUPPLIER'S STATUS .....	20
10.	ENTIRE AGREEMENT.....	20
11.	PROTECTION OF PERSONAL DATA .....	21
12.	INTELLECTUAL PROPERTY RIGHTS .....	23
13.	THIRD PARTY RIGHTS .....	23
14.	NOTICES .....	24
15.	DISPUTES AND LAW .....	24
16.	COUNTERPARTS.....	25

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

<b>"Affiliates"</b>	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Auditor"</b>	means: <ul style="list-style-type: none"><li>a) the Contracting Authority's internal and external auditors;</li><li>b) the Contracting Authority's statutory or regulatory auditors;</li><li>c) the Comptroller and Auditor General and their staff</li><li>d) HM Treasury or the Cabinet Office</li><li>e) any party formally appointed by the Contracting Authority to carry out audit or similar review functions; and</li></ul> successors or assigns of any of the above;
<b>"Authority"</b>	means THE MINISTER FOR THE CABINET OFFICE (" <b>Cabinet Office</b> ") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
<b>"Call Off Agreement"</b>	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Services made between a Contracting Body and a Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Commencement Date"</b>	means the date of commencement of this Call Off Contract set out in paragraph 3 of the Letter of Appointment;
<b>"Call Off Contract"</b>	means this Call Off Contract between the Contracting Authority and the Supplier (entered into pursuant to the provisions of the Framework Agreement) and consisting of the Letter of Appointment, these Call Off Terms (save to the extent varied by the Letter of Appointment) and any other documents referred to in either of them;
<b>"Call Off Contract Charge"</b>	means the Premium in addition to the costs for Associated Support Services as stated in the Supplier's response to the Statement of Requirements contained in Appendix 1 and any other related charges arising from the Premium which may include the IPT and/or the Management Charge and/or Insurance Service Brokerage and/or a Broker Fee;
<b>"Call Off Contract Period"</b>	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date;
<b>"Call Off Expiry Date"</b>	means the date set out in paragraph 4 of the Letter of Appointment or if the Call Off Contract is terminated before this date, the earlier date of termination of this Call

	Off Contract;
<b>“Call Off Terms”</b>	means these terms and conditions entered into (excluding the Letter of Appointment) in respect of the provision of the Contract Services;
<b>“Change of Control”</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>“Combined Bid”</b>	means a Supplier’s bid where the Contracting Authority has requested Suppliers provide two or more classes of insurance in the Market Presentation as described in Framework Schedule 2 Services and Key Performance Indicators Part B - Services (Lot 1);
<b>"Commercially Sensitive Information"</b>	means the Supplier’s Confidential Information listed in Framework Schedule 17 (Commercially Sensitive Information) comprised of commercially sensitive information: <ul style="list-style-type: none"> <li>a) relating to the Supplier, its IPR or its business or information which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss; and</li> <li>b) that constitutes a trade secret;</li> </ul>
<b>“Contracting Authority”</b>	means the Contracting Authority that issues the Letter of Appointment;
<b>"Contracting Authority’s Confidential Information"</b>	means all Contracting Authority’s Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Contracting Authority, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
<b>"Contracting Authority’s Personal Data"</b>	means the Personal Data supplied by the Contracting Authority to the Supplier and, for the purposes of or in connection with this Call Off Contract;
<b>"Contracting Authority’s Representative"</b>	means the representative of the Contracting Authority appointed by the Contracting Authority from time to time in relation to this Call Off Contract and notified to the Supplier;
<b>“Combined Discount”</b>	means the premium discount by value or percentage applicable to a Combined Bid that an Supplier offers to a Contracting Authority;
<b>“Combined Incentive”</b>	means an incentive(s) other than Combined Discount that a Supplier offers to a Contracting Authority as part of a Combined Bid;
<b>“Confidential Information”</b>	means the Contracting Authority’s Confidential Information and/or the Supplier’s Confidential Information;
<b>"Contract Services"</b>	means the Services to be supplied by the Supplier to the Contracting Authority as set out in the Appendix 1 to the Letter of Appointment;
<b>“Control”</b>	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and

