

**FRAMEWORK SCHEDULE 4**

**CALL OFF ORDER FORM AND CALL OFF TERMS**

## PART 1 – CALL OFF ORDER FORM

### SECTION A

This Call Off Order Form is issued in accordance with the provisions of the Framework Agreement for the provision of Manufacturing, Storage, Delivery, Installation and Disposal of Furniture dated 15/02/2019.

The Supplier agrees to supply the Goods and/or Services specified below on and subject to the terms of this Call Off Contract.

For the avoidance of doubt this Call Off Contract consists of the terms set out in this Call Off Order Form and the Call Off Terms.

Order Number	<b>SR190612202</b>
Customer reference number	FURN-0149-2019
From	<b>HMRC ("CUSTOMER")</b>
To	<b>Flexiform ("SUPPLIER")</b>

### SECTION B

#### 1. CALL OFF CONTRACT PERIOD

<b>1.1.</b>	<b>Commencement Date:</b> 15/02/2019
<b>1.2.</b>	<b>Expiry Date:</b> End date of Initial Period <b>31/07/2019</b> End date of Extension Period <b>N/A</b> Minimum written notice to Supplier in respect of extension: <b>N/A</b>

#### 2. GOODS AND/OR SERVICES

<b>2.1</b>	<b>Goods and/or Services required:</b> In Call Off Schedule 2 (Goods and/or Services)
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#### 3. IMPLEMENTATION PLAN

<b>3.1.</b>	<b>Implementation Plan:</b> Not applied
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#### 4. CONTRACT PERFORMANCE

4.1.	<p><b>Standards:</b></p> <p>The Supplier shall perform its obligations under this Framework Agreement in accordance with:</p> <p>the requirements of this Framework Agreement, including Framework Schedule 8 (Framework Management);</p> <p>the terms and conditions of the respective Call Off Contracts;</p> <p>Good Industry Practice;</p> <p>all applicable Standards; and</p> <p>in compliance with all applicable Law.</p> <p>The Supplier shall bring to the attention of the Authority any conflict between any of the requirements of Clause 11.1 and shall comply with the Authority's decision on the resolution of any such conflict.</p>
4.2	<p><b>Service Levels/Service Credits:</b></p> <p>In Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)</p> <p><b>Service Credit Cap</b> (Call Off Schedule 1 (Definitions)):</p> <p>Not applied however HMRC reserve the right to invoke Clause 38.2 Rectification Plan Process.</p> <p><b>Customer periodic reviews of Service Levels</b> (Clause 13.7.1 of the Call Off Terms):</p> <p>Not applied</p>
4.3	<p><b>Critical Service Level Failure:</b></p> <p>HMRC reserve the right to invoke Clause 38.2 Rectification Plan Process.</p>
4.4	<p><b>Performance Monitoring:</b></p> <p>In Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)</p>
4.5	<p><b>Period for providing Rectification Plan:</b></p> <p>In Clause 38.2.1(a) of the Call Off Terms</p>

## 5. PERSONNEL

5.1	<p><b>Key Personnel:</b></p> <p>Lesley Blackburn – Estates</p> <p>This content has been removed as it contains personal information.</p>
5.2	<p><b>Relevant Convictions</b> (Clause 27.2 of the Call Off Terms):</p>

	N/A
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## 6. PAYMENT

<b>6.1</b>	<b>Call Off Contract Charges</b> (including any applicable discount(s), but excluding VAT): In Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)
<b>6.2</b>	<b>Payment terms/profile</b> (including method of payment e.g. Government Procurement Card (GPC) or BACS): In Annex 2 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)
<b>6.3</b>	<b>Not Used</b>
<b>6.4</b>	<b>Customer billing address</b> (paragraph 7.6 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): Invoices should be sent to Payments.team@hmrc.gsi.gov.uk Should hard copy invoices be required these will be sent to Financial Shared Services, Accounts Payable, B Spur Block, Barrington Road, Worthing, West Sussex, BN12 4XH
<b>6.5</b>	<b>Call Off Contract Charges fixed for</b> (paragraph 7.2 of Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): The period of the contract.
<b>6.6</b>	<b>Supplier periodic assessment of Call Off Contract Charges</b> N/A
<b>6.7</b>	<b>Supplier request for increase in the Call Off Contract Charges</b> (paragraph 9 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): Not Permitted

## 7. LIABILITY AND INSURANCE

<b>7.1</b>	<b>Estimated Year 1 Call Off Contract Charges:</b> The sum of £. This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the commercial interests of the parties.
<b>7.2</b>	<b>Supplier's limitation of Liability</b> (Clause 36.2.1 of the Call Off Terms); In Clause 36.2.1 of the Call Off Terms
<b>7.3</b>	<b>Insurance</b> (Clause 37.3 of the Call Off Terms): Minimum insurance indemnities as defined in the Framework Agreement will apply.

## 8. TERMINATION AND EXIT

<b>8.1</b>	<b>Termination on material Default</b> (Clause 41.2.1(c) of the Call Off Terms):
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	In Clause 41.2.1(c) of the Call Off Terms
<b>8.2</b>	<b>Termination without cause notice period</b> (Clause 41.7.1 of the Call Off Terms): In Clause 41.7.1 of the Call Off Terms
<b>8.3</b>	<b>Undisputed Sums Limit:</b> In Clause 42.1.1 of the Call Off Terms
<b>8.4</b>	<b>Exit Management:</b> Not applied

## 9. SUPPLIER INFORMATION

<b>9.1</b>	<b>Supplier's inspection of Sites, Customer Property and Customer Assets:</b> To be decided in due course.
<b>9.2</b>	<b>Commercially Sensitive Information:</b> Cost breakdowns will be treated as commercially sensitive.

## 10. OTHER CALL OFF REQUIREMENTS

<b>10.1</b>	<b>Recitals</b> (in preamble to the Call Off Terms): Recitals B to E Recital C - date of issue of the Statement of Requirements: <b>17/01/2019</b> Recital D - date of receipt of Call Off Tender: <b>31/01/2019</b>
<b>10.2</b>	<b>Call Off Guarantee (Clause 4 of the Call Off Terms):</b> Not required
<b>10.3</b>	<b>Security:</b> <b>Security Plan:</b>  Flexiform Low - HMRC Supplier Secur
<b>10.4</b>	<b>ICT Policy:</b> Not applied
<b>10.5</b>	<b>Testing:</b> Not applied
<b>10.6</b>	<b>Business Continuity &amp; Disaster Recovery:</b> In Call Off Schedule 8 (Business Continuity and Disaster Recovery)  <b>Disaster Period:</b>

	N/A
<b>10.7</b>	<b>Failure of Supplier Equipment (Clause 32.8 of the call off Terms):</b> Not applied
<b>10.8</b>	<b>Protection of Customer Data (Clause 34.2.3 of the Call Off Terms):</b> In Clause 34.3 of the Call Off Terms
<b>10.9</b>	<p><b>Notices (Clause 55.6 of the Call Off Terms):</b></p> <p>Customer’s postal address and email address: 5th Floor West, Ralli Quays 3 Stanley Street. Salford, M60 9LA This content has been removed as it contains personal information.</p> <p>Supplier’s postal address and email address: Flexiform Business Furniture Limited 1392 Leeds Road Thornbury Bradford West Yorkshire BD3 7AE This content has been removed as it contains personal information.</p>
<b>10.10</b>	<b>Transparency Reports</b> In Call Off Schedule 13 (Transparency Reports)
<b>10.11</b>	<p><b>Alternative and/or additional provisions (including any Alternative and/or Additional Clauses under Call Off Schedule 14):</b></p> <p>N/A</p> <p><b>10.11.2 Storage</b></p> <p>10.11.2.1 The Customer will provide a Storage Facility for the Goods and shall store the Goods in accordance with this clause 10.11.2.</p> <p>10.11.2.2 Immediately upon payment for the Goods, the Supplier shall mark all of the Goods with an Asset Tag, identifying them as belonging to the Customer, and store them in the Storage Facility.</p> <p>10.11.2.3 The Parties agree that title to the Goods shall pass to the Customer on payment for the Goods.</p> <p>10.11.2.4 Notwithstanding Clause 10.11.2.3 above, the Supplier shall remain liable for all</p>

