

**ORDER FORM**  
**TCFD CONSULTING SUPPORT**

**SECTION A**

This Order Form is issued in accordance with the provisions of the Environmental, Social and Human Rights Due Diligence Framework Agreement (DN352842). The Supplier agrees to supply the Services specified below on and subject to the terms of this Call Off Agreement and for the avoidance of doubt this Call Off Agreement consists of the terms set out in this Order Form and the Call Off Terms.

**DATE** 11 MAY 2021

**PURCHASE ORDER NUMBER** *to be provided after signature of this Order Form;*

**FROM** THE SECRETARY OF STATE FOR THE EXPORT CREDITS GUARANTEE DEPARTMENT (operating as UK EXPORT FINANCE), 1 Horse Guards Road, London, SW1A 2HQ Tel: 020 271 8080, the "**AUTHORITY**"

**TO** WSP UK Limited, company number 01383511, whose registered address is at WSP House, 70 Chancery Lane, London WC2A 1AF (the "**SUPPLIER**").

**SECTION B**

**1. CALL OFF AGREEMENT PERIOD**

**1.1 Call Off Commencement Date:**

11 May 2021

**1.2 Call Off Expiry Date:**

End date of Call Off Initial Period: 31 December 2021

Number of extensions available: two (2)

Duration of extension(s): each extension may be up to three (3) months in duration.

Maximum end date of Call-off Agreement following any extensions: 12 months

**2. CUSTOMER CORE SERVICES REQUIREMENTS**

**2.1 Services and charges**

See Annex 1 of this Order Form.

**2.2 Dates for Provision of the Services**

From May 2021 to September 2021.

**2.3 Implementation Plan**

Not applicable.

**2.4 Standards**

The Supplier shall comply with Clause 11 (STANDARDS) of the terms of the Framework Agreement.

**2.5 Service Levels and Performance Monitoring**

The Supplier shall conform to Part C of Schedule 1 (Key Performance Indicators) of the Framework Agreement.

## **2.6 Security**

The Supplier shall conform to Clause 7 (Cyber Security), of the Framework Agreement.

## **3. SUPPLIER'S INFORMATION**

### **3.1 Commercially Sensitive Information**

Not applicable.

### **3.2 Supplier Proposal**

See Annex 2 of this Order Form.

## **4. AUTHORITY'S RESPONSIBILITIES**

### **4.1 Authority's Responsibilities**

The Authority will provide the Supplier with access to the following to enable the Supplier to fulfil their obligations under this Order Form:

- Relevant data, including policies and processes, project data and records;
- Access to relevant Authority staff.

This is a non-exhaustive list and further items may be added if necessary.

## **SECTION C**

## **5. CUSTOMER OTHER CONTRACTUAL REQUIREMENTS**

### **5.1 Key Personnel**

**Supplier:**

- [THIS TEXT IS REDACTED]

**Authority:**

- [THIS TEXT IS REDACTED]

### **5.2 Protection of Authority Data**

Clause 6 (PROTECTION OF PERSONAL DATA) of the Call-Off Terms shall apply.

### **5.3 Limitations on Liability**

Clause 4 (LIABILITY AND INSURANCE) of the Call Off Terms shall apply.

### **5.4 Insurance**

Clause 4 (LIABILITY AND INSURANCE) of the Call Off Terms shall apply.

### **5.5 Termination without cause notice period**

The minimum period of time for the purposes of Clause 8.5 (AUTHORITY TERMINATION RIGHTS, Termination without Cause) of the Call Off Terms shall be ten (10) days.

### **5.6 Dispute Resolution**

Clause 22.2 (DISPUTES) of the Call Off Terms Shall Apply

## **5.7 Communications**

The Supplier and the Contracting Authority each agree to communicate electronically over the internet, including email communications. The Supplier and the Contracting Authority shall each be responsible for protecting their own systems and interests and neither party shall be responsible to the other on any basis (contract, tort or otherwise) for any loss, damage or omission in anyway arising from the use of electronic data (including e-mail) as a form of communication. Nothing in this clause shall exclude any liability arising from the negligent addressing and transmission of an email to an incorrect party.

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

### **6.1 Supplemental requirements to the Call Off Terms**

Not applicable.

### **6.2 Amendments to/refinements of the Call Off Terms**

Not applicable.

## **7. FORMATION OF CALL OFF AGREEMENT**

- 7.1 BY SIGNING AND RETURNING THIS ORDER FORM** (which may be done by electronic means) the Supplier agrees to enter a Call Off Agreement with the Authority to provide the Services.
- 7.2 The Parties hereby acknowledge and agree that they have read the Order Form and the Call Off Terms and by signing below agree to be bound by this Call Off Agreement.**
- 7.3 In accordance Framework Schedule 4 (Call Off Procedure), the Parties hereby acknowledge and agree that this Call Off Agreement shall be formed when the Authority acknowledges (which may be done by electronic means) the receipt of the signed copy of the Order Form from the Supplier within two (2) Working Days from receipt.**

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

|                |                         |
|----------------|-------------------------|
| Name and Title | [THIS TEXT IS REDACTED] |
| Signature      | [THIS TEXT IS REDACTED] |
| Date           | 18 May 2021             |

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

|                |                         |
|----------------|-------------------------|
| Name and Title | [THIS TEXT IS REDACTED] |
| Signature      | [THIS TEXT IS REDACTED] |
| Date           | 13 May 2021             |

## ANNEX 1: REQUIREMENT DETAILS

### BACKGROUND

### DELIVERABLES

- review of UKEF's DRAFT Climate Change Strategy. In pursuit of this deliver:
  - a copy of the strategy with comments and suggested edits.
  - a short document summarising general impression of the strategy, from the perspective of the general public, business (particularly those that would seek UKEF support and business organisations e.g. chambers of commerce), NGO/CSOs, including its strengths and opportunities for strengthening.
  - recommended actions and considerations in delivering the strategy
- undertake a SWOT analysis of [THIS TEXT IS REDACTED]. In pursuit of this:
  - Undertake a high level qualitative identification of GHG hotspots within the UKEF existing portfolio and future potential support
  - Qualitative description of (3) scenarios which UKEF should consider in developing its TCFD risk consideration and how UKEF should consider these in its risk considerations
  - [THIS TEXT IS REDACTED]
  - [THIS TEXT IS REDACTED]
- The above to be delivered by 3 weeks following engagement of the contractors.
- Potentially follow up work further developing the more detail analysis of UKEF's portfolio GHG intensity in view of this forming the basis of UKEF's baseline data and data strategies.

