

### **36.3 Non-recoverable Losses**

- 36.3.1 Subject to Clause 36.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:
- (a) indirect, special or consequential Loss;
  - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

### **36.4 Recoverable Losses**

- 36.4.1 Subject to Clause 36.2 (Financial Limits), and notwithstanding Clause 36.3 (Non-recoverable Losses), the Supplier acknowledges that the Contracting Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Contracting Authority to the extent that they arise as a result of a Default by the Supplier:
- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Contracting Authority in dealing with the consequences of the Default;
  - (b) any wasted expenditure or charges;
  - (c) the additional cost of procuring Replacement Services for the remainder of the Call Off Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Call Off Contract;
  - (d) any compensation or interest paid to a third party by the Customer; and
  - (e) any fine, penalty or costs incurred by the Contracting Authority pursuant to Law.

### **36.5 Miscellaneous**

- 36.5.1 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call Off Contract.
- 36.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 36.2 (Financial Limits).

## **37. INSURANCE**

- 37.1 This Clause 37 will only apply where specified in the Order Form or elsewhere in this Call Off Contract.
- 37.2 Notwithstanding any benefit to the Contracting Authority of the policy or policies of insurance referred to in Clause 32 (Insurance) of the Framework Agreement, the Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Framework Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract.

- 37.3 Without limitation to the generality of Clause 37.2 the Supplier shall ensure that it maintains the policy or policies of insurance as are stipulated in the Order Form or elsewhere in this Call Off Contract.
- 37.4 The Supplier shall effect and maintain the policy or policies of insurance referred to in this Clause 37 for six (6) years after the Call Off Expiry Date.
- 37.5 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this Clause 37 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 37.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under this Clause 37 the Contracting Authority may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 37.7 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 37.8 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Contracting Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

## **J. REMEDIES AND RELIEF**

### **38. CONTRACTING AUTHORITY REMEDIES FOR DEFAULT**

#### **38.1 Remedies**

38.1.1 Without prejudice to any other right or remedy of the Contracting Authority howsoever arising (including under Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 13 (Service Levels and Service Credits) and 6.4.1(b) (Delay Payments), if the Supplier commits any Default of this Call Off Contract then the Contracting Authority may (whether or not any part of the Services have been Delivered) do any of the following:

- (a) at the Contracting Authority option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Contracting Authority instructions;
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Call Off Contract;

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

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

## 38.2 Rectification Plan Process

- 38.2.1 Where the Contracting Authority has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 38.1.1(c)(i):
- (a) the Supplier shall submit a draft Rectification Plan to the Contracting Authority for it to review as soon as possible and in any event within the number of Working Days specified in the Order Form or elsewhere in this Call Off Contract (or such other period as may be agreed between the Parties) from the date of Contracting Authority instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Contracting Authority request for a draft Rectification Plan.
  - (b) the draft Rectification Plan shall set out:
    - (i) full details of the Default that has occurred, including a root cause analysis;
    - (ii) the actual or anticipated effect of the Default; and
    - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

- 38.2.2 The Supplier shall promptly provide to the Contracting Authority any further documentation that the Contracting Authority requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of Call Off Schedule 12 (Dispute Resolution Procedure).
- 38.2.3 The Contracting Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
  - (b) will take too long to complete;
  - (c) will not prevent reoccurrence of the Default; and/or
  - (d) will rectify the Default but in a manner which is unacceptable to the Customer.
- 38.2.4 The Contracting Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Contracting Authority rejects the draft Rectification Plan, the Contracting Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Contracting Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Contracting Authority notice rejecting the first draft.
- 38.2.5 If the Contracting Authority consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

### **39. SUPPLIER RELIEF DUE TO CONTRACTING AUTHORITY CAUSE**

39.1 If the Supplier has failed to:

- 39.1.1 Achieve a Milestone by its Milestone Date;
- 39.1.2 provide the Services in accordance with the Service Levels;
- 39.1.3 comply with its obligations under this Call Off Contract,  
(each a "Supplier Non-Performance"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Contracting Authority Cause, then (subject to the Supplier fulfilling its obligations in Clause 17 (Supplier Notification of Contracting Authority Cause)):

- (a) the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Contracting Authority Cause;
- (b) the Contracting Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 41 (Contracting Authority Termination Rights) except Clause 41.6 (Termination Without Cause);

- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
  - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Contracting Authority Cause;
  - (ii) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Contracting Authority Cause;
  - (iii) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Contracting Authority Cause; and/or
- (d) where the Supplier Non-Performance constitutes a Service Level Failure:
  - (i) the Supplier shall not be liable to accrue Service Credits;
  - (ii) the Contracting Authority shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause (Critical Service Level Failure); and
  - (iii) the Supplier shall be entitled to invoice for the Call Off Contract Charges for the provision of the relevant Services affected by the Contracting Authority Cause,
  - (iv) in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Contracting Authority Cause.

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

- 39.2.1 comply with its obligations under Clause 17 (Notification of Contracting Authority Cause); and
- 39.2.2 within ten (10) Working Days of becoming aware that a Contracting Authority Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Contracting Authority notice (a "Relief Notice") setting out details of:
  - (a) the Supplier Non-Performance;
  - (b) the Contracting Authority Cause and its effect on the Supplier's ability to meet its obligations under this Call Off Contract; and
  - (c) the relief claimed by the Supplier.

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

39.4 Without prejudice to Clauses 8.5 (Continuing obligation to provide the Services), if a Dispute arises as to:

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

39.4.2 the nature and/or extent of the relief claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

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

#### **40. FORCE MAJEURE**

40.1 Subject to the remainder of this Clause 40 (and, in relation to the Supplier, subject to its compliance with any obligations in Clause 15 (Business Continuity and Disaster Recovery)), a Party may claim relief under this Clause 40 from liability for failure to meet its obligations under this Call Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

40.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

40.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 40 to the extent that consequences of the relevant Force Majeure Event:

40.3.1 are capable of being mitigated by any of the provision of any Services, including any BCDR Services, but the Supplier has failed to do so; and/or

40.3.2 should have been foreseen and prevented or avoided by a prudent provider of Services similar to the Services, operating to the standards required by this Call Off Contract.