	<p>damage or loss to the Goods until:</p> <p>a) The Customer has requested the delivery of the Goods (or any part of the Goods) in a Customer Delivery Request; and b) The Supplier has delivered the Goods requested in a Customer Delivery Request in accordance with the Customer's instructions.</p> <p>10.11.2.5 Where the Customer has only requested the delivery of part of the Goods in a Customer Delivery Request, the risk of damage and loss shall pass to the Customer in accordance with Clause 10.11.2.3 above only in respect of the part of the Goods that have been delivered, and the Supplier shall remain liable for all damage and loss to any Goods that remain in storage.</p> <p>10.11.2.6 Clause 37 (Insurance) of this Call-Off Contract applies and the Supplier shall effect and maintain such policy or policies of insurance in respect of loss and damage to the Goods whilst in transit or in storage.</p>
<p><b>10.12</b></p>	<p><b>Call Off Tender:</b></p> <p>In Schedule 15 (Call Off Tender)</p>

**FORMATION OF CALL OFF CONTRACT**

**BY SIGNING AND RETURNING THIS CALL OFF ORDER FORM (which may be done by electronic means) the Supplier agrees to enter a Call Off Contract with the Customer to provide the Goods and/or Services in accordance with the terms Call Off Order Form and the Call Off Terms.**

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

**In accordance with paragraph 7 of Framework Schedule 5 (Call Off Procedure), the Parties hereby acknowledge and agree that this Call Off Contract shall be formed when the Customer acknowledges (which may be done by electronic means) the receipt of the signed copy of the Call Off Order Form from the Supplier within two (2) Working Days from such receipt.**

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

Name and Title	
Signature	
Date	

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

Name and Title	
Signature	
Date	

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## PART 2 – CALL OFF TERMS

### TERMS AND CONDITIONS

#### RECITALS

- A. Where recital A has been selected in the Call Off Order Form, the Customer has followed the call off procedure set out in paragraph 1.2 of Framework Schedule 5 (Call Off Procedure) and has awarded this Call Off Contract to the Supplier by way of direct award.
- B. Where recitals B to E have been selected in the Call Off Order Form, the Customer has followed the call off procedure set out in paragraph 1.3 of Framework Schedule 5 (Call Off Procedure) and has awarded this Call Off Contract to the Supplier by way of further competition.
- C. The Customer issued its Statement of Requirements for the provision of the Goods and/or Services on the date specified at paragraph 10.1 of the Call Off Order Form.
- D. In response to the Statement of Requirements the Supplier submitted a Call Off Tender to the Customer on the date specified at paragraph 10.1 of the Call Off Order form through which it provided to the Customer its solution for providing the Goods and/or Services.
- E. On the basis of the Call Off Tender, the Customer selected the Supplier to provide the Goods and/or Services to the Customer in accordance with the terms of this Call Off Contract.

#### A. PRELIMINARIES

##### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Call Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions) or the relevant Call Off Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Call Off Schedule 1 (Definitions) or relevant Call Off Schedule, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Call Off Contract, unless the context otherwise requires:
  - 1.3.1 the singular includes the plural and vice versa;
  - 1.3.2 reference to a gender includes the other gender and the neuter;
  - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

- 1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
- 1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under this Call Off Contract;
- 1.3.8 references to "**Clauses**" and "**Call Off Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Call Off Contract and references in any Call Off Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Call Off Schedule in which these references appear; and
- 1.3.9 the headings in this Call Off Contract are for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract.
- 1.4 Subject to Clauses 1.5 and 1.6 (Definitions and Interpretation), in the event of and only to the extent of any conflict between the Call Off Order Form, the Call Off Terms and the provisions of the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.4.1 the Framework Agreement, except Framework Schedule 21 (Tender);
  - 1.4.2 the Call Off Order Form;
  - 1.4.3 the Call Off Terms, except Call Off Schedule 15 (Call Off Tender);
  - 1.4.4 Call Off Schedule 15 (Call Off Tender); and
  - 1.4.5 Framework Schedule 21 (Tender).
- 1.5 Any permitted changes by the Customer to the Template Call Off Terms and the Template Call Off Order Form under Clause 5 (Call Off Procedure) of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to them becoming the Call Off Terms and the Call Off Order Form which comprise this Call Off Contract shall prevail over the Framework Agreement.
- 1.6 Where Call Off Schedule 15 (Call Off Tender) or Framework Schedule 21 (Tender) contain provisions which are more favourable to the Customer in relation to (the rest of) this Call Off Contract, such provisions of the Call Off Tender or the Tender shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Call Off Tender or Tender is more favourable to it in this context.

## 2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
  - 2.1.1 the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Call Off Contract;

- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- 2.1.3 it has raised all relevant due diligence questions with the Customer before the Call Off Commencement Date;
- 2.1.4 it has undertaken all necessary due diligence and has entered into this Call Off Contract in reliance on its own due diligence alone; and
- 2.1.5 it shall not be excused from the performance of any of its obligations under this Call Off Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
  - (a) misinterpretation of the requirements of the Customer in the Call Off Order Form or elsewhere in this Call Off Contract;
  - (b) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
  - (c) failure by the Supplier to undertake its own due diligence.

### **3. REPRESENTATIONS AND WARRANTIES**

#### **3.1 Each Party represents and warranties that:**

- 3.1.1 it has full capacity and authority to enter into and to perform this Call Off Contract;
- 3.1.2 this Call Off Contract is executed by its duly authorised representative;
- 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Call Off Contract; and
- 3.1.4 its obligations under this Call Off Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

#### **3.2 The Supplier represents and warrants that:**

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call Off Contract;
- 3.2.3 its execution, delivery and performance of its obligations under this Call Off Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
- 3.2.4 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of

- the procurement process, its Tender, Call Off Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract;
- 3.2.5 if the Call Off Contract Charges payable under this Call Off Contract exceed or are likely to exceed five (5) million pounds, as at the Call Off Commencement Date it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
- 3.2.6 it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Goods and/or Services by the Customer;
- 3.2.7 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;
- 3.2.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Contract;
- 3.2.9 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 3.2.10 for the Call Off Contract Period and for a period of twelve (12) months after the termination or expiry of this Call Off Contract, the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Goods and/or Services without Approval or the prior written consent of the Customer which shall not be unreasonably withheld.
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.
- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.5 For the avoidance of doubt, the fact that any provision within this Call Off Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier which constitutes a material Default.

#### **4. CALL OFF GUARANTEE**

- 4.1 Where the Customer has stipulated in the Call Off Order Form that this Call Off Contract shall be conditional upon receipt of a Call Off Guarantee, then, on or prior to the Call Off Commencement Date or on any other date specified by the Customer, the Supplier shall deliver to the Customer:
- 4.1.1 an executed Call Off Guarantee from a Call Off Guarantor; and
  - 4.1.2 a certified copy extract of the board minutes and/or resolution of the Call Off Guarantor approving the execution of the Call Off Guarantee.
- 4.2 The Customer may in its sole discretion at any time agree to waive compliance with the requirement in Clause 4.1 by giving the Supplier notice in writing.

#### **B. DURATION OF CALL OFF CONTRACT**

#### **5. CALL OFF CONTRACT PERIOD**

- 5.1 This Call Off Contract shall take effect on the Call Off Commencement Date and the term of this Call Off Contract shall be the Call Off Contract Period.
- 5.2 Where the Customer has specified a Call Off Extension Period in the Call Off Order Form, the Customer may extend this Call Off Contract for the Call Off Extension Period by providing written notice to the Supplier before the end of the Initial Call Off Period. The minimum period for the written notice shall be as specified in the Call Off Order Form.