### CHARGES AND PERSONNEL

Total initial charges for services provided under this Order Form shall not exceed:

- for review of climate change strategy: up to £5,092.32+VAT
- [THIS TEXT IS REDACTED]: up to £24,665.93 +VAT

Day rates for the Supplier's Key Personnel listed in Section 5.1 of this Order Form are provided in Table 1 below:

*Table 1: Order Form Charges*

| Staff      | Day rate   |
|------------|------------|
| [REDACTED] | [REDACTED] |
| [REDACTED] |            |

|  |        |
|--|--------|
| ████████████████████                         | ██████ |
| ████████████████████                         | ██████ |
| ████████████████████<br>████████████████████ | ██████ |

At the discretion of the Authority, and only with the express written consent of the Authority, the value of this Order Form may be increased by an additional amount of up to ten thousand pounds (£10,000).

## **ANNEX 2: SUPPLIER PROPOSAL**

**[REDACTED]**

## **CALL OFF TERMS.**

### **Call Off Terms CONTENTS**

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Call Off Agreement, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

|                                     |  |
|-------------------------------------|--|
| <b>"Acquired Rights Directive"</b>  | means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;   |
| <b>"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>                    | <p>means:</p> <ul style="list-style-type: none"><li>a) the Authority's internal and external auditors;</li><li>b) the 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 Authority to carry out audit or similar review functions; and</li></ul> <p>successors or assigns of any of the above;</p> |
| <b>"Authority"</b>                  | means <b>THE SECRETARY OF STATE</b> acting by the Export Credits Guarantee Department whose office is at 1 Horse Guards Road, London SW1A 2HQ and which operates as UK Export Finance.   |
| <b>"Authority's Personal Data"</b>  | means the Personal Data supplied by the Authority to the Supplier and, for the purposes of or in connection with this Call Off Agreement;  |
| <b>"Authority's Premises"</b>       | means premises owned, controlled or occupied by the Authority which are made available for use by the Supplier or its Sub-Contractors for provision of the Contract Services (or any of them);   |
| <b>"Authority's Representative"</b> | means the representative of the Authority appointed by the Authority from time to time in relation to this Call Off Agreement and notified to the Supplier;  |

|                                      |   |
|--------------------------------------|---|
| <b>"Call Off Agreement"</b>          | means this agreement between the Authority and the Supplier (entered into pursuant to the provisions of the Framework Agreement) and consisting of the these Call Off Terms and any other documents referred to in either of them;  |
| <b>"Call Off Agreement Period"</b>   | means the term of this Call Off Agreement from the Call Off Commencement Date until the Call Off Expiry Date;   |
| <b>"Call Off Expiry Date"</b>        | means the date set out in the Call Off Agreement for Agreement expiry   |
| <b>"Call Off Terms"</b>              | means these terms and conditions entered into 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>"Confidential Information"</b>    | means the Authority's Confidential Information and/or the Supplier's Confidential Information as the context specifies;   |
| <b>"Contract Services"</b>           | means the services to be supplied by the Supplier to the Authority as set out in 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 Protection Legislation"</b> | means any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and , with effect from 25 May 2018, the GDPR); |
| <b>"Data Subject"</b>                | has the meaning given in the Data Protection Legislation;   |
| <b>"Data Subject Access Request"</b> | means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data;   |
| <b>"Default"</b>                     | means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Call Off Agreement 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 Agreement and in respect of which the Supplier is liable to the Authority;

**"Dispute"**

means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Agreement, including any dispute, difference or question of interpretation relating to the Contract Services, or any matter where this Call Off Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

**"Dispute Resolution Procedure"**

means the dispute resolution procedure set out in Call Off Schedule 1 (Dispute Resolution Procedure);

**"EIR"**

means the Environmental Information Regulations 2004;

**"Financial Conduct Authority or "FCA)"**

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;

**"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;

**"Framework Agreement"**

means the Framework Agreement between the Authority and the Supplier;

**"Framework Prices"**

means the prices contained in Framework Schedule 2 (Framework Prices and Charging Structure);

**"Framework Supplier"**

means a supplier (including the Supplier) appointed under the Framework Agreement;

**"GDPR"**

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

**"Good Industry Practice"**

means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence and prudence which would reasonably and ordinarily be expected of a professional consultant experienced in carrying out work of a similar size, complexity, nature, scope to the Services.

|                                |   |
|--------------------------------|---|
| <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>"Order"</b>                 | means the order for the provision of the Contract Services placed by the Authority with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Agreement;   |
| <b>"Party"</b>                 | means the Supplier or the 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>"Prohibited Act"</b>        | <p>means any of the following:</p> <ul style="list-style-type: none"> <li>a) to directly or indirectly offer, promise or give any person working for or engaged by the 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 this Agreement;</li> <li>c) committing any offence: <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)</li> <li>ii) under legislation or common law concerning fraudulent acts; or</li> <li>iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or</li> </ul> </li> </ul> <p>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;</p> |
| <b>"Regulations"</b>           | means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;   |
| <b>"Relevant Requirements"</b> | 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:

- d) is outside the European Economic Area;
- e) 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
- f) has not been confirmed by the 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 Agreement or the Framework Agreement, pursuant to which a third party:

provides the Services (or any part of them);

provides facilities or services necessary for the provision of the Services (or any part of them); and/or

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's Confidential Information"**

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;

**"Supplier"**

means the person, firm or company with whom the Authority enters into this Call Off Agreement with as identified in the Letter of Appointment;

**"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 Agreement;

**"Supplier's Representative"**

means the representative of the Supplier appointed by the Supplier from time to time in relation to this Call Off Agreement and notified to the Authority;