		"Controlled" shall be interpreted accordingly;
<b>"Data Subject"</b>		shall have the same meaning as set out in the Data Protection Act 1998;
<b>"Data Protection Legislation" or "DPA"</b>		means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any relevant Government department in relation to such legislation;
<b>"Dispute"</b>		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 Contract Services, or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>"Dispute Resolution Procedure"</b>	<b>Resolution</b>	means the dispute resolution procedure set out in Call Off Schedule 1 (Dispute Resolution Procedure);
<b>"FCA Handbook"</b>		means the document which sets out the FCA's legislative and other provisions made under powers given to them by the Financial Services and Markets Act 2000 as amended from time to time;
<b>"Financial Conduct Authority (FCA)"</b>		means the Financial Conduct Authority an independent body corporate with statutory powers derived from the Financial Services and Markets Act 2000, and its successors in title;
<b>"FOIA"</b>		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;
<b>"Framework Agreement"</b>		means the Framework Agreement between the Authority and the Supplier referred to in the Letter of Appointment;
<b>"Framework Supplier"</b>		means a supplier (including the Supplier) appointed under the Framework Agreement;
<b>"Good Industry Practice"</b>		means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Insurance Policy"</b>		means a policy of insurance arising in connection with the provision of the Contract Services;
<b>"Key Sub-Contract"</b>		means each Sub-Contract with a Key Sub-Contractor;
<b>"Key Sub-Contractor"</b>		means any Sub-Contractor:
		a) listed in Framework Schedule 7 (Key Sub-Contractors); and
		b) which, in the opinion of the Authority and the Contracting Authority, performs (or would perform if appointed) a critical role in the provision of all or any part

of the Contract Services; and/or

c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;

<b>"Law"</b>	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;
<b>"Letter of Appointment"</b>	means the letter from the Contracting Authority to the Supplier dated [DD/MM/YYYY] which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Contract Services to be supplied;
<b>"Market Presentation"</b>	means the minimum information provided to the Supplier by the Contracting Authority or a Broker in the form set out in Framework Schedule 2 Services and Key Performance Indicators Part B - Services (Lot 1);
<b>"Order"</b>	means the order for the provision of the Contract Services placed by the Contracting Authority with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;
<b>"Panel Insurer Contract"</b>	means a contract or agreement between a Panel Insurer Broker or a Managing General Agent and a third party insurer under which certain functions or tasks are delegated by way of a delegated authority in accordance with the FCA Handbook.
<b>"Party"</b>	means the Supplier or the Contracting Authority and <b>"Parties"</b> shall mean both of them;
<b>"Personal Data"</b>	has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
<b>"Premium"</b>	means the cost of insurance excluding support services, Third Party Compensation, a Broker Fee (where applicable) and (IPT);
<b>"Prohibited Act"</b>	means any of the following: <ul style="list-style-type: none"><li>a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Authority and/or the Authority or other Contracting Body or any other public body a financial or other advantage to:<ul style="list-style-type: none"><li>i) induce that person to perform improperly a relevant function or activity; or</li><li>ii) reward that person for improper performance of a relevant function or activity;</li></ul></li><li>b) 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</li></ul>

this Agreement;

- c) committing any offence:
  - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)
  - ii) under legislation or common law concerning fraudulent acts; or
  - iii) defrauding, attempting to defraud or conspiring to defraud the Contracting Authority; or

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;

**“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 Requirements”**

means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

**“Restricted Country”**

means any country which:

- a) is outside the European Economic Area;
- b) is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together “Restricted Countries”) including but not limited to the decisions made by the European Commission which may be accessed at [http://ec.europa.eu/justice/data-protection/international-transfers/adequacy/index\\_en.htm](http://ec.europa.eu/justice/data-protection/international-transfers/adequacy/index_en.htm); and
- c) has not been confirmed by the Contracting Authority as a non-Restricted Country either in the Letter of Appointment or in writing from time-to-time.