#### **C. CALL OFF CONTRACT PERFORMANCE**

#### **6. IMPLEMENTATION PLAN**

- 6.1 Formation of Implementation Plan
- 6.1.1 Where an Implementation Plan has not been agreed and included in Call Off Schedule 4 (Implementation Plan) on the Call Off Commencement Date, but the Customer has specified in the Call Off Order Form that the Supplier shall provide a draft Implementation Plan prior to the commencement of the provision of the Goods and/or Services, the Supplier's draft must contain information at the level of detail necessary to manage the implementation stage effectively and as the Customer may require. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
  - 6.1.2 The Supplier shall submit the draft Implementation Plan to the Customer for Approval (such decision of the Customer to Approve or not shall not be unreasonably delayed or withheld) within such period as specified by the Customer in the Call Off Order Form.
  - 6.1.3 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
  - 6.1.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Customer as set

out in this Call Off Contract and report to the Customer on such performance.

## **6.2 Control of Implementation Plan**

- 6.2.1 Subject to Clause 6.2.2, the Supplier shall keep the Implementation Plan under review in accordance with the Customer's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Goods and/or Services. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 6.2.2 Changes to the Milestones (if any), Milestone Payments (if any) and Delay Payments (if any) shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- 6.2.3 Where so specified by the Customer in the Implementation Plan or elsewhere in this Call Off Contract, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

## **6.3 Rectification of Delay in Implementation**

- 6.3.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Call Off Contract:
- (a) it shall:
    - (i) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
    - (ii) include in its notification an explanation of the actual or anticipated impact of the Delay;
    - (iii) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
    - (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
  - (b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Implementation Plan, Clause 6.4 (Delay Payments) shall apply.

## **6.4 Delay Payments**

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

- (a) the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to Achieve the corresponding Milestone;
- (b) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
  - (i) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.7 (Termination Without Cause); or
  - (ii) the delay exceeds the number of days (the "**Delay Period Limit**") specified in Call Off Schedule 4 (Implementation Plan) for the purposes of this sub-Clause, commencing on the relevant Milestone Date;
- (c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified by the Customer in the Implementation Plan);
- (d) no payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver complies with Clause 48 (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Customer's rights to claim Delay Payments; and
- (e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 6.4.1 and Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 36 (Liability).

## 7. GOODS AND/ OR SERVICES

### 7.1 Provision of the Goods and/or Services

- 7.1.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Goods and/or Services and the performance of its obligations under this Call Off Contract.
- 7.1.2 The Supplier shall ensure that the Goods and/or Services:
  - (a) comply in all respects with the description of the Goods and/or Services in Call Off Schedule 2 (Goods and/or Services) or elsewhere in this Call Off Contract; and
  - (b) are supplied in accordance with the provisions of this Call Off Contract (including the Call Off Tender) and the Tender.
- 7.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:
  - (a) all applicable Law;

- (b) Good Industry Practice;
- (c) the Standards;
- (d) the Security Policy;
- (e) the ICT Policy (if so required by the Customer); and
- (f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 7.1.3(a) to 7.1.3(e).

7.1.4 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Goods and/or Services in accordance with this Call Off Contract;
- (b) subject to Clause 22.1 (Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Goods and/or Services;
- (c) ensure that any goods and/or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Goods and/or Services shall enable the Deliverables and/or the Goods and/or the Services to meet the requirements of the Customer;
- (d) ensure that the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer);
- (e) ensure that the Goods and/or Services are fully compatible with any Customer Property or Customer Assets described in Call Off Schedule 4 (Implementation Plan) (or elsewhere in this Call Off Contract) or otherwise used by the Supplier in connection with this Call Off Contract;
- (f) minimise any disruption to the Sites and/or the Customer's operations when providing the Goods and/or Services;
- (g) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (h) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Goods and/or Services to any Other Supplier and, on the Call Off Expiry Date for any reason, to enable the timely transition of the supply of the Goods and/or Services (or any of them) to the Customer and/or to any Replacement Supplier;
- (i) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Goods and/or Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any

reasonable directions that the Customer may notify from time to time to the Supplier;

- (j) provide the Customer with such assistance as the Customer may reasonably require during the Call Off Contract Period in respect of the supply of the Goods and/or Services;
- (k) deliver the Goods and/or Services in a proportionate and efficient manner;
- (l) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and
- (m) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.

7.1.5 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

## **8. SERVICES**

### **8.1 General application**

8.1.1 This Clause 8 shall apply if any Services have been included in Annex 1 of Call Off Schedule 2 (Goods and/or Services).

### **8.2 Time of Delivery of the Services**

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

### **8.3 Location and Manner of Delivery of the Services**

8.3.1 Except where otherwise provided in this Call Off Contract, the Supplier shall provide the Services to the Customer through the Supplier Personnel at the Sites.

8.3.2 The Customer may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Customer Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.

### **8.4 Undelivered Services**

8.4.1 In the event that any of the Services are not Delivered in accordance with Clauses 7.1 (Provision of the Goods and/or Services), 8.2 (Time of Delivery of the Services) and 8.3 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to

withhold payment of the applicable Call Off Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.

- 8.4.2 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 7.1, (Provision of the Goods and/or Services), 8.2 (Time of Delivery of the Services) and 8.3 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

#### **8.5 Obligation to Remedy of Default in the Supply of the Services**

- 8.5.1 Subject to Clauses 33.9.2 and 33.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 8.4.2 (Undelivered Services) and 38 (Customer Remedies for Default)), the Supplier shall, where practicable:
- (a) remedy any breach of its obligations in Clauses 7 and 8 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
  - (b) meet all the costs of, and incidental to, the performance of such remedial work.

#### **8.6 Continuing Obligation to Provide the Services**

- 8.6.1 The Supplier shall continue to perform all of its obligations under this Call Off Contract and shall not suspend the provision of the Services, notwithstanding:
- (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
  - (b) the existence of an unresolved Dispute; and/or
  - (c) any failure by the Customer to pay any Call Off Contract Charges,
- unless the Supplier is entitled to terminate this Call Off Contract under Clause 42.1 (Termination on Customer Cause for Failure to Pay) for failure by the Customer to pay undisputed Call Off Contract Charges.

### **9. GOODS**

#### **9.1 General application**

- 9.1.1 This Clause 9 shall apply if any Goods have been included in Annex 2 of Call Off Schedule 2 (Goods and/or Services).

#### **9.2 Time of Delivery of the Goods**

- 9.2.1 The Supplier shall provide the Goods on the date(s) specified in the Call Off Order Form (or elsewhere in this Call Off Contract) and the Milestone Dates (if any).
- 9.2.2 Subject to Clause 9.2.3 (Time of Delivery of the Goods), where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are

removed from the transporting vehicle and transferred at the Sites. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.

- 9.2.3 Where the Customer has specified any Installation Works in the Call Off Order Form, Delivery shall include installation of the Goods by the Supplier Personnel at the Sites (or at such place as the Customer may reasonably direct) in accordance with Clause 10 (Installation Works) and the Call Off Order Form.

### 9.3 Location and Manner of Delivery of the Goods

- 9.3.1 Except where otherwise provided in this Call Off Contract, the Supplier shall deliver the Goods to the Customer through the Supplier Personnel at the Sites.

- 9.3.2 If requested by the Customer prior to Delivery, the Supplier shall provide the Customer with a sample or samples of Goods for evaluation and Approval, at the Supplier's cost and expense.

- 9.3.3 The Goods shall be marked, stored, handled and delivered in a proper manner and in accordance the Customer's instructions as set out in the Call Off Order Form (or elsewhere in this Call Off Contract), Good Industry Practice, any applicable Standards and any Law. In particular, the Goods shall be marked with the Order number and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

- 9.3.4 On dispatch of any consignment of the Goods the Supplier shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the number of packages, their weight and volume together with the all other relevant documentation and information required to be provided under any Laws.

- 9.3.5 The Customer may inspect and examine the manner in which the Supplier supplies the Goods at the Sites and, if the Sites are not the Customer Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.