40.4 Subject to Clause 40.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

40.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

40.6 Where, as a result of a Force Majeure Event:

40.6.1 an Affected Party fails to perform its obligations in accordance with this Call Off Contract, then during the continuance of the Force Majeure Event:

- (a) the other Party shall not be entitled to exercise any rights to terminate this Call Off Contract in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
- (b) the Supplier shall not be liable for any Default and the Contracting Authority shall not be liable for any Contracting Authority Cause arising as a result of such failure;

40.6.2 the Supplier fails to perform its obligations in accordance with this Call Off Contract:

- (a) the Contracting Authority shall not be entitled:
  - (i) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 38.1.1(b) and 38.1.1(c) (Contracting Authority Remedies for Default) as a result of such failure;
  - (ii) to receive Delay Payments pursuant to Clause 6.4 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
  - (iii) to receive Service Credits or withhold and retain any of the Call Off Contract Charges as Compensation for Critical Service Level Failure pursuant to Clause 14 (Critical Service Level Failure) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; and
- (b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.

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

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

## **K. TERMINATION AND EXIT MANAGEMENT**

### **41. CONTRACTING AUTHORITY TERMINATION RIGHTS**

#### **41.1 Termination in Relation to Guarantee**

41.1.1 Where this Call Off Contract is conditional upon the Supplier procuring a Call Off Guarantee pursuant to Clause 4 (Call Off Guarantee), the Contracting Authority may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where:

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

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

- (e) the Supplier fails to provide the documentation required by Clause 4.1 by the date so specified by the Customer.

#### **41.2 Termination on Material Default**

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

- (a) the Supplier commits a Critical Service Level Failure;
- (b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Contracting Authority are acceptable;
- (c) as a result of any Defaults, the Contracting Authority incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clauses 36.2.1(a) and 36.2.1(b) (Liability);
- (d) the Contracting Authority expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: 6.2.3 (Implementation Plan), 8.3.2 (Undelivered Services), 14.1 (Critical Service Level Failure), 16.4 (Disruption), 21.5 (Records, Audit Access and Open Book Data), 24 (Promoting Tax Compliance), 34.3.9 (Confidentiality), 50.6.2 (Prevention of Fraud and Bribery), Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Call Off Schedule 11 (Staff Transfer);
- (e) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Customer, capable of remedy; and/or
- (f) the Supplier commits a Default, including a material Default, which in the opinion of the Contracting Authority is remediable but has not remedied such Default to the satisfaction of the Contracting Authority in accordance with the Rectification Plan Process;

41.2.2 For the purpose of Clause 41.2.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such

Defaults are remedied) which taken together constitute a material Default.

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

41.3.1 The Contracting Authority may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Contracting 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 Services under this Call Off Contract; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Call Off Contract.

#### **41.4 Termination on Insolvency**

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

#### **41.5 Termination on Change of Control**

41.5.1 The Supplier shall notify the Contracting 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 Contracting Authority immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation or has taken place. The Contracting Authority may terminate this Call Off Contract by issuing a Termination Notice to the Supplier within six (6) Months of:

- (a) being notified in writing that a Change of Control has occurred or is planned or in contemplation; or
- (b) where no notification has been made, the date that the Contracting 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 an Approval was granted prior to the Change of Control.

#### **41.6 Termination Without Cause**

41.6.1 The Contracting Authority shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving written notice of at least the number of days stipulated, for the purposes of this Clause 41.6.1, in the Order Form or elsewhere in this Call Off Contract.

#### **41.7 Termination in Relation to Framework Agreement**

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

#### **41.8 Termination In Relation to Benchmarking**

41.8.1 The Contracting Authority may terminate this Call Off Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in paragraphs 1 and 2 of

**41.9 Termination in Relation to Variation**

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

**41.10 Termination for failing to comply with the technical requirements of Cyber Essentials**

41.11 Where the Supplier and/or its Sub Contractors fails to comply with the technical requirements prescribed by Cyber Essentials in accordance with clause 24.5.5 of the Framework Agreement, the Contracting Authority shall be entitled to terminate this Call-Off Contract with immediate effect by serving a Termination Notice on the Supplier

**42. SUPPLIER TERMINATION RIGHTS**

**42.1 Termination on Contracting Authority Cause for Failure to Pay**

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

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

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

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

**43. TERMINATION BY EITHER PARTY**

**43.1 Termination for continuing Force Majeure Event**

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

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

- 44.1 Where the Contracting Authority has the right to terminate this Call Off Contract, the Contracting Authority shall be entitled to terminate or suspend all or part of this Call Off Contract provided always that, if the Contracting Authority elects to terminate or suspend this Call Off Contract in part, the parts of this Call Off Contract not terminated or suspended can, in the Contracting Authority reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Call Off Contract.
- 44.2 Any suspension of this Call Off Contract under Clause 44.1 shall be for such period as the Contracting Authority may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.
- 44.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Call Off Contract Charges, provided that the Supplier shall not be entitled to:
- 44.3.1 an increase in the Call Off Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Contracting Authority termination rights under Clause 41 (Contracting Authority Termination Rights) except Clause 41.6 (Termination Without Cause); and
- 44.3.2 reject the Variation.

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

- 45.1 Consequences of termination under Clauses 41.2 (Termination on Material Default), 41.3 (Termination in Relation to Financial Standing), 41.7 (Termination in Relation to Framework Agreement), 41.8 (Termination in Relation to Benchmarking) and 41.9 (Termination in Relation to Variation)
- 45.1.1 Where the Contracting Authority
- (a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause; and
- (b) then makes other arrangements for the supply of the Services, the Contracting Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Contracting Authority throughout the remainder of the Call Off Contract Period provided that Contracting Authority shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Contracting Authority to the Supplier until the Contracting Authority has established the final cost of making those other arrangements.
- 45.2 Consequences of termination under Clauses 41.6 (Termination without Cause) and 42.1 (Termination on Contracting Authority Cause for Failure to Pay)
- 45.2.1 Where:
- (a) the Contracting Authority terminates (in whole or in part) this Call Off Contract under Clause 41.6 (Termination without Cause); or

- (b) the Supplier terminates this Call Off Contract pursuant to Clause 42.1 (Termination on Contracting Authority Cause for Failure to Pay),

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

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

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

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

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

45.4 Consequences of Termination for Any Reason

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

- (a) termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Contracting Authority or the Supplier under Clauses 21 (Records, Audit Access & Open Book Data), 33 (Intellectual Property Rights), 34.3 (Confidentiality), 34.5 (Freedom of Information) 34.6 (Protection of Personal Data), 36 (Liability), 45 (Consequences of Expiry or Termination), 51 (Severance), 53 (Entire Agreement), 54 (Third Party Rights) 56 (Dispute Resolution) and 57 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), Call Off Schedule 10 (Exit Management), Call Off Schedule 11 (Staff Transfer), Call Off Schedule 12 (Dispute