**"Supplier's Staff"**

means all persons employed by the Supplier and/or any Sub-Contractor to perform the Supplier's obligations under this Call Off Agreement 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 Agreement;

**"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 Agreement on a specified date and setting out the grounds for termination;

**"Valid Invoice"**

means an invoice issued by the Supplier to the Authority in accordance with the Agreement; and

**"Working Day"**

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 Agreement 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 Appendices form 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 Appendices;
- 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 Agreement);
- 1.2.1.7 headings are included in this Call Off Agreement for ease of reference only and shall not affect the interpretation or construction of this Call Off Agreement;

- 1.2.1.8 references to “Clauses” and the “Annex” are, unless otherwise provided, references to the clauses of and the Annex to these Call Off Terms and references to “paragraphs” are, unless otherwise provided, references to paragraphs of the Annex in which the references are made;
- 1.2.1.9 terms or expressions contained in this Call Off Agreement which are capitalised but which do not have an interpretation in Clause 1.1 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 these Call Off Terms, any other document referred to in the Call Off Agreement and the Framework Agreement, the conflict shall be resolved in accordance with the following descending order of precedence:
  - (a) Framework Clauses including clause 1 (Definitions);
  - (b) Framework Schedules 1 to 23 (excluding Framework Schedule 13 (Tender));
  - (c) Framework Schedule 13 (Tender).
- 1.2.1.12 If there is any conflict between the provisions of this Framework Agreement and provisions of any Call Off Agreement, the provisions of this Framework Agreement shall prevail over those of the Call Off Agreement save that:
- 1.2.1.13 any refinement to the Template Order Form and Template Call Off Terms permitted for the purposes of a Call Off Agreement under Clause 4 and Framework Schedule 4 (Call Off Procedure) shall prevail over Framework Schedule 3 (Template Order Form and Template Call –Off Terms); and
- 1.2.1.14 subject to Clause 1.2.1.15, the Call Off Agreement shall prevail over Framework Schedule 13 (Tender).

## **2. SUPPLY OF CONTRACT SERVICES**

### **2.1 Variation of Contract Services**

- 2.1.1 The Authority may request a variation to the Contract Services at any time provided that such variation does not amount to a material change to the Order.
- 2.1.2 Any request by the Authority for a variation to the Contract Services shall be by written notice to the Supplier:
  - 2.1.2.1 giving sufficient information for the Supplier to assess the extent of the variation and any additional costs that may be incurred; and
  - 2.1.2.2 specifying the timeframe within which the Supplier must respond to the request, which shall be reasonable,

and the Supplier shall respond to such request within such timeframe.

2.1.3 If the Authority and the Supplier agree to vary this Call Off Agreement, the Supplier shall implement such variation and be bound by the same provisions so far as is applicable, as though such variation was stated in this Call Off Agreement.

2.1.4 In the event that the Supplier and the Authority are unable to agree any change to the Call Off Agreement Charges in connection with any requested variation to the Contract Services, the Authority may agree that the Supplier should continue to perform its obligations under this Call Off Agreement without the variation or may terminate this Call Off Agreement in accordance with Clause 8.5.1.

### **3. CALL OFF AGREEMENT PAYMENT**

#### **3.1 Call Off Agreement Payment**

3.1.1 The Authority shall pay the Supplier for the Services.

a) Payments of any lump sum fee shall be in monthly instalments but if no lump sum fee is agreed shall be on a time basis in accordance with the Supplier's schedule of hourly rates.

b) all payments of fees shall be made monthly in arrears.

c) If the project cost rises or the programme is extended then the total fees due may be recalculated with consent from the Authority.

d) All reasonable disbursements shall be reimbursed at cost plus a handling charge of 10%.

3.1.2 Amounts quoted in this Agreement exclude any Value Added Tax ("VAT") payable under the law.

3.1.3 The Supplier's invoice shall be the payment notice. The Authority shall pay the Supplier each amount stated on the payment notice including VAT where applicable within thirty days (the final date) of the due date, being the date on which the Supplier submitted such payment notice subject to correction of any error. The Authority may not withhold any payment after the final date for payment of any part of the payment notice unless the Authority gives, not later than seven days before such final date, a notice to pay less specifying the amount that the Authority considers to be due to the Supplier on the date the notice is served and the basis on which such amount is calculated.

### **4. LIABILITY AND INSURANCE**

#### **4.1 Liability**

4.1.1 Neither Party excludes or limits its liability for:

4.1.1.1 death or personal injury; or

4.1.1.2 fraud or fraudulent misrepresentation by it or its employees.

4.1.2 No individual nor any service company of the Supplier employing that individual shall have any personal liability to the Authority for the Contract Services supplied by that individual on behalf of the Supplier and the Authority shall not bring any claim under this Call Off Agreement against that individual or such service company in respect of the Contract Services save in the case of fraud or any liability for death or personal injury.



- 4.1.3 Subject to the limits stated in Clause 4.1.8 below, subject to Clause 4.1.4 and without prejudice to the provisions of 4.1.5 below the Supplier shall be liable to the Authority in full from and against all legally enforceable, reasonably foreseeable and properly mitigated claims, proceedings, actions, damages, costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with, the negligent supply, of the Contract Services or the negligent performance by the Supplier of its obligations under the Framework Agreement and the Authority's financial loss arising from any negligent advice given or omitted to be given by the Supplier, or any other loss which is caused by any negligent act or omission of the Supplier.
- 4.1.4 Subject to Clauses 4.1.1 and 4.1.5, in no event shall either Party be liable to the other for any:
- 4.1.4.1 loss of profits;
  - 4.1.4.2 loss of business;
  - 4.1.4.3 loss of revenue;
  - 4.1.4.4 loss of or damage to goodwill;
  - 4.1.4.5 loss of savings (whether anticipated or otherwise); and/or
  - 4.1.4.6 any indirect, special or consequential loss or damage.
- 4.1.5 The Supplier shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Authority) be recoverable by the Authority:
- 4.1.5.1 the additional operational and/or administrative costs and expenses arising from any material Default; and
  - 4.1.5.2 the cost of procuring, implementing and operating any alternative or replacement services to the Contract Services.
  - 4.1.5.3 any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.
- 4.1.6 No enquiry, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Authority to any document or information provided by the Supplier in its provision of the Contract Services, and no failure of the Authority to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to exercise all the obligations of a professional Supplier employed in a Authority/Supplier relationship
- 4.1.7 Save as otherwise expressly provided, the obligations of the Authority under this Call Off Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Call Off Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Call Off Agreement (howsoever arising) on the part of the Authority to the Supplier.