### 9.4 Undelivered Goods

- 9.4.1 In the event that not all of the Goods are Delivered in accordance with Clauses 7.1 (Provision of the Goods and/or Services), 9.2 (Time of Delivery of the Goods) and 9.3 (Location and Manner of Delivery of the Goods) ("**Undelivered Goods**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Goods that were not so Delivered until such time as the Undelivered Goods are Delivered.

- 9.4.2 The Customer, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising deem the failure to comply with Clauses 7.1 (Provision of the Goods and/or Services), 9.2 (Time of Delivery of the Goods) and 9.3 (Location and Manner of Delivery of the Goods) and meet the relevant Milestone Date (if any) to be a material Default.

## 9.5 Over-Delivered Goods

- 9.5.1 The Customer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity specified in the Call Off Order Form (or elsewhere in this Call Off Contract) ("**Over-Delivered Goods**").
- 9.5.2 If the Customer elects not to accept such Over-Delivered Goods it may, without prejudice to any other rights and remedies of the Customer howsoever arising, give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such Over-Delivered Goods (including but not limited to the costs of moving and storing the Over-Delivered Goods).
- 9.5.3 If the Supplier fails to comply with the Customer's notice under Clause 9.5.2, the Customer may dispose of such Over-Delivered Goods and charge the Supplier for the costs of such disposal. The risk in any Over-Delivered Goods shall remain with the Supplier.

## 9.6 Delivery of the Goods by Instalments

- 9.6.1 Unless expressly agreed to the contrary, the Customer shall not be obliged to accept delivery of the Goods by instalments. If, however, the Customer does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its Delivery shall, without prejudice to any other rights or remedies of the Customer howsoever arising, entitle the Customer to terminate the whole or any unfulfilled part of this Call Off Contract for material Default without further liability to the Customer.

## 9.7 Risk and Ownership in Relation to the Goods

- 9.7.1 Without prejudice to any other rights or remedies of the Customer howsoever arising:
- (a) risk in the Goods shall pass to the Customer at the time of Delivery; and
  - (b) ownership of to the Goods shall pass to the Customer on the earlier of Delivery of the Goods or payment by the Customer of the Call Off Contract Charges;

## 9.8 Responsibility for Damage to or Loss of the Goods

- 9.8.1 Without prejudice to the Supplier's other obligations to provide the Goods in accordance with this Call Off Contract, the Supplier accepts responsibility for all damage to or loss of the Goods if the:
- (a) same is notified in writing to the Supplier within three (3) Working Days of receipt and inspection of the Goods by the Customer; and
  - (b) Goods have been handled by the Customer in accordance with the Supplier's instructions.
- 9.8.2 Where the Supplier accepts responsibility under Clause 9.8.1, it shall, at its sole option, replace or repair the Goods (or part thereof) within such time as is reasonable having regard to the circumstances and as agreed with the Customer.

## 9.9 Warranty of the Goods

- 9.9.1 The Supplier hereby guarantees the Goods for the Warranty Period against faulty materials and workmanship.
- 9.9.2 If the Customer shall within such Warranty Period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies of the Customer howsoever arising) promptly remedy such faults or defects (whether by repair or replacement as the Customer shall elect) free of charge.
- 9.10 Obligation to Remedy Default in the Supply of the Goods
- 9.10.1 Subject to Clauses 33.9.2 and 33.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 9.4.2 (Undelivered Goods) and 38 (Customer Remedies for Default)), the Supplier shall, where practicable:
- (a) remedy any breach of its obligations in this Clause 9 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
  - (b) meet all the costs of, and incidental to, the performance of such remedial work.
- 9.11 Continuing Obligation to Provide the Goods
- 9.11.1 The Supplier shall continue to perform all of its obligations under this Call Off Contract and shall not suspend the provision of the Goods, notwithstanding:
- (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
  - (b) the existence of an unresolved Dispute; and/or
  - (c) any failure by the Customer to pay any Call Off Contract Charges,
- unless the Supplier is entitled to terminate this Call Off Contract under Clause 42.1 (Termination on Customer Cause for Failure to Pay) for failure to pay undisputed Call Off Contract Charges.

## **10. INSTALLATION WORKS**

- 10.1 This Clause 10 shall apply if any Goods have been included in Annex 2 of Call Off Schedule 2 (Goods and/or Services) and the Customer has specified Installation Works in the Call Off Order Form.
- 10.2 Where the Supplier reasonably believes it has completed the Installation Works it shall notify the Customer in writing. Following receipt of such notice, the Customer shall inspect the Installation Works and shall, by giving written notice to the Supplier:
- 10.2.1 accept the Installation Works, or
  - 10.2.2 reject the Installation Works and provide reasons to the Supplier if, in the Customer's reasonable opinion, the Installation Works do not meet the

requirements set out in the Call Off Order Form (or elsewhere in this Call Off Contract).

- 10.3 If the Customer rejects the Installation Works in accordance with Clause 10.2, the Supplier shall immediately rectify or remedy any defects and if, in the Customer's reasonable opinion, the Installation Works do not, within five (5) Working Days of such rectification or remedy, meet the requirements set out in the Call Off Order Form (or elsewhere in this Call Off Contract), the Customer may terminate this Call Off Contract for material Default.
- 10.4 The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Customer in accordance with Clause 10.2. Notwithstanding the acceptance of any Installation Works in accordance with Clause 10.2 (Installation Works), the Supplier shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the specification in the Call Off Order Form (or elsewhere in this Call Off Contract). No rights of estoppel or waiver shall arise as a result of the acceptance by the Customer of the Installation Works.
- 10.5 Throughout the Call Off Contract Period, the Supplier shall have at all times all licences, approvals and consents necessary to enable the Supplier and the Supplier Personnel to carry out the Installation Works.

## **11. STANDARDS AND QUALITY**

- 11.1 The Supplier shall at all times during the Call Off Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.
- 11.2 Throughout the Call Off Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Customer, of the Goods and/or Services. The adoption of any such new or emergent standard, or changes to existing Standards (including any specified in the Call Off Order Form), shall be agreed in accordance with the Variation Procedure.
- 11.3 Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Customer's receipt of the Goods and/or Services is explained to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 11.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Call Off Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard or Standards shall require Approval (and the written consent of the Customer where the relevant Standard or Standards is/are included in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) and shall be implemented within an agreed timescale.
- 11.5 Where a standard, policy or document is referred to by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall agree the impact of such change.

## **12. TESTING**

- 12.1 This Clause 12 shall apply if so specified by the Customer in the Call Off Order Form.
- 12.2 The Parties shall comply with any provisions set out in Call Off Schedule 5 (Testing).

### **13. SERVICE LEVELS AND SERVICE CREDITS**

- 13.1 This Clause 13 shall apply where the Customer has specified Service Levels and Service Credits in the Call Off Order Form. Where the Customer has specified Service Levels but not Service Credits, only sub-clauses 13.2, 13.3 and 13.7 shall apply.
- 13.2 When this Clause 13.2 applies, the Parties shall also comply with the provisions of Part A (Service Levels and Service Credits) of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).
- 13.3 The Supplier shall at all times during the Call Off Contract Period provide the Goods and/or Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
- 13.4 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to the rights set out in Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.
- 13.5 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 13.6 A Service Credit shall be the Customer's exclusive financial remedy for a Service Level Failure except where:
  - 13.6.1 the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;
  - 13.6.2 the Service Level Failure:
    - (a) exceeds the relevant Service Level Threshold;
    - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and
    - (c) results in:
      - (i) the corruption or loss of any Customer Data (in which case the remedies under Clause 34.2.8 (Protection of Customer Data) shall also be available); and/or
      - (ii) the Customer being required to make a compensation payment to one or more third parties; and/or
  - 13.6.3 the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.7 (Termination Without Cause).
- 13.7 Not more than once in each Call Off Contract Year, the Customer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Level Performance Criteria and the Supplier shall not be entitled to object to, or increase the Call Off Contract Charges as a result of such changes, provided that:

- 13.7.1 the total number of Service Level Performance Criteria for which the weighting is to be changed does not exceed the number set out, for the purposes of this clause, in the Call Off Order Form;
- 13.7.2 the principal purpose of the change is to reflect changes in the Customer's business requirements and/or priorities or to reflect changing industry standards; and
- 13.7.3 there is no change to the Service Credit Cap.