Resolution Procedure) and, without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

#### **45.5 Exit management**

45.5.1 The Parties shall comply with the exit management provisions set out in Call Off Schedule 10 (Exit Management).

### **L. MISCELLANEOUS AND GOVERNING LAW**

#### **46. COMPLIANCE**

##### **46.1 Health and Safety**

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

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

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

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

##### **46.2 Equality and Diversity**

46.2.1 The Supplier shall:

- (a) perform its obligations under this Call Off Contract (including those in relation to provision of the Services) in accordance with:
  - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
  - (ii) any other requirements and instructions which the Contracting Authority reasonably imposes in connection with any equality obligations imposed on the Contracting Authority at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Contracting 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).

##### **46.3 Official Secrets Act and Finance Act**

- 46.3.1 The Supplier shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
  - (b) section 182 of the Finance Act 1989.

#### 46.4 Environmental Requirements

- 46.4.1 The Supplier shall, when working on the Sites, perform its obligations under this Call Off Contract in accordance with the Environmental Policy of the Customer.
- 46.4.2 The Contracting Authority shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

### 47. ASSIGNMENT AND NOVATION

- 47.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Call Off Contract or any part of it without Approval.
- 47.2 The Contracting Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Call Off Contract or any part thereof to:
- 47.2.1 any other Contracting Authority; or
  - 47.2.2 any other Authority established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Contracting Authority; or
  - 47.2.3 any private sector Authority which substantially performs the functions of the Customer,

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

- 47.3 A change in the legal status of the Contracting Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 47.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor Authority to the Customer.
- 47.4 If the Contracting Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a Authority which is not a Contracting Authority or if a Authority which is not a Contracting Authority succeeds the Contracting Authority (both "Transferee" in the rest of this Clause) the right of termination of the Contracting Authority in Clause 41.4 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in Clause 41.4 (Termination on Insolvency) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee).

### 48. WAIVER AND CUMULATIVE REMEDIES

- 48.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 55 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Call Off Contract or by Law shall

not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of.

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

#### **49. RELATIONSHIP OF THE PARTIES**

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

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

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

50.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

50.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

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

50.2.1 commit a Prohibited Act; and/or

50.2.2 do or suffer anything to be done which would cause the Contracting Authority or any of the Contracting Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

50.3 The Supplier shall during the Call Off Contract Period:

50.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

50.3.2 keep appropriate records of its compliance with its obligations under Clause 50.3.1 and make such records available to the Contracting Authority on request;

50.3.3 if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Contracting Authority in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Call Off Contract. The Supplier shall provide such supporting evidence of compliance as the Contracting Authority may reasonably request; and

- 50.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Contracting Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 50.4 The Supplier shall immediately notify the Contracting Authority in writing if it becomes aware of any breach of Clause 50.1, or has reason to believe that it has or any of the Supplier Personnel have:
- 50.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 50.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 50.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call Off Contract or otherwise suspects that any person or Party directly or indirectly connected with this Call Off Contract has committed or attempted to commit a Prohibited Act.
- 50.5 If the Supplier makes a notification to the Contracting Authority pursuant to Clause 50.4, the Supplier shall respond promptly to the Contracting Authority enquiries, co-operate with any investigation, and allow the Contracting Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 21 (Records, Audit Access and Open Book Data).
- 50.6 If the Supplier breaches Clause 50.3, the Contracting Authority may by notice:
- 50.6.1 require the Supplier to remove from performance of this Call Off Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
- 50.6.2 immediately terminate this Call Off Contract for material Default.
- 50.7 Any notice served by the Contracting Authority under Clause 50.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Contracting Authority believes has committed the Prohibited Act and the action that the Contracting Authority has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).

## **51. SEVERANCE**

- 51.1 If any provision of this Call Off Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Call Off Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call Off Contract shall not be affected.
- 51.2 In the event that any deemed deletion under Clause 51.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract or materially alters the balance of risks and rewards in this Call Off Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

51.3 If the Parties are unable to resolve the Dispute arising under this Clause 51 within twenty (20) Working Days of the date of the notice given pursuant to Clause 51.2, this Call Off Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Contract is terminated pursuant to this Clause 51.

## **52. FURTHER ASSURANCES**

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

## **53. ENTIRE AGREEMENT**

53.1 This Call Off Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

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

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

## **54. THIRD PARTY RIGHTS**

54.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs and 1.4, 2.3 and 2.8 of Part D of Call Off Schedule 11 (Staff Transfer) and the provisions of paragraph 9.9 of Schedule 10 (Exit Management) (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

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

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

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

## **55. NOTICES**

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

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

Manner of Delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 55.3 and 55.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 <sup>st</sup> Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

55.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1<sup>st</sup> Class or other prepaid in the manner set out in the table in Clause 55.2:

55.3.1 any Termination Notice (Clause (Contracting Authority Termination Rights)),

55.3.2 any notice in respect of:

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

55.3.3 any Dispute Notice.

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

earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

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

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

## **56. DISPUTE RESOLUTION**

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

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

## **57. GOVERNING LAW AND JURISDICTION**

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

57.2 Subject to Clause 56 (Dispute Resolution) and Call Off Schedule 12 (Dispute Resolution Procedure) (including the Contracting Authority right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.