4.1.8 Subject always to Clause 4.1.1 and Clause 4.1.4, the aggregate liability (whether expressed as an indemnity or otherwise) of the Supplier to the Authority for each year of this Agreement:

4.1.8.2 in respect of defaults, claims, losses or damages whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the greater of the sum of £1million (one Million Pounds) or a sum equivalent to One Hundred and Twenty-Five Per Cent (125%) of the Call Off Agreement Charges paid or payable to the Supplier in the relevant year of this Call Off Agreement calculated at the date of the event giving rise to the liability (estimated for the full year if the event occurs in the first year of this Call Off Agreement).

## **5. INTELLECTUAL PROPERTY RIGHTS**

5.1 All Intellectual Property Rights in the output from the Contract Services shall be owned by the Authority who will have a non-exclusive, royalty-free, unlimited, irrevocable licence to use them. Any pre-existing IPR shall remain under the ownership of the Supplier.

5.2 Subject to Clause 5.1 and save as expressly granted elsewhere under the Call Off Agreement, the 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 Authority or its licensors.

5.3 The Supplier shall be liable to the Authority for all properly mitigated actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority 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").

5.4 If a Claim arises, the Authority shall notify the Supplier in writing of the Claim and the 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:

5.4.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;

5.4.2 shall take due and proper account of the interests of the Authority;

5.4.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority into disrepute; and

5.5 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.

## **6. PROTECTION OF PERSONAL DATA**

6.1 With respect to the Parties' rights and obligations under the Call Off Agreement, the Parties agree that they are joint Data Controllers in relation to the Authority's Personal Data.

6.2 Where the Supplier processes the Authority's Personal Data, the Supplier shall:

6.2.1 Process the Authority's Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Call Off Agreement or as otherwise notified by the Authority to the Supplier during the term of this Call Off Agreement);

- 6.2.2 Process the 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;
- 6.2.3 implement appropriate technical and organisational measures to protect the 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 Authority's Personal Data and having regard to the nature of Authority's Personal Data which is to be protected;
- 6.2.4 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:
- (a) are aware of and comply with the Supplier's duties under this Clause 6.2.4;
  - (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 Authority or as otherwise permitted by this Call Off Agreement; and
  - (c) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- 6.2.5 obtain the Authority's prior written approval in order to transfer all or any of the Authority's Personal Data to any Sub-Contractors for the provision of the Contract Services;
- 6.2.6 notify the Authority within five (5) Working Days if the Supplier receives:
- (a) a request from a Data Subject to have access to the Authority's Personal Data relating to that person; or
  - (b) any other complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- 6.2.7 provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint or request made (as referred to in Clause 6.2.6 including by promptly providing:
- (a) the Authority with full details of the complaint or request;
  - (b) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; ;
  - (c) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- 6.2.8 if requested by 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 6.2.8 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals; and
- 6.2.9 permit or procure permission for the Authority or the 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 Authority to enable the Authority to verify and/or procure that the Supplier is in full compliance with its obligations under this Call Off Agreement;

- 6.3 Subject to Clause 6.4 the Supplier shall not Process or otherwise transfer any Personal Data in or to any Restricted Country.
- 6.4 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 Authority on such terms as may be required by the Authority.
- 6.5 Where the Supplier enters into a data transfer agreement, the Supplier shall:
  - 6.5.1 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:
    - 6.5.1.1 a direct data processing agreement with the Authority on such terms as may be required by the Authority; or
    - 6.5.1.2 a data processing agreement with the Supplier on such terms as may be required by the Authority.
- 6.6 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Call Off Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 6.7 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Authority's Personal Data that the Authority may be irreparably harmed (including harm to its reputation). In such circumstances, the 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).
- 6.8 In the event that through any failure by the Supplier to comply with its obligations under this Call Off Agreement, Authority's Personal Data is transmitted or Processed in connection with this Call Off Agreement 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 Authority in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Supplier.
- 6.9 **Confidentiality**
  - 6.9.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in the Call Off Agreement, each Party shall:
    - 6.9.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;
    - 6.9.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent;
    - 6.9.1.3 not use or exploit the other Party's Confidential Information in any way except for the purposes anticipated under this Call Off Agreement; and
    - 6.9.1.4 immediately notify the other Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the other Party's Confidential Information.

- 6.9.2 Clause 6.2.1 shall not apply to the extent that:
- 6.9.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIRs; or
  - 6.9.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; or
  - 6.9.2.3 such information was obtained from a third party without obligation of confidentiality; or
  - 6.9.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call Off Agreement; or
  - 6.9.2.5 it is independently developed without access to the other Party's Confidential Information.
- 6.9.3 The Supplier may only disclose the Authority's Confidential Information to those members of the Supplier's Staff who are directly involved in the provision of the Contract Services and who need to know the information, and shall ensure that such individuals are aware of and shall comply with these obligations as to confidentiality.
- 6.9.4 The Supplier shall not, and shall procure that the Supplier's Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Call Off Agreement.
- 6.9.5 At the written request of the Authority, the Supplier shall sign a confidentiality undertaking prior to commencing any work in accordance with this Call Off Agreement.
- 6.9.6 Nothing in this Call Off Agreement shall prevent the Authority from disclosing the Supplier's Confidential Information:
- 6.9.6.1 to any Crown body or any other Contracting Authorities to the Framework Agreement on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any other Authority save as required by Law;
  - 6.9.6.2 to any consultant, contractor or other person engaged by the Authority for any purpose relating to or connected with this Call Off Agreement or the Framework Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an Office of Government Commerce gateway review or any additional assurance programme;
  - 6.9.6.3 for the purpose of the examination and certification of the Authority's accounts; or