#### **14. CRITICAL SERVICE LEVEL FAILURE**

14.1 This Clause 14 shall apply if the Customer has specified both Service Credits and Critical Service Level Failure in the Call Off Order Form.

14.2 On the occurrence of a Critical Service Level Failure:

- 14.2.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
- 14.2.2 the Customer shall (subject to the Service Credit Cap set out in Clause 36.2.1(a) (Financial Limits)) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Call Off Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this Clause 14.2 shall be without prejudice to the right of the Customer to terminate this Call Off Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.

14.3 The Supplier:

- 14.3.1 agrees that the application of Clause 14.2 is commercially justifiable where a Critical Service Level Failure occurs; and
- 14.3.2 acknowledges that it has taken legal advice on the application of Clause 14.2 and has had the opportunity to price for that risk when calculating the Call Off Contract Charges.

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

15.1 This Clause 15 shall apply if the Customer has so specified in the Call Off Order Form.

15.2 The Parties shall comply with the provisions of Call Off Schedule 8 (Business Continuity and Disaster Recovery).

#### **16. DISRUPTION**

16.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call Off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.

16.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.

- 16.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods and/or Services in accordance with its obligations under this Call Off Contract.
- 16.4 If the Supplier's proposals referred to in Clause 16.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.
- 16.5 If the Supplier is temporarily unable to fulfil the requirements of this Call Off Contract owing to disruption of normal business solely due to a Customer Cause, then subject to Clause 17 (Supplier Notification of Customer Cause), an appropriate allowance by way of an extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **17. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE**

- 17.1 Without prejudice to any other obligations of the Supplier in this Call Off Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 42.1.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall:
- 17.1.1 notify the Customer as soon as reasonably practicable ((and in any event within two (2) Working Days of the Supplier becoming aware)) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:
- (a) the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Call Off Contract; and
  - (b) any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
  - (c) use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

## **18. CONTINUOUS IMPROVEMENT**

- 18.1 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Goods and/or Services in accordance with this Clause 18 with a view to reducing the Customer's costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Goods and/or Services and their supply to the Customer. As part of this obligation the Supplier shall identify and report to the Customer once every twelve (12) months:
- 18.1.1 the emergence of new and evolving relevant technologies which could improve the Sites and/or the provision of the Goods and/or Services, and those technological advances potentially available to the Supplier and the Customer which the Parties may wish to adopt;
- 18.1.2 new or potential improvements to the provision of the Goods and/or Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support goods and/or services in relation to the Goods and/or Services;

- 18.1.3 changes in business processes and ways of working that would enable the Goods and/or Services to be provided at lower costs and/or at greater benefits to the Customer; and/or
- 18.1.4 changes to the Sites business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Goods and/or Services.
- 18.2 The Supplier shall ensure that the information that it provides to the Customer shall be sufficient for the Customer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Customer requests.
- 18.3 If the Customer wishes to incorporate any improvement identified by the Supplier, the Customer shall request a Variation in accordance with the Variation Procedure and the Supplier shall implement such Variation at no additional cost to the Customer.

**D. CALL OFF CONTRACT GOVERNANCE**

**19. PERFORMANCE MONITORING**

- 19.1 The Supplier shall comply with the monitoring requirements set out in Part B (Performance Monitoring) of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).

**20. REPRESENTATIVES**

- 20.1 Each Party shall have a representative for the duration of this Call Off Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Call Off Contract.
- 20.2 The initial Supplier Representative shall be the person named as such in the Call Off Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 27 (Supplier Personnel).
- 20.3 If the initial Customer Representative is not specified in the Call Off Order Form, the Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Call Off Commencement Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.

**21. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

- 21.1 The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Goods and/or Services provided under it, any Sub-Contracts and the amounts paid by the Customer.
- 21.2 The Supplier shall:
  - 21.2.1 keep the records and accounts referred to in Clause 21.1 in accordance with Good Industry Practice and Law; and
  - 21.2.2 afford any Auditor access to the records and accounts referred to in Clause 21.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same,

as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 21.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call Off Contract including in order to:

- (a) verify the accuracy of the Call Off Contract Charges and any other amounts payable by the Customer under this Call Off Contract (and proposed or actual variations to them in accordance with this Call Off Contract);
- (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Goods and/or Services;
- (c) verify the Open Book Data;
- (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Framework Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to perform the Goods and/or Services;
- (g) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Call Off Contract;
- (i) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;
- (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
- (k) review any Performance Monitoring Reports provided under Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Goods and/or Services and to verify that these reflect the Supplier's own internal reports and records;
- (l) verify the accuracy and completeness of any information delivered or required by this Call Off Contract;

- (m) review the Supplier's quality management systems (including any quality manuals and procedures);
  - (n) review the Supplier's compliance with the Standards;
  - (o) inspect the Customer Assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date; and/or
  - (p) review the integrity, confidentiality and security of the Customer Data.
- 21.3 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.
- 21.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 21.4.1 all reasonable information requested by the Customer within the scope of the audit;
  - 21.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Goods and/or Services; and
  - 21.4.3 access to the Supplier Personnel.
- 21.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 21, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

## 22. CHANGE

### 22.1 Variation Procedure

- 22.1.1 Subject to the provisions of this Clause 22 and Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 22.1.2 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 22.1.3 Where the Customer has so specified on receipt of a Variation Form from the Supplier, the Supplier shall carry out an impact assessment of the Variation on the Goods and/or Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:
  - (a) details of the impact of the proposed Variation on the Goods and/or Services and the Supplier's ability to meet its other obligations under this Call Off Contract;

- (b) details of the cost of implementing the proposed Variation;
- (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Call Off Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
- (e) such other information as the Customer may reasonably request in (or in response to) the Variation request.

22.1.4 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.

22.1.5 Subject to 22.1.4, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Goods and/or Services and the proposed Variation.

22.1.6 In the event that:

- (a) the Supplier is unable to agree to or provide the Variation; and/or
- (b) the Parties are unable to agree a change to the Call Off Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof,

the Customer may:

- (i) agree to continue to perform its obligations under this Call Off Contract without the Variation; or
- (ii) terminate this Call Off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the provision of the Goods and/or Services in accordance with this Call Off Contract or where the Supplier can show evidence of substantial work being carried out to provide the Goods and/or Services under this Call Off Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

22.1.7 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Call Off Contract.

## **22.2 Legislative Change**

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

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

- 22.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 22.2.1(b)), the Supplier shall:
- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
    - (i) whether any Variation is required to the provision of the Goods and/or Services, the Call Off Contract Charges or this Call Off Contract; and
    - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
  - (b) provide to the Customer with evidence:
    - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
    - (ii) as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services; and
    - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 18 (Continuous Improvement), has been taken into account in amending the Call Off Contract Charges.
- 22.2.3 Any change in the Call Off Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 22.2.1(b)) shall be implemented in accordance with the Variation Procedure.

**E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**

**23. CALL OFF CONTRACT CHARGES AND PAYMENT**

**23.1 Call Off Contract Charges**

- 23.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Goods and/or Services, the Customer shall pay the undisputed Call Off Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).
- 23.1.2 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 12 (Testing), 21 (Records, Audit Access and Open Book Data), 34.4 (Transparency and Freedom of Information) and 34.5 (Protection of Personal Data).
- 23.1.3 If the Customer fails to pay any undisputed Call Off Contract Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a

daily basis from the due date up to the date of actual payment, whether before or after judgment.

- 23.1.4 If at any time during this Call Off Contract Period the Supplier reduces its Framework Prices for any Goods and/or Services which are provided under the Framework Agreement (whether or not such Goods and/or Services are offered in a catalogue, if any, which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Call Off Contract Charges for such Goods and/or Services under this Call Off Contract by the same amount.