## CALL OFF SCHEDULE 1: DEFINITIONS

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

<b>"Achieve"</b>	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Strategy Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and <b>"Achieved"</b> , <b>"Achieving"</b> and <b>"Achievement"</b> shall be construed accordingly;
<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>"Additional Clauses"</b>	means the additional Clauses in Call Off Schedule 14 (Alternative and/or Additional Clauses) and any other additional Clauses set out in the Order Form or elsewhere in this Call Off Contract;
<b>"Affected Party"</b>	means the party seeking to claim relief in respect of a Force Majeure;
<b>"Affiliates"</b>	means in relation to a Authority corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that Authority corporate from time to time;
<b>"Alternative Clauses"</b>	means the alternative Clauses in Call Off Schedule 14 (Alternative and/or Additional Clauses) and any other alternative Clauses set out in the Order Form or elsewhere in this Call Off Contract;
<b>"Approval"</b>	means the prior written consent of the Contracting Authority and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Approved Sub-Licensee"</b>	means any of the following: <ul style="list-style-type: none"> <li>a) a Central Government Authority;</li> <li>b) any third party providing services to a Central Government Authority; and/or</li> <li>c) any Authority (including any private sector Authority) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;</li> </ul>
<b>"Auditor"</b>	means: <ul style="list-style-type: none"> <li>a) the Contracting Authority internal and external auditors;</li> <li>b) the Contracting Authority statutory or regulatory auditors;</li> </ul>

	<p>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office</p> <p>d) HM Treasury or the Cabinet Office</p> <p>e) any party formally appointed by the Contracting Authority to carry out audit or similar review functions; and</p> <p>f) successors or assigns of any of the above;</p>
"Authority"	means <b>THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office")</b> as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
"BCDR Plan"	means the plan prepared pursuant to paragraph 2 of Call Off Schedule 9 (Business Continuity and Disaster Recovery), as may be amended from time to time;
"BCDR Services"	means the Business Continuity Services and Disaster Recovery Services;
"Business Continuity Services"	has the meaning given to it in paragraph 4.2.2 of Call Off Schedule 9 (Business Continuity and Disaster Recovery);
"Call Off Contract"	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Services made between a Contracting Authority and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
"Call Off Commencement Date"	means the date of commencement of this Call Off Contract set out in paragraph 1.1 of the Order Form;
"Call Off Contract"	means this contract between the Contracting Authority and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Order Form and the Call Off Terms;
"Call Off Contract Charges"	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Contracting Authority under this Call Off Contract, as set out in Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Call Off Contract less any Deductions;
"Call Off Contract Period"	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date, which shall in no event exceed a maximum duration of four (4) years;
"Call Off Contract Year"	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or

	each anniversary thereof;
<b>"Call Off Expiry Date"</b>	means: a) the end date of the Call Off Initial Period or any Call Off Extension Period; or b) if this Call Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call Off Contract;
<b>"Call Off Extension Period"</b>	means the extension term of this Call Off Contract from the end date of the Call Off Initial Period to the end date of the extension period stated in the Order Form;
<b>"Call Off Guarantee"</b>	means a deed of guarantee that may be required under this Call Off Contract in favour of the Contracting Authority in the form set out in Framework Schedule 13 (Guarantee) granted pursuant to Clause 7 (Call Off Guarantee);
<b>"Call Off Guarantor"</b>	means the person, in the event that a Call Off Guarantee is required under this Call Off Contract, acceptable to the Contracting Authority to give a Call Off Guarantee;
<b>"Call Off Initial Period"</b>	means the initial term of this Call Off Contract from the Call Off Commencement Date to the end date of the initial term stated in the Order Form;
<b>"Call Off Schedule"</b>	means a schedule to this Call Off Contract;
<b>"Call Off Terms"</b>	means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Services, together with the Call Off Schedules hereto;
<b>"Central Government Authority"</b>	means a Authority listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Authority or Assembly Sponsored Public Authority (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
<b>"Change in Law"</b>	means any change in Law which impacts on the supply of the Services and performance of the Call Off Terms which comes into force after the Call Off Commencement Date;
<b>"Change of Control"</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	means the charges raised under or in connection with a Call Off Agreement from time to time, which Charges

	shall be calculated in a manner which is consistent with the Charging Structure;
<b>"Charging Structure"</b>	means the structure to be used in the establishment of the charging model which is applicable to each Call Off Agreement, which structure is set out in Framework Schedule 3 (Framework Prices and Charging Structure);
<b>"Commercially Sensitive Information"</b>	means the Confidential information listed in the Order Form (if any) comprising of a commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Contracting Authority that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Supply"</b>	means the supply of Services to another Contracting Authority of the Supplier that are the same or similar to the Services;
<b>"Compensation for Critical Service Level Failure"</b>	has the meaning given to it in Clause 14.1.2 (Critical Service Level Failure);
<b>"Confidential Information"</b>	means the Contracting Authority Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
<b>"Continuous Improvement Plan"</b>	means a plan for improving the provision of the Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);
<b>"Contracting Authority"</b>	means the Contracting Authority and any other bodies listed in paragraph [VI.3] of the OJEU Notice;
<b>"Control"</b>	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
<b>"Conviction"</b>	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;
<b>"Costs"</b>	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services: a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day,

	<p>of engaging the Supplier Personnel, including:</p> <ul style="list-style-type: none"> <li>i) base salary paid to the Supplier Personnel;</li> <li>ii) employer's national insurance contributions;</li> <li>iii) pension contributions;</li> <li>iv) car allowances;</li> <li>v) any other contractual employment benefits;</li> <li>vi) staff training;</li> <li>vii) work place accommodation;</li> <li>viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and</li> <li>ix) reasonable recruitment costs, as agreed with the Customer;</li> </ul> <p>b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Contracting Authority or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services;</p> <p>but excluding:</p> <ul style="list-style-type: none"> <li>d) Overhead;</li> <li>e) financing or similar costs;</li> <li>f) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Call Off Contract Period whether in relation to Supplier Assets or otherwise;</li> <li>g) taxation;</li> <li>h) fines and penalties;</li> <li>i) amounts payable under Clause 25 (Benchmarking); and</li> <li>j) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</li> </ul>
<b>"Critical Service</b>	means any instance of critical service level failure specified in Annex 2 to Part A of Call Off Schedule 6

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

	Authority is the Data Controller;
"Contracting Authority Premises"	means premises owned, controlled or occupied by the Contracting Authority which are made available for use by the Supplier or its Sub-Contractors for provision of the Services (or any of them);
"Contracting Authority Property"	means the property, other than real property and IPR, including any equipment issued or made available to the Supplier by the Contracting Authority in connection with this Call Off Contract;
"Contracting Authority Representative"	means the representative appointed by the Contracting Authority from time to time in relation to this Call Off Contract;
"Contracting Authority Responsibilities"	means the responsibilities of the Contracting Authority set out in the Part B of Call Off Schedule 4 (Implementation Plan, Contracting Authority Responsibilities and Key Personnel) and any other responsibilities of the Contracting Authority in the Order Form or agreed in writing between the Parties from time to time in connection with this Call Off Contract;
"Contracting Authority Confidential Information"	means: <ul style="list-style-type: none"> <li>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Contracting Authority (including all Contracting Authority Background IPR and Project Specific IPR);</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Contracting Authority attention or into the Contracting Authority possession in connection with this Call Off Contract; and</li> <li>c) information derived from any of the above;</li> </ul>
"Data Controller"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Processor"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Protection Legislation" or "DPA"	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Subject Access"	means a request made by a Data Subject in accordance