**"Sub-Contract"**

means any contract or agreement (or proposed contract or agreement), other than this Call Off Contract, the Framework Agreement or a Panel Insurer Contract, pursuant 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;

<b>“Supplier”</b>		means the person, firm or company with whom the Contracting Authority enters into this Call Off Contract as identified in the Letter of Appointment;
<b>"Supplier's Information"</b>	<b>Confidential</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including all IPRs, together with information derived from the foregoing, and that in any case is clearly designated as being confidential;
<b>“Supplier’s Representative”</b>		means the representative of the Supplier appointed by the Supplier from time to time in relation to this Call Off Contract and notified to the Contracting Authority;
<b>"Supplier’s Staff"</b>		means all persons employed by the Supplier and/or any Sub-Contractor to perform the Supplier’s obligations under this Call Off Contract together with the Supplier's and/or any Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors used in the performance of the Supplier’s obligations under this Call Off Contract;
<b>“Termination Notice”</b>		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;
<b>“Valid Invoice”</b>		means an invoice issued by the Supplier to the Contracting Authority in accordance with Clause 6.2; and
<b>“Working Day”</b>		means any day other than a Saturday, Sunday or public holiday in England and Wales.

## 1.2 Interpretation

- 1.2.1 The interpretation and construction of this Call Off Contract shall be subject to the following provisions:
- 1.2.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - 1.2.1.2 words importing the masculine include the feminine and the neuter;
  - 1.2.1.3 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
  - 1.2.1.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
  - 1.2.1.5 the Appendix forms part of these Call Off Terms and shall have effect as if set out in full in the body of these Call Off Terms and any reference to these Call Off Terms includes the Appendix;
  - 1.2.1.6 references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or

instrument as amended or replaced by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of this Call Off Contract);

- 1.2.1.7 headings are included in this Call Off Contract for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract;
- 1.2.1.8 references to “Clauses” and the “Appendix” are, unless otherwise provided, references to the clauses of and the Appendix to these Call Off Terms and references to “paragraphs” are, unless otherwise provided, references to paragraphs of the Appendix in which the references are made;
- 1.2.1.9 terms or expressions contained in this Call Off Contract which are capitalised but which do not have an interpretation in Clause 1.2 shall be interpreted in accordance with the Framework Agreement;
- 1.2.1.10 a reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.1.11 in the event of and only to the extent of any conflict between the Letter of Appointment, these Call Off Terms, any other document referred to in this Call Off Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
  - (a) the Framework Agreement (excluding Framework Schedule 4 (Template Order Form and Template Call Off Terms));
  - (b) any Insurance Policy;
  - (c) the Letter of Appointment (excluding the Appendices);
  - (d) these Call Off Terms;
  - (e) the Appendix to the Letter of Appointment (excluding any Insurance Policy); and
  - (f) any other document referred to in this Call Off Contract.

and for the avoidance of doubt there will be no severability of any terms where a conflict exists and each term shall continue to apply.

## **2. TERMINATION**

- 2.1 The Contracting Authority may, by issuing a Termination Notice, terminate this Call Off Contract if:
  - 2.1.1 the Supplier ceases to be authorised by the FCA to carry on regulated activities; and/or
  - 2.1.2 any of the grounds for termination set out in Regulation 73(1) of the Public Contracts Regulations 2015 occur.

where upon this Call Off Contract shall terminate on the date specified in the Termination Notice.

2.2 The Supplier may, by issuing a Termination Notice to the Contracting Authority, terminate this Call Off Contract if the Contracting Authority fails to pay an undisputed sum due to the Supplier under this Call Off Contract and the said undisputed sum due remains outstanding for forty (40) Working Days (the “**Undisputed Sums Time Period**”) after the receipt by the Contracting Authority of a written notice of non-payment from the Supplier specifying:

2.2.1 the Contracting Authority’s failure to pay; and

2.2.2 the correct overdue and undisputed sum; and

2.2.3 the reasons why the undisputed sum is due; and

2.2.4 the requirement on the Contracting Authority 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).

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

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

3.1 Subject to Clause 3.2 where the Contracting Authority terminates this Call Off Contract pursuant to Clause 2.1 and then makes other arrangements for the supply of the Contract Services:

3.1.1 the Contracting Authority may recover from the Supplier the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Contracting Authority in securing the Contract Services in accordance with the requirements of this Call Off Contract;

3.1.2 the Contracting Authority shall take all reasonable steps to mitigate such additional expenditure; and

3.1.3 no further payments shall be payable by the Contracting Authority to the Supplier until the Contracting Authority has established the final cost of making those other arrangements, whereupon the Contracting Authority shall be entitled to deduct an amount equal to the final cost of such other arrangements from the further payments then due to the Supplier.