- 6.9.6.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 6.9.7 The Authority shall use all reasonable endeavours to ensure that any government department, Authority, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 6.9.6 is made aware of the Authority's obligations of confidentiality.
- 6.9.8 Nothing in this Clause 6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Call Off Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 6.9.9 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Call Off Agreement, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- 6.9.10 The Supplier shall, at all times during and after the performance of this Call Off Agreement, be liable to the Authority against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Authority arising from any breach of the Supplier's obligations under this Clause 6 except and to the extent that such liabilities have resulted directly from the Authority's instructions.
- 6.9.11 In the event that the Supplier fails to comply with its obligations in this Clause 6, the Authority reserves the right to terminate this Call Off Agreement for material Default.
- 6.10 **Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989**
  - 6.10.1 The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:
    - 6.10.1.1 the Official Secrets Acts 1911 to 1989.
- 6.11 **Freedom of Information**
  - 6.11.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
  - 6.11.2 The Supplier shall and shall procure that its Sub-Contractors shall:
    - 6.11.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
    - 6.11.2.2 provide the Authority with a copy of all Information relating to a Request for Information in its possession, or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
    - 6.11.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request

for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.

- 6.11.3 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Call Off Agreement) for the purpose of this Call Off Agreement, the Authority 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.
- 6.11.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 6.11.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 6) the Authority may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the EIRs to disclose information concerning the Supplier or the Contract Services:
- 6.11.5.1 in certain circumstances without consulting the Supplier; or
  - 6.11.5.2 following consultation with the Supplier and having taken the Supplier's views into account,
  - 6.11.5.3 provided always that where Clause 6.11.6 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 6.11.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of the Call Off Agreement and in any event in accordance with the requirements of Good Industry Practice and shall permit the Authority on reasonable notice to inspect such records as requested from time to time.
- 6.11.7 The Supplier acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Authority may be obliged to disclose it in accordance with Clause 6.11.5.

## 6.12 **Transparency**

- 6.12.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Call Off Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Call Off Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 6.12.2 Notwithstanding any other term of the Call Off Agreement, the Supplier hereby gives consent to the Authority to publish the Call Off Agreement to the general public in its entirety (subject only to redaction of any information which is exempt

from disclosure in accordance with the provisions of the FOIA), including any changes to the Call Off Agreement agreed from time to time.

6.12.3 The Authority may consult with the Supplier to inform its decision regarding any redactions but the Authority shall have the final decision in its absolute discretion.

6.12.4 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish the Call Off Agreement.

## **7. REPRESENTATIONS AND WARRANTIES**

7.1 Each Party warrants that:

7.1.1 it has full capacity and authority to enter into and to perform this Call Off Agreement;

7.1.2 this Call Off Agreement is executed by its duly authorised representative;

7.1.3 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 Agreement; and

7.1.4 its obligations under this Call Off Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (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).

7.2 The Supplier represents and warrants that:

7.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

7.2.2 it has all necessary consents (including, where its procedures so require, the consent of its parent company) licences authorisations permissions (statutory, regulatory, contractual or otherwise) to enter into this Call Off Agreement;

7.2.3 in entering the Call Off Agreement it has not committed any fraud;

7.2.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;

7.2.5 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 Agreement and it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

7.2.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Call Off Agreement;



- 7.2.7 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Call Off Agreement;
- 7.2.8 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Call Off Agreement;
- 7.2.9 no proceedings or other steps have been taken and not discharged or dismissed (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;
- 7.2.10 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or Trojans, spyware or other malware into the computing environment (including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority; and
- 7.2.11 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Call Off Agreement and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Contract Services.
- 7.2.12 it has read and fully understood the Letter of Appointment and these Call Off Terms and is capable of performing the Contract Services in all respects in accordance with the Call Off Agreement;
- 7.2.13 the Supplier and each of its Sub-Contractors has all Staff, equipment and experience necessary for the proper performance of the Contract Services; and
- 7.2.14 it will at all times:
  - 7.2.14.1 perform its obligations under the Call Off Agreement with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
  - 7.2.14.2 comply with all the KPIs;
  - 7.2.14.3 carry out the Contract Services within the timeframe agreed with the Authority; and
  - 7.2.14.4 ensure to the satisfaction of the Authority that the Contract Services are provided and carried out by such appropriately qualified, skilled and experienced Suppliers and/or other Staff as shall be necessary for the proper performance of the Contract Services.
- 7.3 The Supplier shall immediately notify the Authority in writing:
  - 7.3.1 of any material detrimental change in the financial standing and/or credit rating of the Supplier;
  - 7.3.2 if the Supplier undergoes a Change of Control; and

- 7.3.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.
- 7.4 For the avoidance of doubt, the fact that any provision within the Call Off Agreement is expressed as a warranty shall not preclude any right of termination the Authority would have in respect of breach of that provision by the Supplier if that provision had not been so expressed.
- 8. AUTHORITY TERMINATION RIGHTS**
- 8.1 Termination on Insolvency**
- 8.1.1 The Authority may terminate this Call Off Agreement with immediate effect by issuing a Termination Notice to the Supplier if:
- 8.1.1.1 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, the Supplier's creditors; or
  - 8.1.1.2 a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Supplier be wound up or a resolution for the winding-up of the Supplier is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
  - 8.1.1.3 a petition is presented for the winding-up of the Supplier (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 in respect of the Supplier pursuant to section 98 of the Insolvency Act 1986; or
  - 8.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Supplier's business or assets; or
  - 8.1.1.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within ten (10) Working Days;
  - 8.1.1.6 an application is made in respect of the Supplier either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - 8.1.1.7 if the Supplier is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
  - 8.1.1.8 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
  - 8.1.1.9 in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- (a) adversely impacts on the Supplier's ability to supply the Contract Services in accordance with the Call Off Agreement; or
  - (b) could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Contract Services in accordance with this Call Off Agreement; or
- 8.1.1.10 the Supplier demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Supplier; or
  - 8.1.1.11 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Supplier comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 8.1.1.12 the Supplier being an individual dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
  - 8.1.1.13 where the Supplier is an individual or partnership, any event analogous to those listed in Clauses 8.1.1.1 to 8.1.1.11 (inclusive) occurs in relation to that individual or partnership;
  - 8.1.1.14 any event analogous with those listed in Clauses 8.1.1.1 to 8.1.1.13 occurs under the law of any other jurisdiction.