<b>"Request"</b>	with rights granted pursuant to the DPA to access his or her Personal Data;
<b>"Deductions"</b>	means all Service Credits, Delay Payments or any other deduction which the Contracting Authority is paid or is payable under this Call Off Contract;
<b>"Default"</b>	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;
<b>"Delay"</b>	means: <ul style="list-style-type: none"> <li>a) a delay in the Achievement of a Milestone by its Milestone Date; or</li> <li>b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</li> </ul>
<b>"Delay Payments"</b>	means the amounts payable by the Supplier to the Contracting Authority in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
<b>"Delay Period Limit"</b>	shall be the number of days specified in Part A of Call Off Schedule 4: Implementation Plan, Contracting Authority Responsibilities and Key Personnel, for the purposes of 6.4.1(b)(ii);
<b>"Deliverable"</b>	means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan (if any) or at any other stage during the performance of this Call Off Contract;
<b>"Delivery"</b>	means, in respect of Goods, the time at which the Goods have been delivered and, in respect of Services, the time at which the Services have been provided or performed by the Supplier as confirmed by the issue by the Contracting Authority of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Call Off Contract and accepted by the Contracting Authority and "Deliver" and "Delivered" shall be construed accordingly;
<b>"Disaster"</b>	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Order Form or elsewhere in the Call Off Contract (for the purposes of this definition the "Disaster Period")

<b>"Disaster Recovery Services"</b>	means the services embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster, as detailed further in Call Off Schedule 9 (Business Continuity and Disaster Recovery);
<b>"Disclosing Party"</b>	has the meaning given to it in Clause 34.3.1 (Confidentiality);
<b>"Dispute"</b>	means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>"Dispute Notice"</b>	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
<b>"Dispute Resolution Procedure"</b>	means the dispute resolution procedure set out in Call Off Schedule 12 (Dispute Resolution Procedure);
<b>"Documentation"</b>	means all documentation as: <ul style="list-style-type: none"> <li>a) is required to be supplied by the Supplier to the Contracting Authority under this Call Off Contract;</li> <li>b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Contracting Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services;</li> <li>c) is required by the Supplier in order to provide the Services; and/or</li> <li>d) has been or shall be generated for the purpose of providing the Services;</li> </ul>
<b>"DOTAS"</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
<b>"Due Diligence Information"</b>	means any information supplied to the Supplier by or on behalf of the Contracting Authority prior to the Call Off Commencement Date;
<b>"Employee"</b>	means all claims, actions, proceedings, orders, demands,

<b>Liabilities"</b>	<p>complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"> <li>a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li> <li>b) unfair, wrongful or constructive dismissal compensation;</li> <li>c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</li> <li>d) compensation for less favourable treatment of part-time workers or fixed term employees;</li> <li>e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Contracting Authority or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;</li> <li>f) claims whether in tort, contract or statute or otherwise;</li> <li>g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory Authority and of implementing any requirements which may arise from such investigation;</li> </ul>
<b>"Employment Regulations"</b>	<p>means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;</p>
<b>"Environmental Information Regulations or EIRs"</b>	<p>means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Customer;</p>
<b>"Environmental Policy"</b>	<p>means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;</p>

<b>"Estimated Year 1 Call Off Contract Charges"</b>	means the sum in pounds estimated by the Contracting Authority to be payable by it to the Supplier as the total aggregate Call Off Contract Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year stipulated in the Order Form or elsewhere in this Call Off Contract;
<b>"Expedited Dispute Timetable"</b>	means the timetable set out in paragraph 5 of Schedule 12 (Dispute Resolution Procedure);
<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
<b>"Force Majeure"</b>	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Contracting Authority or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> <li>a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Call Off Contract;</li> <li>b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>c) acts of the Crown, local government or Regulatory Bodies;</li> <li>d) fire, flood or any disaster; and</li> <li>e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> <li>i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and</li> <li>ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</li> <li>iii) any failure of delay caused by a lack of funds;</li> </ul> </li> </ul>
<b>"Force Majeure Notice"</b>	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
<b>"Former Supplier"</b>	means a supplier supplying the Services to the Contracting Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

<b>"Framework Agreement"</b>	means the Framework Agreement between the Authority and the Supplier referred to in the Order Form;
<b>"Framework Commencement Date"</b>	means the date of commencement of the Framework Agreement as stated in the Call Off Schedule 1 (Definitions);
<b>"Framework Period"</b>	means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;
<b>"Framework Price(s)"</b>	means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);
<b>"Framework Schedule"</b>	means a schedule to the Framework Agreement;
<b>"Fraud"</b>	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
<b>"Further Competition Procedure"</b>	means the award procedure described in paragraph 3 of Framework Schedule 5 (Call Off Procedure);
<b>"General Anti-Abuse Rule"</b>	means (a) the legislation in Part 5 of the Finance Act 2013 and; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>"General Change in Law"</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or Authority engaged within the relevant industry or business sector;
<b>"Government"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Halifax Abuse Principle"</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	means Her Majesty's Revenue and Customs;
<b>"Holding Company"</b>	has the meaning given to it in section 1159 of the Companies Act 2006;