## **23.2 VAT**

- 23.2.1 The Call Off Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a Valid Invoice.
- 23.2.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call Off Contract. Any amounts due under Clause 23.2 (VAT) shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

## **23.3 Retention and Set Off**

- 23.3.1 The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Call Off Contract or under any other agreement between the Supplier and the Customer.
- 23.3.2 If the Customer wishes to exercise its right pursuant to Clause 23.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Call Off Contract Charges.
- 23.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

## **23.4 Foreign Currency**

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

## **23.5 Income Tax and National Insurance Contributions**

- 23.5.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call Off Contract, the Supplier shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Goods and/or Services by the Supplier or any Supplier Personnel.

23.5.2 In the event that any one of the Supplier Personnel is a Worker as defined in Call Off Schedule 1 (Definitions) who receives consideration relating to the Goods and/or Services, then, in addition to its obligations under Clause 23.5.1, the Supplier shall ensure that its contract with the Worker contains the following requirements:

- (a) that the Customer may, at any time during the Call Off Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 23.5.1, or why those requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided;
- (b) that the Worker's contract may be terminated at the Customer's request if:
  - (i) the Worker fails to provide the information requested by the Customer within the time specified by the Customer under Clause 23.5.2(a); and/or
  - (ii) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with Clause 23.5.1 or confirms that the Worker is not complying with those requirements; and
- (c) that the Customer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

## **24. PROMOTING TAX COMPLIANCE**

24.1 This Clause 24 shall apply if the Call Off Contract Charges payable under this Call Off Contract exceed or are likely to exceed five (5) million pounds during the Call Off Contract Period.

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

- 24.2.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
- 24.2.2 promptly provide to the Customer:

- (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.
- 24.3 In the event that the Supplier fails to comply with this Clause 24 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable, then the Customer reserves the right to terminate this Call Off Contract for material Default.

## **25. BENCHMARKING**

- 25.1 Notwithstanding the Supplier's obligations under Clause 18 (Continuous Improvement), the Customer shall be entitled to regularly benchmark the Call Off Contract Charges and level of performance by the Supplier of the supply of the Goods and/or Services, against other suppliers providing goods and/or services substantially the same as the Goods and/or Services during the Call Off Contract Period.
- 25.2 The Customer, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 25.1 above.
- 25.3 The Customer shall be entitled to disclose the results of any benchmarking of the Call Off Contract Charges and provision of the Goods and/or Services to the Authority and any Contracting Authority (subject to the Contracting Authority entering into reasonable confidentiality undertakings).
- 25.4 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking and such information requirements shall be at the discretion of the Customer.
- 25.5 Where, as a consequence of any benchmarking carried out by the Customer, the Customer decides improvements to the Goods and/or Services should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Customer.
- 25.6 The benefit of any work carried out by the Supplier at any time during the Call Off Contract Period to update, improve or provide the Goods and/or Services, facilitate their delivery to any other Contracting Authority and/or any alterations or variations to the Charges or the provision of the Goods and/or Services, which are identified in the Continuous Improvement Plan produced by the Supplier and/or as a consequence of any benchmarking carried out by the Authority pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking), shall be implemented by the Supplier in accordance with the Variation Procedure and at no additional cost to the Customer.

## **F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS**

### **26. KEY PERSONNEL**

- 26.1 This Clause 26 shall apply where the Customer has specified Key Personnel in the Call Off Order Form.

- 26.2 The Call Off Order Form lists the key roles (“**Key Roles**”) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Call Off Commencement Date.
- 26.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Call Off Contract Period.
- 26.4 The Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 26.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Call Off Schedule 9 (Exit Management) unless:
  - 26.5.1 requested to do so by the Customer;
  - 26.5.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - 26.5.3 the person’s employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
  - 26.5.4 the Supplier obtains the Customer’s prior written consent (such consent not to be unreasonably withheld or delayed).
- 26.6 The Supplier shall:
  - 26.6.1 notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 26.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 26.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel’s employment contract, this will mean at least three (3) Months’ notice;
  - 26.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Goods and/or Services; and
  - 26.6.5 ensure that any replacement for a Key Role:
    - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
    - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
  - 26.6.6 shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.
- 26.7 The Customer may require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

**27. SUPPLIER PERSONNEL**

## 27.1 Supplier Personnel

### 27.1.1 The Supplier shall:

- (a) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- (b) ensure that all Supplier Personnel:
  - (i) are appropriately qualified, trained and experienced to provide the Goods and/or Services with all reasonable skill, care and diligence;
  - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards;
  - (iii) obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Goods and/or Services to the reasonable satisfaction of the Customer; and
  - (iv) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call Off Schedule 7 (Security);
- (c) subject to Call Off Schedule 10 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Call Off Contract shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.

### 27.1.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Call Off Contract, it may:

- (a) refuse admission to the relevant person(s) to the Customer Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Goods and/or Services of the relevant person(s).

- 27.1.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

## **27.2 Relevant Convictions**

- 27.2.1 This sub-clause 27.2 shall apply if the Customer has specified Relevant Convictions in the Call Off Order Form.

- 27.2.2 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Goods and/or Services without Approval.

- 27.2.3 Notwithstanding Clause 27.2.2, for each member of Supplier Personnel who, in providing the Goods and/or Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):

- (a) carry out a check with the records held by the Department for Education (DfE);
- (b) conduct thorough questioning regarding any Relevant Convictions; and
- (c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Goods and/or Services any person who has a Relevant Conviction or an inappropriate record.

## **28. STAFF TRANSFER**

- 28.1 This Clause 28 shall not apply if there are Goods but no Services under this Call Off Contract.

- 28.2 The Parties agree that :

- 28.2.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Call Off Schedule 10 (Staff Transfer) shall apply as follows:

- (a) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Call Off Schedule 10 (Staff Transfer) shall apply;
- (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Call Off Schedule 10 (Staff Transfer) shall apply;
- (c) where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Call Off Schedule 10 (Staff Transfer) shall apply; and
- (d) Part C of Call Off Schedule 10 (Staff Transfer) shall not apply;

- 28.2.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Call Off Schedule 10 (Staff Transfer) shall apply and Parts A and B of Call Off Schedule 10 (Staff Transfer) shall not apply; and
- 28.2.3 Part D of Call Off Schedule 10 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;
- 28.3 The Supplier shall both during and after the Call Off Contract Period indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

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

### **29.1 Appointment of Sub-Contractors**

- 29.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
  - (b) comply with its obligations under this Call Off Contract in the Delivery of the Goods and/or Services; and
  - (c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Call Off Contract.
- 29.1.2 Prior to sub-contacting any of its obligations under this Call Off Contract, the Supplier shall notify the Customer and provide the Customer with:
- (a) the proposed Sub-Contractor's name, registered office and company registration number;
  - (b) the scope of any Goods and/or Services to be provided by the proposed Sub-Contractor; and
  - (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 29.1.3 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 29.1.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-Contract; and
  - (b) any further information reasonably requested by the Customer.
- 29.1.4 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 29.1.2 (or, if later, receipt of any further information requested pursuant to Clause 29.1.3), object to the appointment of the relevant Sub-Contractor if they consider that:
- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to the interests respectively of the Customer under this Call Off Contract;

(b) the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or

(c) the proposed Sub-Contractor employs unfit persons,

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

29.1.5 If:

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

(i) the Supplier's notice issued pursuant to Clause 29.1.2; and

(ii) any further information requested by the Customer pursuant to Clause 29.1.3; and

(b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority and the Customer in accordance with Clause 29.2 (Appointment of Key Sub-Contractors).

the Supplier may proceed with the proposed appointment.

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

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

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

(a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to its interests;

(b) the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and/or reasonable services to its other customers; and/or

(c) the proposed Key Sub-Contractor employs unfit persons.