## 8.2 Termination on Material Default

8.2.1 The Authority may terminate this Call Off Agreement for material Default by issuing a Termination Notice to the Supplier where:

- 8.2.1.1 the Supplier commits any material Default of this Call Off Agreement which is not, in the reasonable opinion of the Authority, capable of remedy; :
- 8.2.1.2 the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority with ten (10) Working Days or such other longer period as may be specified by the Authority after issue of a written notice to the Supplier specifying the material Default and requesting it to be remedied; and/or
- 8.2.1.3 the Authority expressly reserves the right to terminate this Call Off Agreement for material Default, including pursuant to any of the following Clauses: Clause 6 (Confidentiality), Clause 7 (Representations and Warranties) and Clause 11 (Prevention of Fraud and Bribery).

## 8.3 Termination on Change of Control

8.3.1 The Supplier shall notify the Authority immediately if the Supplier undergoes or is intending to undergo a Change of Control and provided this does not contravene any Law shall notify the Authority immediately in writing of any circumstances

suggesting that a Change of Control is planned or in contemplation or has taken place. The Authority may terminate this Call Off Agreement by issuing a Termination Notice to the Supplier within six (6) Months of:

8.3.1.1 being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

8.3.1.2 where no notification has been made, the date that the Authority becomes aware that a Change of Control has occurred or is planned or is in contemplation,

but shall not be permitted to terminate where the Authority's written consent to the continuation of this Call Off Agreement was granted prior to the Change of Control.

#### **8.4 Termination in Relation to Financial Standing**

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

8.4.1.1 adversely impacts on the Supplier's ability to supply the Contract Services under this Call Off Agreement; or

8.4.1.2 could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Contract Services under this Call Off Agreement.

#### **8.5 Termination Without Cause**

8.5.1 The Authority shall have the right to terminate this Call Off Agreement at any time by issuing a Termination Notice to the Supplier giving written notice of at least ten (10) days.

#### **8.6 Termination in Relation to the Framework Agreement**

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

#### **8.7 Partial Termination**

8.7.1 Where the Authority is entitled to terminate this Call Off Agreement pursuant to this Clause 8, the Authority shall be entitled to terminate all or part of this Call Off Agreement provided always that the parts of this Call Off Agreement not terminated can operate effectively to deliver the intended purpose of this Call Off Agreement or a part thereof.

#### **8.8 Termination for breach of Regulations**

8.8.1 The Authority may terminate this Call Off Agreement by issuing a Termination Notice to the Supplier where Regulation 73(1) of the Public Contracts Regulations 2015 applies.

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

- 9.1 Subject to Clause 9.2, where the Authority terminates this Call Off Agreement pursuant to Clause 8 (Authority Termination Rights) and then makes other arrangements for the supply of this Call Off Agreement Services:
- 9.1.1 the Authority may recover from the Supplier the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Authority in securing the Contract Services in accordance with the requirements of this Call Off Agreement;
  - 9.1.2 the Authority shall take all reasonable steps to mitigate such additional expenditure; and
  - 9.1.3 no further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements, whereupon the 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.
- 9.2 Clause 9.1 shall not apply where the Authority terminates this Call Off Agreement:
- 9.2.1 solely pursuant to Clause 8.3 or Clause 8.4; or
  - 9.2.2 solely pursuant to Clause 8.6 if termination pursuant to Clause 8.6 occurs as a result of termination of the Framework Agreement pursuant to the provisions of clauses 33.1 or 33.4 thereof.
- 9.3 On the termination of this Call Off Agreement for any reason, the Supplier shall, at the request of the Authority and at the Supplier's cost:
- 9.3.1 immediately return to the Authority all Confidential Information and the Authority's Personal Data in its possession or in the possession or under the control of any permitted Sub-Contractors, which was obtained or produced in the course of providing the Contract Services, except where the retention of Authority's Personal Data is required by Law and or the FCA;
  - 9.3.2 promptly destroy all copies of the Authority Data and provide written confirmation to the Authority that the data has been destroyed, except where the retention of Authority's Personal Data is required by Law and or the FCA;
  - 9.3.3 immediately deliver to the 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 Authority in connection with this Call Off Agreement provided to the Supplier;
  - 9.3.4 vacate, and procure that the Supplier's Staff vacate, any premises of the Authority occupied for the purposes of providing the Contract Services;
  - 9.3.5 return to the Authority any sums prepaid in respect of the Contract Services not provided by the Call Off Agreement Expiry Date or termination (howsoever arising); and
  - 9.3.6 promptly provide all information concerning the provision of the Contract Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Contract Services have been

provided or for the purpose of allowing the Authority or any replacement Supplier to conduct due diligence.