<b>"ICT Policy"</b>	means the Contracting Authority ICT policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
<b>"Impact Assessment"</b>	has the meaning given to it in Clause 22.1.3 (Variation Procedure);
<b>"Implementation Plan"</b>	means the plan set out in the Order Form;
<b>"Information"</b>	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
<b>"Insolvency Event"</b>	<p>means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable):</p> <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</li> <li>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</li> <li>h) where the Supplier or Framework Guarantor or Call Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</li> <li>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other</li> </ul>

	jurisdiction;
<b>"Intellectual Property Rights" or "IPR"</b>	<p>means</p> <ul style="list-style-type: none"> <li>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;</li> <li>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</li> <li>c) all other rights having equivalent or similar effect in any country or jurisdiction;</li> </ul>
<b>"IPR Claim"</b>	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Contracting Authority in the fulfilment of its obligations under this Call Off Contract;
<b>"Key Performance Indicators" or "KPIs"</b>	means the performance measurements and targets in respect of the Supplier's performance of the Framework Agreement set out in Part B of Framework Schedule 2 (Services and Key Performance Indicators);
<b>"Key Personnel"</b>	means the individuals (if any) identified as such in Part C of Call Off Schedule 4 (Implementation Plan, Contracting Authority Responsibilities and Key Personnel);
<b>"Key Role(s) "</b>	has the meaning given to it in Clause 26.1 (Key Personnel);
<b>"Key Sub-Contract"</b>	means each Sub-Contract with a Key Sub-Contractor;
<b>"Key Sub-Contractor"</b>	<p>means any Sub-Contractor:</p> <ul style="list-style-type: none"> <li>a) listed in Framework Schedule 7 (Key Sub-Contractors);</li> <li>b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or</li> <li>c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;</li> </ul>
<b>"Know-How"</b>	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but

	excluding know-how already in the other Party's possession before the Call Off Commencement Date;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"Man Day"	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Man Hours"	means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Milestone"	means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;
"Milestone Date"	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
"Milestone Payment"	means a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"Occasion of Tax Non-Compliance"	means: <ul style="list-style-type: none"> <li>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or</li> </ul> </li> </ul>

	<p>should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or</p> <p>b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a civil penalty for fraud or evasion;</p>
<b>"Open Book Data "</b>	<p>means complete and accurate financial and non-financial information which is sufficient to enable the Contracting Authority to verify the Call Off Contract Charges already paid or payable and Call Off Contract Charges forecast to be paid during the remainder of this Call Off Contract, including details and all assumptions relating to:</p> <p>a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs);</p> <p>b) operating expenditure relating to the provision of the Services including an analysis showing:</p> <p>i) the unit costs and quantity of Goods and any other consumables and bought-in services;</p> <p>ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;</p> <p>iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and</p> <p>c) Overheads;</p> <p>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;</p> <p>e) the Supplier Profit achieved over the Call Off Contract Period and on an annual basis;</p> <p>f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and</p> <p>h) the actual Costs profile for each Service Period.</p>
<b>"Order"</b>	<p>means the order for the provision of the Services placed</p>

	by the Contracting Authority with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;
<b>"Order Form"</b>	means the form, as completed and forming part of this Call Off Contract, which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied;
<b>"Other Supplier"</b>	means any supplier to the Contracting Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
<b>"Overhead"</b>	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
<b>"Parent Company"</b>	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
<b>"Party"</b>	means the Contracting Authority or the Supplier and "Parties" shall mean both of them;
<b>"Performance Monitoring System"</b>	has the meaning given to it in paragraph 19.1.2 in Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Performance Monitoring Reports"</b>	has the meaning given to it in paragraph 21.1 of Part B of Schedule 6 (Service Level, Service Credit and Performance Monitoring);
<b>"Personal Data"</b>	has the meaning given to it in the Data Protection Act 1998;
<b>"Processing"</b>	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
<b>"Prohibited Act"</b>	means any of the following: a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Authority and/or the Authority or other Contracting

	<p>Authority or any other public Authority a financial or other advantage to:</p> <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> <p>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;</p> <p>c) committing any offence:</p> <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 Customer; or</li> <li>iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</li> </ul>
<b>"Project Specific IPR"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or</li> <li>b) IPR in or arising as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same;</li> </ul> <p>but shall not include the Supplier Background IPR;</p>
<b>"Recipient"</b>	has the meaning given to it in Clause 34.3.1 (Confidentiality);
<b>"Rectification Plan"</b>	means the rectification plan pursuant to the Rectification Plan Process;
<b>"Rectification Plan Process"</b>	means the process set out in Clause 38.2 (Rectification Plan Process);
<b>"Registers"</b>	has the meaning given to in Call Off Schedule 10 (Exit Management);
<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>"Reimbursable Expenses"</b>	has the meaning given to it in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
<b>"Related Supplier"</b>	means any person who provides Services to the Contracting Authority which are related to the Services from time to time;
<b>"Relevant Conviction"</b>	means a Conviction that is relevant to the nature of the Services to be provided or as specified by the Contracting Authority in the Order Form or elsewhere in this Call Off Contract;
<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;
<b>"Relevant Tax Authority"</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Relevant Transfer"</b>	means a transfer of employment to which the Employment Regulations applies;
<b>"Relevant Transfer Date"</b>	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>"Relief Notice"</b>	has the meaning given to it in Clause 39.2.2 (Supplier Relief Due to Contracting Authority Cause);
<b>"Replacement Goods"</b>	means any goods which are substantially similar to any of the Goods and which the Contracting Authority receives in substitution for any of the Goods following the Call Off Expiry Date, whether those goods are provided by the Contracting Authority internally and/or by any third party;
<b>"Replacement Services"</b>	means any services which are substantially similar to any of the Services and which the Contracting Authority receives in substitution for any of the Services following the Call Off Expiry Date, whether those services are provided by the Contracting Authority internally and/or by any third party;
<b>"Replacement Sub-Contractor"</b>	means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>"Replacement Supplier"</b>	means any third party provider of Replacement Services appointed by or at the direction of the Contracting Authority from time to time or where the Contracting Authority is providing Replacement Services for its own account, shall also include the Customer;
<b>"Request for Information"</b>	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
<b>"Restricted Countries"</b>	has the meaning given to it in Clause 34.6.3 (Protection of Personal Data);

<b>"Satisfaction Certificate"</b>	means the certificate materially in the form of the document contained in Call Off Schedule 5 (Testing) granted by the Contracting Authority when the Supplier has Achieved a Milestone or a Test;
<b>"Security Management Plan"</b>	means the Supplier's security management plan prepared pursuant to paragraph 3 of Call Off Schedule 8 (Security) a draft of which has been provided by the Supplier to the Contracting Authority in accordance with paragraph 3 of Call Off Schedule 8 (Security) and as updated from time to time;
<b>"Security Policy"</b>	means the Contracting Authority security policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>"Security Policy Framework"</b>	the HMG Security Policy Framework <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf</a> ;
<b>"Service Credit Cap"</b>	has the meaning given to it in Paragraph 18 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)
<b>"Service Credits"</b>	means any service credits specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) being payable by the Supplier to the Contracting Authority in respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service Failure"</b>	means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future;
<b>"Service Level Failure"</b>	means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
<b>"Service Level Performance Criteria"</b>	has the meaning given to it in paragraph 15.2 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Level Performance Measure"</b>	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Level Threshold"</b>	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Levels"</b>	means any service levels applicable to the provision of the Services under this Call Off Contract specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels,