3.2 On the termination of this Call-Off Contract in accordance with Clause 2.1, the Supplier shall, at the request of the Contracting Authority and at the Supplier’s cost:

3.2.1 immediately return to the Contracting Authority all Confidential Information and the Contracting Authority’s Personal Data in its possession or in the possession or under the control of any permitted Key Sub-Contractors or Sub-Contractors, which was obtained or produced in the course of providing the Contract Services, except where the retention of Contracting Authority’s Personal Data is required by Law and or the FCA;

3.2.2 promptly destroy all copies of the Contracting Authority’s Personal Data and provide written confirmation to the Contracting Authority that the data has been destroyed, except where the retention of the Contracting Authority’s Personal Data is required by Law and or the FCA;

3.2.3 immediately deliver to the Contracting Authority in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property

and IPR) issued or made available to the Supplier by the Contracting Authority in connection with the Call-Off Contract provided to the Supplier;

- 3.2.4 return to the Contracting Authority any sums prepaid in respect of the Contract Services not provided by the Call Off Expiry Date or termination (howsoever arising); and
- 3.2.5 promptly provide all information concerning the provision of the Contract Services which may reasonably be requested by the Contracting Authority for the purposes of adequately understanding the manner in which the Contract Services have been provided or for the purpose of allowing the Contracting Authority or any replacement Supplier to conduct due diligence.

#### **4. SUPPLY CHAIN RIGHTS AND PROTECTION**

##### **4.1 Appointment of Sub-Contractors**

- 4.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
  - 4.1.1.1 manage any Sub-Contractors in accordance with Good Industry Practice;
  - 4.1.1.2 comply with its obligations under this Call Off Contract in the Delivery of the Services; and
  - 4.1.1.3 assign, novate or otherwise transfer to the Contracting Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Call Off Contract.
- 4.1.2 Prior to sub-contacting any of its obligations under this Call Off Contract, the Supplier shall provide the Contracting Authority with:
  - 4.1.2.1 the proposed Sub-Contractor's name, registered office and company registration number;
  - 4.1.2.2 the scope of any Services to be provided by the proposed Sub-Contractor; and
  - 4.1.2.3 where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Contracting Authority that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 4.1.3 If requested by the Contracting Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 4.1.2, the Supplier shall also provide:
  - 4.1.3.1 a copy of the proposed Sub-Contract; and
  - 4.1.3.2 any further information reasonably requested by the Contracting Authority.
- 4.1.4 The Contracting Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 4.1.2 (or, if later, receipt of any further information requested pursuant to Clause 4.1.3), object to the appointment of the relevant Sub-Contractor they consider that:

4.1.4.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Contracting Authority under this Call Off Contract;

4.1.4.2 the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or

4.1.4.3 the proposed Sub-Contractor employs unfit persons,

in which case, the Supplier shall not proceed with the proposed appointment.

4.1.5 If:

4.1.5.1 the Contracting Authority has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:

(a) the Supplier's notice issued pursuant to Clause 4.1.2; and

(b) any further information requested by the Contracting Authority pursuant to Clause 4.1.3; and

4.1.5.2 the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority and the Contracting Authority in accordance with Clause 4.2 (Appointment of Key Sub-Contractors).

the Supplier may proceed with the proposed appointment.

## 4.2 **Appointment of Key Sub-Contractors**

4.2.1 The Authority and the Contracting Authority have consented to the engagement of the Key Sub-Contractors listed in Paragraph 9 of the Letter of Appointment.

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

4.2.2.1 the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Contract Services or may be contrary to its interests;

4.2.2.2 the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or

4.2.2.3 the proposed Key Sub-Contractor employs unfit persons.

4.2.3 Except where the Contracting Authority have given their prior written consent under Clause 4.2.1, the Supplier shall ensure that each Key Sub-Contract shall include:

4.2.3.1 provisions which will enable the Supplier to discharge its obligations under this Call Off Contract;

4.2.3.2 a right under CRTPA for the Contracting Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Contracting Authority;

- 4.2.3.3 a provision enabling the Contracting Authority to enforce the Key Sub-Contract as if it were the Supplier;
- 4.2.3.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Contracting Authority or any Replacement Supplier;
- 4.2.3.5 obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Call Off Contract in respect of:
  - (a) data protection requirements set out in Clause 27.5 of the Framework Agreement (Protection of Contracting Authority Data);
  - (b) FOIA requirements set out in Clause 27.5 of the Framework Agreement (Freedom of Information);
  - (c) the obligation not to embarrass the Contracting Authority or otherwise bring the Contracting Authority into disrepute set out in paragraph 9 of the Letter of Appointment; and
- 4.2.3.6 a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the goods and/or services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Contracting Authority;