29.2.3 Except where the Authority and the Customer have given their prior written consent under Clause 29.2.1, the Supplier shall ensure that each Key Sub-Contract shall include:

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

(b) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;

(c) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;

- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Call Off Contract in respect of:
  - (i) data protection requirements set out in Clauses 34.1 (Security Requirements), 34.2 (Protection of Customer Data) and 34.5 (Protection of Personal Data);
  - (ii) FOIA requirements set out in Clause 34.4 (Transparency and Freedom of Information);
  - (iii) the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in Clause 7.1.4(l) (Provision of Goods and/or Services);
  - (iv) the keeping of records in respect of the Goods and/or Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data;
  - (v) the conduct of audits set out in Clause 21 (Records, Audit Access & Open Book Data);
- (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 41 (Customer Termination Rights), 43 (Termination by Either Party) and 45 (Consequences of Expiry or Termination) of this Call Off Contract;
- (g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Goods and/or Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;
- (h) a provision, where a provision in Call Off Schedule 10 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be.

### **29.3 Supply Chain Protection**

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

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
- (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- (c) conferring a right to the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;

- (d) giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
- (e) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 29.3.1.

29.3.2 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
- (b) include within the Performance Monitoring Reports required under Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) a summary of its compliance with this Clause 29.3.2 (a), such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.

29.3.3 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

29.3.4 Notwithstanding any provision of Clauses 34.3 (Confidentiality) and 35 (Publicity and Branding) if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

#### **29.4 Termination of Sub-Contracts**

29.4.1 The Customer may require the Supplier to terminate:

- (a) a Sub-Contract where:
  - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant to any of the termination events in Clause 41 (Customer Termination Rights) except Clause 41.7 (Termination Without Cause); and/or
  - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Goods and/or Services or otherwise; and/or
- (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:

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

## **29.5 Competitive Terms**

- 29.5.1 If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Goods and/or Services, then the Customer may:
- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or
  - (b) subject to Clause 29.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.
- 29.5.2 If the Customer exercises the option pursuant to Clause 29.5.1, then the Call Off Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.
- 29.5.3 The Customer's right to enter into a direct agreement for the supply of the relevant items is subject to:
- (a) the Customer making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Goods and/or Services; and
  - (b) any reduction in the Call Off Contract Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

## **29.6 Retention of Legal Obligations**

- 29.6.1 Notwithstanding the Supplier's right to Sub-Contract pursuant to Clause 29 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

## **G. PROPERTY MATTERS**

### **30. CUSTOMER PREMISES**

#### **30.1 Licence to occupy Customer Premises**

- 30.1.1 Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Call Off Contract. The

Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Call Off Contract and in accordance with Call Off Schedule 9 (Exit Management).

30.1.2 The Supplier shall limit access to the Customer Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Call Off Contract and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Customer Premises as the Customer may reasonably request.

30.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2 (Due Diligence) and set out in the Call Off Order Form (or elsewhere in this Call Off Contract), should the Supplier require modifications to the Customer Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this Clause 30.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.

30.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Customer Premises and conduct of personnel at the Customer Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

30.1.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Call Off Contract, the Customer retains the right at any time to use any Customer Premises in any manner it sees fit.

## 30.2 Security of Customer Premises

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

30.2.2 The Customer shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

## 31. CUSTOMER PROPERTY

31.1 Where the Customer issues Customer Property free of charge to the Supplier such Customer Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Customer Property.

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

## **32. SUPPLIER EQUIPMENT**

- 32.1 Unless otherwise stated in the Call Off Order Form (or elsewhere in this Call Off Contract), the Supplier shall provide all the Supplier Equipment necessary for the provision of the Goods and/or Services.
- 32.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.
- 32.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Call Off Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.
- 32.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Supplier's property located on Customer Premises which is due to the negligent act or omission of the Customer.
- 32.5 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Goods and/or Services in accordance with this Call Off Contract, including the Service Level Performance Measures.
- 32.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.

- 32.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- 32.7.1 remove from the Customer Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Call Off Contract; and
  - 32.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.
- 32.8 For the purposes of this Clause 32.8, 'X' shall be the number of Service Failures, and 'Y' shall be the period in months, as respectively specified for 'X' and 'Y' in the Call Off Order Form. If this Clause 32.8 has been specified to apply in the Call Off Order Form, and there are no values specified for 'X' and/or 'Y', in default, 'X' shall be two (2) and 'Y' shall be twelve (12). Where a failure of Supplier Equipment or any component part of Supplier Equipment causes X or more Service Failures in any Y Month period, the Supplier shall notify the Customer in writing and shall, at the Customer's request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced).

## **H. INTELLECTUAL PROPERTY AND INFORMATION**

### **33. INTELLECTUAL PROPERTY RIGHTS**

#### **33.1 Allocation of title to IPR**

- 33.1.1 Save as expressly granted elsewhere under this Call Off Contract:
- (a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
    - (i) the Supplier Background IPR; and
    - (ii) the Third Party IPR.
  - (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the:
    - (i) Customer Background IPR;
    - (ii) Customer Data; and
    - (iii) Project Specific IPRs.
- 33.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 33.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 33.1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

- 33.1.4 Unless the Customer otherwise agrees in advance in writing (and subject to Clause 33.10.3):
- (a) Project Specific IPR Items shall be created in a format, or able to be converted into a format, which is:
    - (i) suitable for publication by the Customer as Open Source; and
    - (ii) based on Open Standards (where applicable);
  - (b) where the Project Specific IPR Items are written in a format that requires conversion before publication as Open Source or before complying with Open Standards, the Supplier shall also provide the converted format to the Customer.

### **33.2 Assignments granted by the Supplier: Project Specific IPR**

- 33.2.1 The Supplier hereby assigns to the Customer with full guarantee (or shall procure from the first owner the assignment to the Customer), title to and all rights and interest in the Project Specific IPRs. The assignment under this Clause 33.2.1 shall take effect as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs.
- 33.2.2 The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Project Specific IPRs are properly transferred to the Customer.
- 33.2.3 To the extent that it is necessary to enable the Customer to obtain the full benefits of ownership of the Project Specific IPRs, the Supplier hereby grants to the Customer and shall procure that any relevant third party licensor shall grant to the Customer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR Items.

### **33.3 Licences granted by the Supplier: Supplier Background IPR**

- 33.3.1 The Supplier hereby grants to the Customer a perpetual, royalty-free and non-exclusive licence to use the Supplier Background IPR for any purpose relating to the Goods and/or Services (or substantially equivalent goods and/or services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function.
- 33.3.2 At any time during the Call Off Contract Period or following the Call Off Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Background IPR under Clause 33.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Customer Cause which constitutes a material breach of the terms of 33.3.1 which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.
- 33.3.3 In the event the licence of the Supplier Background IPR is terminated pursuant to Clause 33.3.2, the Customer shall:
- (a) immediately cease all use of the Supplier Background IPR;

- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Background IPR, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Customer may destroy the documents and other tangible materials that contain any of the Supplier Background IPR; and
- (c) ensure, so far as reasonably practicable, that any Supplier Background IPR that is held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Customer) from any computer, word processor, voicemail system or any other device containing such Supplier Background IPR.

### **33.4 Customer's right to sub-license**

33.4.1 The Customer may sub-license:

- (a) the rights granted under Clause 33.3.1 (Licence granted by the Supplier: Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
  - (i) the sub-license is on terms no broader than those granted to the Customer; and
  - (ii) the sub-license only authorises the third party to use the rights licensed in Clause 33.3.1 (Licence granted by the Supplier: Supplier Background IPR) for purposes relating to the Goods and/or Services (or substantially equivalent goods and/or services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and
- (b) the rights granted under Clause 33.3.1 (Licence granted by the Supplier: Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR provided that the sub-license is on terms no broader than those granted to the Customer.

### **33.5 Customer's right to assign/novate licences**

33.5.1 The Customer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR) to:

- (a) a Central Government Body; or
- (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.