	Service Credits and Performance Monitoring);
"Service Period"	has the meaning given to in paragraph 16.1 of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Service Transfer"	means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
"Service Transfer Date"	means the date of a Service Transfer;
"Services"	means the services to be provided by the Supplier to the Contracting Authority as referred to Annex A of Call Off Schedule 2 (Goods and Services);
"Sites"	means: <ul style="list-style-type: none"> <li>a) any premises (including the Contracting Authority Premises, the Supplier's premises or third party premises): <ul style="list-style-type: none"> <li>i) from, to or at which: <ul style="list-style-type: none"> <li>(1) the Services are (or are to be) provided; or</li> <li>(2) the Supplier manages, organises or otherwise directs the provision or the use of the Services.</li> </ul> </li> </ul> </li> </ul>
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Contracting Authority and which would not affect a Comparable Supply;
"Staffing Information"	has the meaning give to it in Call Off Schedule 11 (Staff Transfer);
"Standards"	means any: <ul style="list-style-type: none"> <li>a) standards published by BSI British Standards, the National Standards Authority of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>b) standards detailed in the specification in Framework Schedule 2 (Services and Key Performance Indicators);</li> <li>c) standards detailed by the Contracting Authority in Call Off Schedule 7 (Standards) or agreed between the Parties from time to time;</li> <li>d) relevant Government codes of practice and guidance applicable from time to time.</li> </ul>
"Sub-Contract"	means any contract or agreement or proposed contract or agreement between the Supplier and any third party

	whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the provision of the Services or any part thereof;
<b>"Sub-Contractor"</b>	means any third party engaged by the Supplier, including any Key Sub-Contractor, from time to time under a Sub-Contract permitted pursuant to the Framework Agreement and this Call Off Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;
<b>"Supplier"</b>	means the person, firm or company with whom the Contracting Authority enters into this Call Off Contract as identified in the Order Form;
<b>"Supplier Assets"</b>	means all assets and rights used by the Supplier to provide the Services in accordance with this Call Off Contract but excluding the Contracting Authority Assets;
<b>"Supplier Background IPR"</b>	means <ul style="list-style-type: none"> <li>a) Intellectual Property Rights owned by the Supplier before the Call Off Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</li> <li>b) Intellectual Property Rights created by the Supplier independently of this Call Off Contract,</li> </ul>
<b>"Supplier Personnel"</b>	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Call Off Contract;
<b>"Supplier Equipment"</b>	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Call Off Contract;
<b>"Supplier Non-Performance"</b>	has the meaning given to it in Clause 39.1 (Supplier Relief Due to Contracting Authority Cause);
<b>"Supplier Profit"</b>	means, in relation to a period or a Milestone (as the context requires), the difference between the total Call Off Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
<b>"Supplier Profit Margin"</b>	means, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by

	the total Call Off Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
<b>"Supplier Representative"</b>	means the representative appointed by the Supplier named in the Order Form;
<b>"Supplier's Confidential Information"</b>	means <ul style="list-style-type: none"> <li>a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier;</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Call Off Contract;</li> <li>c) information derived from any of the above.</li> </ul>
<b>"Template Call Off Terms"</b>	means the template terms and conditions in Annex 2 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
<b>"Template Order Form"</b>	means the template order form in Annex 1 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
<b>"Tender"</b>	means the tender submitted by the Supplier to the Authority and annexed to or referred to in Framework Schedule 20;
<b>"Tests and Testing"</b>	means any tests required to be carried out pursuant to this Call Off Contract as set out in the Test Plan or elsewhere in this Call Off Contract and "Tested" shall be construed accordingly;
<b>"Test Issue"</b>	means any variance or non-conformity of the Services or Deliverables from their requirements as set out in the Call Off Contract;
<b>"Test Plan"</b>	means a plan <ul style="list-style-type: none"> <li>a) for the Testing of the Deliverables; and</li> <li>b) setting out other agreed criteria related to the achievement of Milestones,</li> </ul> as described further in paragraph 4 of Call of Schedule 5 (Testing);
<b>"Test Strategy"</b>	means a strategy for the conduct of Testing as described further in paragraph 3 of Call Off Schedule 5 (Testing);
<b>"Termination Notice"</b>	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this

	Call Off Contract on a specified date and setting out the grounds for termination;
<b>"Third Party IPR"</b>	means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Services;
<b>"Transferring Supplier Employees"</b>	means those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.
<b>"Undelivered Services"</b>	has the meaning given to it in Clause 8.3.1 (Undelivered Services);
<b>"Undisputed Sums Time Period"</b>	has the meaning given to it Clause 42.1.1 (Termination of Contracting Authority Cause for Failure to Pay);
<b>"Valid Invoice"</b>	means an invoice issued by the Supplier to the Contracting Authority that complies with the invoicing procedure in paragraph 6 (Invoicing Procedure) of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
<b>"Variation"</b>	has the meaning given to it in Clause 22.1 (Variation Procedure);
<b>"Variation Form"</b>	means the form set out in Call Off Schedule 13 (Variation Form);
<b>"Variation Procedure"</b>	means the procedure set out in Clause 22.1 (Variation Procedure);
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Warranty Period"</b>	means, in relation to any Goods, the warranty period specified in the Order Form;
<b>"Worker"</b>	means any one of the Supplier Personnel which the Customer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 0712 – Tax Arrangements of Public Appointees <a href="https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees">https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees</a> applies in respect of the Services.
<b>"Working Day"</b>	means any Day other than a Saturday or Sunday or public holiday in England and Wales.