#### 4.3 **Supply Chain Protection**

- 4.3.1 The Supplier shall ensure that all Sub-Contracts contain a provision:
  - 4.3.1.1 requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
  - 4.3.1.2 requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
  - 4.3.1.3 requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses 4.3.1.1 and 4.3.1.2 above; and
  - 4.3.1.4 conferring a right to the Contracting Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 4.3.2 The Supplier shall:
  - 4.3.2.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
- 4.3.3 Any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed.
- 4.3.4 If the Supplier notifies the Contracting Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the

Contracting Authority otherwise discovers the same, the Contracting Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

#### **4.4 Termination of Sub-Contracts**

4.4.1 The Contracting Authority may require the Supplier to terminate:

4.4.1.1 a Sub-Contract where:

- (a) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Contracting Authority's right of termination pursuant to any of the termination events in Clause 2.1 and/or
- (b) the relevant Sub-Contractor or its Affiliates embarrassed the Contracting Authority or otherwise brought the Contracting Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Contracting Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or

4.4.1.2 a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:

- (a) the Contracting Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
- (b) the Contracting Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Contracting Authority was given notice of the Change of Control.

#### **4.5 Retention of Legal Obligations**

4.5.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 4 (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.

### **5. PREVENTION OF FRAUD AND BRIBERY**

5.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Staff, have at any time prior to the Call Off Commencement Date:

- 5.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 5.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

5.2 The Supplier shall not during the Call Off Contract Period:

5.2.1 commit a Prohibited Act; and/or

- 5.2.2 do or suffer anything to be done which would cause the Contracting Authority or any of the Contracting Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 5.3 The Supplier shall during the Call Off Contract Period:
- 5.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- 5.3.2 keep appropriate records of its compliance with its obligations under Clause 5.3.1 and make such records available to the Contracting Authority on request;
- 5.3.3 if so required by the Contracting Authority, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Contracting Authority in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Goods and/or Services in connection with this Call Off Contract. The Supplier shall provide such supporting evidence of compliance as the Contracting Authority may reasonably request; and
- 5.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Contracting Authority on request) to prevent it and any Supplier's Staff or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 5.4 The Supplier shall immediately notify the Contracting Authority in writing if it becomes aware of any breach of Clause 5.1 or 5.2, or has reason to believe that it has or any of the Supplier's Staff have:
- 5.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 5.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 5.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call Off Contract or otherwise suspects that any person or Party directly or indirectly connected with this Call Off Contract has committed or attempted to commit a Prohibited Act.
- 5.5 If the Supplier breaches Clause 5.3, the Contracting Authority may by notice:
- 5.5.1 require the Supplier to remove from performance of this Call Off Contract any Supplier's Staff whose acts or omissions have caused the Supplier's breach; or
- 5.6 Any notice served by the Contracting Authority under Clause 5.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Contracting Authority believes has committed the Prohibited Act and the action that the Contracting Authority has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).
- 6. CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING**
- 6.1 Call Off Contract Charges**

- 6.1.1 In consideration of the Supplier's performance of its obligations under this Call Off Contract, the Contracting Authority shall pay all sums properly due and payable in respect of the Call Off Contract Charges.
- 6.1.2 The Call Off Contract Charges shall include all costs and expenses relating to the Contract Services provided to the Contracting Authority and/or the Supplier's performance of its obligations under this Call Off Contract and no further amounts shall be payable by a Contracting Authority to the Supplier in respect of such performance, including in respect of matters such as:
- 6.1.2.1 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's Staff, network or data interchange costs or other telecommunications charges; or
  - 6.1.2.2 any amount for any services provided or costs incurred by the Supplier prior to the commencement date of this Call-Off Contract.
- 6.1.3 The Supplier shall indemnify the Contracting Authority on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Contracting Authority at any time in respect of the Supplier's failure to account for or to pay any VAT, and/or IPT if applicable, relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause shall be paid by the Supplier to the Contracting Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Contracting Authority.