- 9.4 Without prejudice to any other right or remedy which the Authority may have, if any Contract Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of this Call Off Agreement then the Authority may (whether or not any part of the Contract Services have been delivered) do any one or more of the following:
- 9.4.1 at the Authority's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the performance of the Contract Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of this Call Off Agreement are fulfilled, in accordance with the Authority's instructions;
  - 9.4.2 without terminating this Call Off Agreement, itself supply or procure the supply of all or part of the Contract Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Supplier will once more be able to supply all or such part of the Contract Services in accordance with this Call Off Agreement;
  - 9.4.3 without terminating the whole of this Call Off Agreement, terminate this Call Off Agreement in respect of part of the Contract Services only and thereafter itself supply or procure a third party to supply such part of the Contract Services; and/or
  - 9.4.4 charge the Supplier for, whereupon the Supplier shall on demand pay, any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Contract Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Contract Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Contract Services.
- 9.5 Save as otherwise expressly provided in this Call Off Agreement:
- 9.5.1 termination or expiry of this Call Off Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Agreement prior to termination or expiration and nothing in this Call Off Agreement shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
  - 9.5.2 termination of this Call Off Agreement shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under the following Clauses: Clause 3 (Call Off Agreement Charges, Payment and Invoicing); Clause 4 (Liability and Insurance); Clause 5 (Intellectual Property Rights); Clause 6 (Protection of Personal Data); Clause 6 (Confidentiality); Clause 6.10 (Official Secrets Act); Clause 6.11 (Freedom of Information); Clause 11 (Prevention of Fraud and Bribery); Clause 15 (Waiver and Cumulative Remedies); Clause 19 (Entire Agreement); Clause 20 (Third Party Rights); Clause 21 (Notices); Clause 22 (Dispute and Law); (Exit Management); and, without limitation to the foregoing, any other provision of this Call Off Agreement which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of this Call Off Agreement.
- 9.6 The Supplier shall fully indemnify the Authority against any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.

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

- 10.1 The Supplier shall not, and shall procure that its Sub-Contractors shall not, make any press announcements or publicise this Call Off Agreement in any way without the Authority's prior written approval and shall take reasonable steps to ensure that the Supplier's Staff and professional advisors comply with this Clause 11. Any such press announcements or publicity proposed under this Clause 11 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
- 10.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Authority shall be entitled to publicise this Call Off Agreement in accordance with any legal obligation upon the Authority including any examination of this Call Off Agreement by the Auditors.
- 10.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.

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

- 11.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Call Off Commencement Date:
- 11.1.1 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
  - 11.1.2 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.
- 11.2 The Supplier shall not during the Call Off Agreement Period:
- 11.2.1 commit a Prohibited Act; and/or
  - 11.2.2 do or suffer anything to be done which would cause the Authority or any of the 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.
- 11.3 The Supplier shall during the Call Off Agreement Period:
- 11.3.1 establish, maintain and enforce, and require that its 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;
  - 11.3.2 keep appropriate records of its compliance with its obligations under Clause 11.3.1 and make such records available to the Authority on request;
  - 11.3.3 if so required by the Authority, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Authority in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Contract Services in connection with this Call Off Agreement are compliant with the relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and

- 11.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 11.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 28.1 or 12.2, or has reason to believe that it has or any of the Supplier Personnel have:
  - 11.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 11.4.2 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
  - 11.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call Off Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Call Off Agreement has committed or attempted to commit a Prohibited Act.
- 11.5 If the Supplier makes a notification to the Authority pursuant to Clause 11.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.
- 11.6 If the Supplier breaches Clause 11.3, the Authority may by notice:
  - 11.6.1 require the Supplier to remove from performance of this Call Off Agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
  - 11.6.2 immediately terminate this Call Off Agreement for material Default.
- 11.7 Any notice served by the Authority under Clause 11.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Call Off Agreement shall terminate).

## **12. EQUALITY AND DIVERSITY**

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



### 13. TRANSFER AND SUB-CONTRACTING

- 13.1 The Supplier shall not assign, novate, enter into a Sub-Contract in respect of, or in any other way dispose of, this Call Off Agreement or any part of it without the Authority's prior written consent.
- 13.2 The Supplier shall be responsible for all acts and omissions of its Sub-Contractors and those employed or engaged by the Sub-Contractors as though they are its own.
- 13.3 The Authority may assign, novate or otherwise dispose of its rights and obligations under this Call Off Agreement or any part thereof to:
- 13.3.1 any other Contracting Authorities; or
  - 13.3.2 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 Authority; or
  - 13.3.3 any private sector body which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Call Off Agreement.
- 13.4 Any change in the legal status of the Authority such that it ceases to be a Authority shall not, subject to Clause 13.5, affect the validity of this Call Off Agreement. In such circumstances, this Call Off Agreement shall bind and inure to the benefit of any successor body to the Authority.
- 13.5 If the rights and obligations under this Call Off Agreement are assigned, novated or otherwise disposed of pursuant to Clause 14.3 a body which is not a Contracting Authorities there is a change in the legal status of the Authority such that it ceases to be a Contracting Authorities (in the remainder of this Clause any such body being referred to as a "**Transferee**"):
- 13.5.1 the rights of termination of the Authority in Clause 8 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and
  - 13.5.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Call Off Agreement or any part thereof with the previous consent in writing of the Supplier.
- 13.6 The Authority may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this Call Off Agreement. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under this Call Off Agreement and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 13.7 For the purposes of Clause 14.5 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Call Off Agreement.

### 14. SUPPLY CHAIN PROTECTION

14.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- 14.1.1 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;
- 14.1.2 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;
- 14.1.3 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 15.1.1 and 15.1.2 above; and
- 14.1.4 conferring a right to the Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

14.2 The Supplier shall:

- 14.2.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
- 14.2.2 provide the Authority with a quarterly summary of its compliance with this Clause 14.1.4 certified by a director of the Supplier as being accurate and not misleading.

14.3 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.

14.4 If the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

## **15. WAIVER AND CUMULATIVE REMEDIES**

15.1 The failure of either Party to insist upon strict performance of any provision of this Call Off Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Call Off Agreement.

15.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 21.

15.3 A waiver by either Party of any right or remedy arising from a breach of this Call Off Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Call Off Agreement.

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

## **16. FURTHER ASSURANCES**

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

## **17. SEVERABILITY**

- 17.1 If any provision of this Call Off Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Call Off Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call Off Agreement shall not be affected.
- 17.2 In the event that any deemed deletion under Clause 17.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Agreement or materially alters the balance of risks and rewards in this Call Off Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Agreement and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.
- 17.3 If the Parties are unable to resolve the good faith negotiations referred to in Clause 17.2 within twenty (20) Working Days of the date of the notice given pursuant to Clause 18.2 and to the satisfaction of both Parties, this Call Off Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Agreement is terminated pursuant to this Clause 17.