## **CALL OFF SCHEDULE 2: SERVICES**

### **1. INTRODUCTION**

1.1 This Call Off Schedule specifies the:

1.1.1 Services to be provided under this Call Off Contract, in Annex 1.



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**[REDACTED]**

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

### 1. DEFINITIONS

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

**“Agency Rules”** means the rules for agency staff working in the NHS developed by Monitor and the NHS Trust Development Authority (TDA) now collectively known as NHS Improvement, as amended from time to time. Details can be found here: [Agency Rules](#)

### 2. GENERAL PROVISIONS

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

### 3. CALL OFF CONTRACT CHARGES

- 3.1 The Call Off Contract Charges which are applicable to this Call Off Contract are set out in Annex 1 of this Call Off Schedule.
- 3.2 The Supplier acknowledges and agrees that:
- 3.2.1 In accordance with paragraph 2 (General Provisions) of Framework Schedule 3 (Framework Prices and Charging Structure), the Call Off Contract Charges can in no event exceed the Framework Prices set out in Annex 3 to Framework Schedule 3 (Framework Prices and Charging Structure); and
  - 3.2.2 subject to paragraph 0 of this Call Off Schedule (Adjustment of Call Off Contract Charges), the Call Off Contract Charges cannot be increased during the Call Off Contract Period.
  - 3.2.3 The Supplier acknowledges and agrees that they shall comply with the [Agency Rules](#) when calculating Charge Rates as part of a Call Off Contract under the Framework Agreement, where that Call Off Contract is for a Contracting Authority for whom the Agency Rules applies.
  - 3.2.4 The Supplier acknowledges and agrees that the only permitted exception to Clause 3.2.3 shall be where the Supplier receives written notice from the Contracting Authority that the Contracting Authority is invoking an override to the Agency Rules (on exceptional patient safety grounds). Where such notice is received from the Contracting Authority, the Supplier's Charge Rate may exceed the Agency Rules. However, in all cases, the Temporary Worker's Pay Rate must fall

within the range of pay rates set out at Annex 1 to this Schedule 3 and the Supplier's Agency Fee must not exceed the maximum Agency Fee set out in Annex 1 to this Schedule 3.

#### **4. COSTS AND EXPENSES**

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

#### **5. PAYMENT TERMS/PAYMENT PROFILE**

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

#### **6. INVOICING PROCEDURE**

- 6.1 The Contracting Authority shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Contracting Authority in paragraph 6.5 of this Call Off Schedule and in accordance with the provisions of this Call Off Contract.
- 6.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Contracting Authority may specify):
- 6.2.1 contains:
    - (a) all appropriate references, including the unique Order reference number and a detailed breakdown of the Delivered Services, including the Milestone(s) (if any) and Deliverable(s) within this Call Off Contract to which the Delivered Services relate, against the applicable due and payable Call Off Contract Charges; and
  - 6.2.2 shows separately:
    - (a) any Service Credits due to the Customer; and
    - (b) the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 23.2.1 of this Call Off Contract (VAT) and the tax point date relating to the rate of VAT shown; and
  - 6.2.3 is exclusive of any Management Charge (and the Supplier shall not attempt to increase the Call Off Contract Charges or otherwise recover from the Contracting Authority as a surcharge the Management Charge levied on it by the Authority); and

- 6.2.4 it is supported by any other documentation reasonably required by the Contracting Authority to substantiate that the invoice is a Valid Invoice.
- 6.3 The Supplier shall accept the Government Procurement Card as a means of payment for the Services where such card is agreed with the Contracting Authority to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.
- 6.4 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Call Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- 6.5 The Supplier shall submit invoices directly to:
- Charges, Payment and Recovery of Sums Due.

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Department for Work and Pensions  
3<sup>rd</sup> Floor, Companies House,  
Crown Way,  
Maindy,  
Cardiff  
CF14 3UW

#### ADJUSTMENT OF CALL OFF CONTRACT CHARGES

- 6.6 The Call Off Contract Charges shall only be varied:
- 6.6.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Call Off Contract Charges in accordance with Clause 22.2 of this Call Off Contract (Legislative Change);
- 6.6.2 in accordance with Clause 23.1.4 of this Call Off Contract (Call Off Contract Charges and Payment) where all or part of the Call Off Contract Charges are reduced as a result of a reduction in the Framework Prices;
- 6.6.3 where all or part of the Call Off Contract Charges are reduced as a result of a review of the Call Off Contract Charges in accordance with Clause 18 of this Call Off Contract (Continuous Improvement);
- 6.6.4 where all or part of the Call Off Contract Charges are reduced as a result of a review of Call Off Contract Charges in accordance with Clause and/or Clause 25 of this Call Off Contract (Benchmarking);
- 6.6.5 where all or part of the Call Off Contract Charges are reviewed and reduced in accordance with paragraph 7 of this Call Off Schedule; or
- 6.6.6 where a review and increase of Call Off Contract Charges is requested by the Supplier and Approved, in accordance with the provisions of paragraph **Error! Reference source not found.** of this Call Off Schedule.
- 6.7 Subject to paragraphs 6.6.1 to 6.6.5 of this Call Off Schedule, the Call Off Contract Charges will remain fixed for the first two (2) Contract Years.
- 6.8

## **7. SUPPLIER PERIODIC ASSESSMENT OF CALL OFF CONTRACT CHARGES**

- 7.1 Every six (6) Months during the Call Off Contract Period, the Supplier shall assess the level of the Call Off Contract Charges to consider whether it is able to reduce them.
- 7.2 Such assessments by the Supplier under paragraph 7 of this Call Off Schedule shall be carried out on 1 May and 1 December in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Call Off Contract Charges it shall promptly notify the Contracting Authority in writing and such reduction shall be implemented in accordance with paragraph 8.1.5 of this Call Off Schedule below.

## **8. CONTRACTING AUTHORITY IMPLEMENTATION OF ADJUSTED CALL OFF CONTRACT CHARGES**

- 8.1 Variations in accordance with the provisions of this Call Off Schedule to all or part the Call Off Contract Charges (as the case may be) shall be made by the Contracting Authority to take effect:
  - 8.1.1 in accordance with Clause 22.2 of this Call Off Contract (Legislative Change) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.6.1 of this Call Off Schedule;
  - 8.1.2 in accordance with Clause 23.1.4 of this Call Off Contract (Call Off Contract Charges and Payment) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.6.2 of this Call Off Schedule;
  - 8.1.3 in accordance with Clause 18 of this Call Off Contract (Continuous Improvement) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.6.3 of this Call Off Schedule;
  - 8.1.4 in accordance with Clause 25 of this Call Off Contract (Benchmarking) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.6.4 of this Call Off Schedule or;
  - 8.1.5 on 1 June for assessments made on 1 May and on 1 January for assessments made on 1 December where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.6.5 of this Call Off Schedule; or
  - 8.1.6 on the Review Adjustment Date where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.6.6 of this Call Off Schedule;

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

**ANNEX 1: CALL OFF CONTRACT CHARGES**

**[REDACTED]**