## 6.2 Invoicing Procedure

- 6.2.1 The Supplier shall ensure that each invoice submitted to BPDTS Limited for any Call Off Contract Charges payable (whether submitted electronically or in a paper form, as the Contracting Authority may specify):
- 6.2.1.1 contains:
    - (a) all appropriate references, including the unique contract reference number PO0005 and
    - (b) a detailed breakdown of the Contract Services provided or to be provided; and
  - 6.2.1.2 shows separately:
    - (a) any credits due to the Contracting Authority (which may include the Management Charge); and
    - (b) the IPT added to the due and payable Call Off Contract Charges; and
    - (c) the Insurance Services Brokerage added where relevant; and
    - (d) any costs associated with the provision of Associated Support Services; and

6.2.1.3 it is supported by any other documentation reasonably required by the Contracting Authority to substantiate that the invoice is a Valid Invoice.

6.3 The Supplier shall ensure that all invoices submitted to BPDTS Limited for Contract Services are inclusive of the Management Charge payable to the Authority in respect of the Contract Services.

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

6.5 The Supplier shall submit invoices directly to:

[REDACTED]

## **7. WAIVER**

7.1 No failure or delay by a Party to exercise any right or remedy provided under this Call Off Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy

## **8. SEVERABILITY**

8.1 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.

8.2 In the event that any deemed deletion under Clause 8.1 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.

8.3 If the Parties are unable to resolve the Dispute arising under this Clause 8 within twenty (20) Working Days of the date of the notice given pursuant to Clause 8.2, 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 8.

## **9. SUPPLIER'S STATUS**

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

## **10. ENTIRE AGREEMENT**

10.1 This Call Off Contract, together with a completed, signed and dated Framework Agreement and the other documents referred to in them constitute the entire agreement and understanding between the Parties.

10.2 Each of the Parties acknowledges and agrees that in entering into this Call Off Contract it does not rely on, and shall have no right or remedy in respect of, any statement,

representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Call Off Contract.

- 10.3 The Supplier acknowledges that it has entered into this Call Off Contract in reliance on its own due diligence alone and has received sufficient information required by it in order to determine whether it is able to provide the Contract Services in accordance with the terms of this Call Off Contract.
- 10.4 Nothing in Clauses 10.1 and 10.2 shall operate to:
- 10.4.1 exclude fraud or fraudulent misrepresentation; or
  - 10.4.2 to limit the rights of the Contracting Authority pursuant to Clause 45 of the Framework Agreement (Third Party Rights).

## **11. PROTECTION OF PERSONAL DATA**

- 11.1 With respect to the Parties' rights and obligations under the Call Off Contract, the Parties agree that they are joint Data Controllers in relation to the Contracting Authority's Personal Data.
- 11.2 Where the Supplier Processes the Contracting Authority's Personal Data, the Supplier shall:
- 11.2.1 Process the Contracting Authority's Personal Data only in accordance with instructions from the Contracting Authority (which may be specific instructions or instructions of a general nature as set out in this Call Off Contract or as otherwise notified by the Contracting Authority to the Supplier during the term of this Call Off Contract);
  - 11.2.2 Process the Contracting Authority's Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any regulatory body;
  - 11.2.3 implement appropriate technical and organisational measures to protect the Contracting Authority's Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Contracting Authority's Personal Data and having regard to the nature of the Contracting Authority's Personal Data which is to be protected;
  - 11.2.4 take reasonable steps to ensure the reliability and integrity of any Supplier's Staff who have access to the Personal Data and ensure that the Supplier's Staff:
    - (a) are aware of and comply with the Supplier's duties under this Clause 11.2.4;
    - (b) 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 Contracting Authority or as otherwise permitted by this Call Off Contract; and
    - (c) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
  - 11.2.5 obtain the Contracting Authority's prior written approval in order to transfer all or any of the Contracting Authority's Personal Data to any Sub-Contractors for the provision of the Contract Services;
  - 11.2.6 notify the Contracting Authority within five (5) Working Days if the Supplier receives:

- (a) a request from a Data Subject to have access to the Contracting Authority's Personal Data relating to that person; or
  - (b) any other complaint or request relating to the Contracting Authority's obligations under the Data Protection Legislation;
- 11.2.7 provide the Contracting Authority with full cooperation and assistance (within the timescales reasonably required by the Contracting Authority) in relation to any complaint or request made (as referred to in Clause 11.2.6 including by promptly providing:
  - (a) the Contracting Authority with full details of the complaint or request;
  - (b) where applicable, such assistance as is reasonably requested by the Contracting Authority to enable the Contracting Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; Contracting Authority;
  - (c) the Contracting Authority, on request by the Contracting Authority, with any Personal Data it holds in relation to a Data Subject; and
- 11.2.8 if requested by the Contracting 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 11.2 and provide to the Contracting Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals; and
- 11.2.9 permit or procure permission for the Contracting Authority or the Contracting Authority's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents and Sub-Contractors) and comply with all reasonable requests or directions by the Contracting Authority to enable the Contracting Authority to verify and/or procure that the Supplier is in full compliance with its obligations under this Call Off Contract;
- 11.3 Subject to Clause 11.4 the Supplier shall not Process or otherwise transfer any Personal Data in or to any Restricted Country.
- 11.4 The Supplier shall only be permitted to Process or otherwise transfer any Personal Data in or to a Restricted Country where they agree to enter into a data transfer agreement with the Contracting Authority on such terms as may be required by the Contracting Authority.
- 11.5 Where the Supplier enters into a data transfer agreement, the Supplier shall:
  - 11.5.1 procure that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - 11.5.1.1 a direct data processing agreement with the Contracting Authority on such terms as may be required by the Contracting Authority; or
    - 11.5.1.2 a data processing agreement with the Supplier on such terms as may be required by the Contracting Authority.
- 11.6 The Supplier acknowledges that in each case, this may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Contracting Authority deems necessary for the purpose of protecting Personal Data.

- 11.7 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Call Off Contract in such a way as to cause the Contracting Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 11.8 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Contracting Authority's Personal Data that the Contracting Authority may be irreparably harmed (including harm to its reputation). In such circumstances, the Contracting Authority may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 11.9 In the event that through any failure by the Supplier to comply with its obligations under this Call Off Contract, Contracting Authority's Personal Data is transmitted or Processed in connection with this Call Off Contract is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Contracting Authority in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Supplier.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1 All Intellectual Property Rights in the output from the Contract Services shall vest in the Supplier who shall grant to the Contracting Authority a non-exclusive, royalty-free, unlimited, irrevocable licence to use and exploit the same.
- 12.2 Subject to Clause 9.1 and save as expressly granted elsewhere under this Call Off Contract, the Contracting Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors and the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contracting Authority or its licensors.
- 12.3 The Supplier shall on demand fully indemnify and keep fully indemnified and hold the Contracting Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contracting Authority and or the Crown may suffer or incur as a result of any claim that the performance by the Supplier of the Contract Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "**Claim**").
- 12.4 If a Claim arises, the Contracting Authority shall notify the Supplier in writing of the Claim and the Contracting Authority shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 12.4.1 shall consult the Contracting Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 12.4.2 shall take due and proper account of the interests of the Contracting Authority;
  - 12.4.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Contracting Authority into disrepute; and
  - 12.4.4 shall not settle or compromise the Claim without the prior written approval of the Contracting Authority (not to be unreasonably withheld or delayed).
- 12.5 Neither Party shall have the right to use any of the other Party's names, logos or trademarks without the prior written approval of the other Party.

## **13. THIRD PARTY RIGHTS**

- 13.1 A person who is not a party to this Call Off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication,

confer a benefit on him, without the prior written agreement of the Parties, provided that this Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

- 13.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Call Off Contract or any one or more Clauses of it.
- 13.3 Without prejudice to the Contracting Authority's rights as a Contracting Authority under Clause 33 of the Framework Agreement, the Supplier agrees that the Contracting Authority may enforce any of the provisions of the Framework Agreement referred to in Clause 33.2 (with the exception of Clauses 32 and 46 of the Framework Agreement) as if they were terms of this Call Off Contract (reading references in those provisions to Contracting Authorities and the Supplier as references to the Contracting Authority and the Supplier respectively).