## **18. RELATIONSHIP OF PARTIES**

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

## **19. ENTIRE AGREEMENT**

- 19.1 This Call Off Agreement, 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 in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.
- 19.2 Each of the Parties acknowledges and agrees that in entering into this Call Off Agreement it does not rely on, and shall have no 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 Agreement.
- 19.3 The Supplier acknowledges that it has:
- 19.3.1 entered into this Call Off Agreement in reliance on its own due diligence alone; and
  - 19.3.2 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 Agreement.

- 19.4 Nothing in Clauses 19.1 and 19.2 shall operate:
- 19.4.1 to exclude fraud or fraudulent misrepresentation; or
- 19.4.2 to limit the rights of the Authority pursuant to Clause 33 of the Framework Agreement (Third Party Rights).

## 20. THIRD PARTY RIGHTS

- 20.1 A person who is not a party to this Call Off Agreement 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 20.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 20.2 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 Agreement or any one or more Clauses of it.

## 21. NOTICES

- 21.1 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 21.4 or to such other address or email address as that Party may have stipulated in accordance with Clause 21.5.
- 21.2 A notice shall be deemed to have been received:
- 21.2.1 if delivered personally, at the time of delivery;
- 21.2.2 in the case of pre-paid first class post, special or other recorded delivery two (2) Working Days from the date of posting; and
- 21.2.3 in the case of electronic communication, two (2) Working Days after posting of a confirmation letter.
- 21.3 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 21.4 (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.
- 21.4 For the purposes of Clause 21.2, the address or email address of each Party shall be the address or email address specified in paragraph **Error! Reference source not found.** of the Letter of Appointment.
- 21.5 Either Party may change its address or email address for service by serving written notice in accordance with this Clause 21.
- 21.6 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..

## **22. DISPUTES AND LAW**

### **22.1 Governing Law and Jurisdiction**

This Call Off Agreement 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 Agreement.

For the purposes of this Contract, the Supplier will comply with all relevant laws and procedures that it operates the services in on behalf of the Authority.

### **22.2 Dispute Resolution**

The Parties shall follow the dispute resolution procedure as set out in Call-Off Schedule 1, Dispute Resolution Procedure.

## CALL OFF SCHEDULE 1: DISPUTE RESOLUTION PROCEDURE

### 23. DEFINITIONS

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

|                    |   |
|--------------------|---|
| "CEDR"             | the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;                                |
| "Counter Notice"   | has the meaning given to it in paragraph 28.2 of this Call Off Schedule;  |
| "Exception"        | a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Agreement or in the supply of the Contract Services; |
| "Expert"           | the person appointed by the Parties in accordance with paragraph 27.2 of this Call Off Schedule;  |
| "Mediation Notice" | has the meaning given to it in paragraph 25.2 of this Call Off Schedule; and  |
| "Mediator"         | the independent third party appointed in accordance with paragraph 26.2 of this Call Off Schedule.  |

### 24. INTRODUCTION

24.1 If a Dispute arises then:

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

24.2 The Dispute Notice shall set out:

- 24.2.1 the material particulars of the Dispute;
- 24.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- 24.2.3 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 24.6 of this Call Off Schedule, the reason why.

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

24.4 Subject to paragraph 25.2 of this Call Off Schedule, the Parties shall seek to resolve Disputes:

- 24.4.1 first by commercial negotiation (as prescribed in paragraph 25 of this Call Off Schedule);
- 24.4.2 then by mediation (as prescribed in paragraph 26 of this Call Off Schedule); and
- 24.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Call Off Schedule) or litigation (in accordance with Clause 22.1 of this Call Off Agreement (Governing Law and Jurisdiction)).
- 24.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 27 of this Call Off Schedule) where specified under the provisions of this Call Off Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 27 of this Call Off Schedule.
- 24.6 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 Authority.
- 24.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 24.5 or is otherwise specified under the provisions of this Call Off Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
  - 24.7.1 in paragraph 25.2.3, ten (10) Working Days;
  - 24.7.2 in paragraph 26.2, ten (10) Working Days;
  - 24.7.3 in paragraph 27.2, five (5) Working Days; and
  - 24.7.4 in paragraph 28.2, ten (10) Working Days.
- 24.8 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.

## **25. COMMERCIAL NEGOTIATIONS**

- 25.1 Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authority's Commercial Contract Manager and the Supplier's Account Manager.
- 25.2 If:
  - 25.2.1 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;
  - 25.2.2 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 25 of this Call Off Schedule; or

25.2.3 the Parties have not settled the Dispute in accordance with paragraph 25.1 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 26 of this Call Off Schedule.

## **26. MEDIATION**

- 26.1 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 Agreement.
- 26.2 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.
- 26.3 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.
- 26.4 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.

## **27. EXPERT DETERMINATION**

- 27.1 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.
- 27.2 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.
- 27.3 The Expert shall act on the following basis:
  - 27.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
  - 27.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
  - 27.3.3 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;
  - 27.3.4 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;



- 27.3.5 the process shall be conducted in private and shall be confidential; and
- 27.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## **28. ARBITRATION**

- 28.1 The Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 28.4 of this Call Off Schedule.
- 28.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the 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 28.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 22.1 of this Call Off Agreement (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 28.3 If:
- 28.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 28.4 of this Call Off Schedule shall apply;
- 28.3.2 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 Agreement (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
- 28.3.3 the Authority does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 28.2 of this Call Off Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 28.4 of this Call Off Schedule or commence court proceedings in the courts in accordance with Clause 22.1 of this Call Off Agreement (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 28.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 28.1 to 28.3 of this Call Off Schedule, the Parties hereby confirm that:
- 28.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Agreement (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 28.4.5 to 28.4.7 of this Call Off Schedule);
- 28.4.2 the arbitration shall be administered by the LCIA;
- 28.4.3 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 Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 28.4.4 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;

- 28.4.5 the chair of the arbitral tribunal shall be British;
- 28.4.6 the arbitration proceedings shall take place in London and in the English language; and
- 28.4.7 the seat of the arbitration shall be London.

**29. URGENT RELIEF**

- 29.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
  - 29.1.1 for interim or interlocutory remedies in relation to this Call Off Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
  - 29.1.2 where compliance with paragraph 24.1 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.