## **14. NOTICES**

- 14.1 Any notices given under or in relation to this Contract shall be in writing by letter, (signed by or on behalf of the Party giving it) sent by hand, post, registered post or by the recorded delivery service or by electronic mail to the address or email address and for the attention of the relevant Party set out in Clause 14.4 or to such other address or email address as that Party may have stipulated in accordance with Clause 14.5.
- 14.2 A notice shall be deemed to have been received:
- 14.2.1 if delivered personally, at the time of delivery;
  - 14.2.2 in the case of pre-paid first class post, special or other recorded delivery two (2) Working Days from the date of posting; and
  - 14.2.3 in the case of electronic communication, two (2) Working Days after posting of a confirmation letter.
- 14.3 In proving service, it shall be sufficient to prove that personal delivery was made, or (including for the purposes of electronic mail, the confirmation letter) that the envelope containing the notice was addressed to the relevant Party set out in Clause 14.4 (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, special or other recorded delivery.
- 14.4 For the purposes of Clause 14.2, the address or email address of each Party shall be the address or email address specified in paragraph 19 of the Letter of Appointment.
- 14.5 Either Party may change its address or email address for service by serving written notice in accordance with this Clause 14.
- 14.6 For the avoidance of doubt, any notice given under this Call Off Contract shall not be validly served if sent by electronic mail (email) where the confirmation letter is not sent within 24 hours of the electronic mail (email) being sent.

## **15. DISPUTES AND LAW**

### **15.1 Governing Law and Jurisdiction**

- 15.1.1 This Call Off Contract shall be governed by and interpreted in accordance with the Laws of the country stipulated in the Letter of Appointment (England & Wales unless otherwise specified) and the parties agree to submit to the exclusive jurisdiction of the courts of that chosen country any dispute that arises in connection with this Call Off Contract.

### **15.2 Dispute Resolution**

- 15.2.1 The Parties shall follow the dispute resolution procedure as set out in the Dispute Resolution Procedure.

**16. COUNTERPARTS**

- 16.1 This Call Off Contract may, if the Laws of the chosen country so permits, be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

## CALL OFF SCHEDULE 1: DISPUTE RESOLUTION PROCEDURE

### 1. DEFINITIONS

1.1 In this Call Off Schedule 1, the following definitions shall apply:

<b>"CEDR"</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>"Counter Notice"</b>	has the meaning given to it in paragraph 6.2 of this Call Off Schedule;
<b>"Exception"</b>	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Contract Services;
<b>"Expert"</b>	the person appointed by the Parties in accordance with paragraph 5.2 of this Call Off Schedule; and
<b>"Mediation Notice"</b>	has the meaning given to it in paragraph 3.2 of this Call Off Schedule;
<b>"Mediator"</b>	the independent third party appointed in accordance with paragraph 4.2 of this Call Off Schedule.

### 2. INTRODUCTION

2.1 If a Dispute arises then:

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

2.2 The Dispute Notice shall set out:

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

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

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

- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Call Off Schedule);
- 2.4.2 then by mediation (as prescribed in paragraph 4 of this Call Off Schedule); and
- 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Call Off Schedule) or litigation (in accordance with Clause 15.1 of this Call Off Contract (Governing Law and Jurisdiction)).

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

### 3. COMMERCIAL NEGOTIATIONS

- 3.1 Following the service of a Dispute Notice, the Contracting Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Contracting Authority's Representative and the Supplier's Representative.
- 3.2 If:
  - 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
  - 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Call Off Schedule; or
  - 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Call Off Schedule within thirty (30) Working Days of service of the Dispute Notice,either Party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with paragraph 4 of this Call Off Schedule.

### 4. MEDIATION

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Call Off Contract.
- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the

Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

## 5. EXPERT DETERMINATION

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

## 6. ARBITRATION

- 6.1 The Contracting Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Call Off Schedule.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Contracting Authority of its intentions and the Contracting Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 15.1 of this Call Off Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
  - 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Call Off Schedule shall apply;

- 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 61 of this Call Off Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
- 6.3.3 the Contracting Authority does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Call Off Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Call Off Schedule or commence court proceedings in the courts in accordance with Clause 15.1 of this Call Off Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Call Off Schedule, the Parties hereby confirm that:
  - 6.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA") (subject to paragraphs 6.4.5 to 6.4.7 of this Call Off Schedule);
  - 6.4.2 the arbitration shall be administered by the LCIA;
  - 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - 6.4.5 the chair of the arbitral tribunal shall be British;
  - 6.4.6 the arbitration proceedings shall take place in London and in the English language; and
  - 6.4.7 the seat of the arbitration shall be London.

## **7. URGENT RELIEF**

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