33.5.2 Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 33.3 (Licences granted by the Supplier: Supplier Background IPR). If the Customer ceases to be a Central Government Body, the successor body

to the Customer shall still be entitled to the benefit of the licences granted in Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR).

- 33.5.3 If a licence granted in Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR) is novated under Clause 33.5.1 or there is a change of the Customer's status pursuant to Clause 33.5.2 (both such bodies being referred to as the "Transferee"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

### **33.6 Third Party IPR**

- 33.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR) and Clause 33.5.1 (Customer's right to assign/novate licences). If the Supplier cannot obtain for the Customer a licence in accordance with the licence terms set out in Clause 33.3 (Licences granted by the Supplier: Supplier Background IPR) and Clause 33.5.1 (Customer's right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:

- (a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
- (b) only use such Third Party IPR if the Customer Approves the terms of the licence from the relevant third party.

- 33.6.2 Should the Supplier become aware at any time, including after termination, that the Project Specific IPRs contain any Intellectual Property Rights for which the Customer does not have a licence, then the Supplier must notify the Customer within 10 days of what those rights are and which parts of the Project Specific IPRs they are found in.

- 33.6.3 Without prejudice to any other right or remedy of the Customer, if the Supplier becomes aware at any time, including after termination, that any Intellectual Property Rights for which the Customer does not have a licence in accordance with Clause 33.2.3 subsist in the Project Specific IPR Items, then the Supplier must notify the Customer within 10 days of what those rights are and which parts of the Project Specific IPR Items they are found in.

### **33.7 Licence granted by the Customer**

- 33.7.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call Off Contract Period to use the Customer Background IPR, the Project Specific IPRs and the Customer Data solely to the extent necessary for providing the Goods and/or Services in accordance with this Call Off Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 34.3 (Confidentiality); and
- (b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

### **33.8 Termination of licenses**

- 33.8.1 Subject to Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR), all licences granted pursuant to Clause 33 (Intellectual Property Rights) (other than those granted pursuant to Clause 33.6 (Third Party IPR) and 33.7 (Licence granted by the Customer)) shall survive the Call Off Expiry Date.
- 33.8.2 The Supplier shall, if requested by the Customer in accordance with Call Off Schedule 9 (Exit Management), grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 33.8.3 The licence granted pursuant to Clause 33.7 (Licence granted by the Customer ) and any sub-licence granted by the Supplier in accordance with Clause 33.7.1 (Licence granted by the Customer) shall terminate automatically on the Call Off Expiry Date and the Supplier shall:
- (a) immediately cease all use of the Customer Background IPR and the Customer Data (as the case may be);
  - (b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Background IPR and the Customer Data, provided that if the Customer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Background IPR and the Customer Data (as the case may be); and
  - (c) ensure, so far as reasonably practicable, that any Customer Background IPR and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Customer Background IPR and/or Customer Data.

### **33.9 IPR Indemnity**

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

- (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
- (ii) the replaced or modified item does not have an adverse effect on any other Goods and/or Services;
- (iii) there is no additional cost to the Customer; and
- (iv) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Goods and/or Services.

33.9.3 If the Supplier elects to procure a licence in accordance with Clause 33.9.2(a) or to modify or replace an item pursuant to Clause 33.9.2(b), but this has not avoided or resolved the IPR Claim, then:

- (a) the Customer may terminate this Call Off Contract by written notice with immediate effect; and
- (b) without prejudice to the indemnity set out in Clause 33.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute goods and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

### **33.10 Open Source Publication**

33.10.1 Subject to Clause 33.10.3, the Supplier agrees that the Customer may at its sole discretion publish as Open Source all or part of the Project Specific IPR Items after the Operational Services Commencement Date (such date to be notified by the Customer to the Supplier).

33.10.2 Subject to Clause 33.10.3, the Supplier hereby warrants that the Project Specific IPR Items:

- (a) are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Customer will not enable a third party to use the published Project Specific IPRs or Project Specific IPR Items in any way, which could reasonably be foreseen to compromise the operation, running or security of the Project Specific IPRs or the Customer System;
- (b) have been developed by the Supplier using reasonable endeavours to ensure that publication by the Customer of the same shall not cause any harm or damage to any party using the published Project Specific IPRs;
- (c) do not contain any material which would bring the Customer into disrepute upon publication as Open Source;
- (d) do not contain any IPRs which have not been licensed to the Customer under licence terms which permit the publication of the Project Specific IPR Items as Open Source by the Customer;

- (e) will be supplied in a format suitable for publication as Open Source (“the Open Source Publication Material”) no later than the date notified to the Supplier under Clause 33.10.1; and
- (f) do not contain any Malicious Software.

33.10.3 The Supplier hereby acknowledges and agrees that any Supplier Background IPRs which it includes in the Open Source Publication Material supplied to the Customer pursuant to Clause 33.10.2(e) and which have not been Approved for exclusion under Clause 33.10.4 will become Open Source and will hereby be licensed to the Customer under the Open Source licence terms adopted by the Customer and treated as such following publication by the Customer.

33.10.4 Where the Customer has Approved a request by the Supplier under Clause 33.1.4, for any part of the Project Specific IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Background IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:

- (a) as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and
- (b) include in the written details provided under Clause 33.10.4 (a) information about the impact that inclusion of such IPRs and items or Deliverables based on such IPRs will have on any other Project Specific IPRs Items and the Customer’s ability to publish such other items or Deliverables as Open Source.

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

### **34.1 Security Requirements**

- 34.1.1 The Supplier shall comply with the Security Policy and the requirements of Call Off Schedule 7 (Security) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 34.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 34.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Goods and/or Services it may propose a Variation to the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call Off Contract Charges shall then be subject to the Variation Procedure.
- 34.1.4 Until and/or unless a change to the Call Off Contract Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Goods and/or Services in accordance with its existing obligations.

## 34.2 Protection of Customer Data

- 34.2.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 34.2.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call Off Contract or as otherwise Approved by the Customer.
- 34.2.3 To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified by the Customer in the Call Off Order Form and, in any event, as specified by the Customer from time to time in writing.
- 34.2.4 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 34.2.5 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with any BCDR Plan or otherwise. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 34.2.6 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 34.2.7 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 34.2.8 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Supplier may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Call Off Schedule 8 (Business Continuity and Disaster Recovery) or as otherwise required by the Customer, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
  - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Call Off Schedule 8 (Business Continuity and Disaster Recovery) or as otherwise required by the Customer.

## 34.3 Confidentiality

- 34.3.1 For the purposes of Clause 34.3, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.

- 34.3.2 Except to the extent set out in Clause 34.3 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
  - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call Off Contract or without obtaining the owner's prior written consent;
  - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and
  - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 34.3.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 34.4 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
  - (b) the need for such disclosure arises out of or in connection with:
    - (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;
    - (ii) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Goods and/or Services provided under this Call Off Contract; or
    - (iii) the conduct of a Central Government Body review in respect of this Call Off Contract; or
  - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
  - (d) such information was in the possession of the Disclosing Party without obligation of confidentiality prior to its disclosure by the information owner;
  - (e) such information was obtained from a third party without obligation of confidentiality;
  - (f) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; and

- (g) the information is independently developed without access to the Disclosing Party's Confidential Information.
- 34.3.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 34.3.5 Subject to Clause 34.3.2, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:
  - (a) Supplier Personnel who are directly involved in the provision of the Goods and/or Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Call Off Contract; and
  - (b) its professional advisers for the purposes of obtaining advice in relation to this Call Off Contract.
- 34.3.6 Where the Supplier discloses Confidential Information of the Customer pursuant to Clause 34.3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.
- 34.3.7 The Customer may disclose the Confidential Information of the Supplier:
  - (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
  - (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
  - (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 34.3.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Call Off Contract;
  - (e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or
  - (f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under Clause 34.3.
- 34.3.8 Nothing in Clause 34.3 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result

in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

- 34.3.9 In the event that the Supplier fails to comply with Clauses 34.3.2 to 34.3.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

#### **34.4 Transparency and Freedom of Information**

- 34.4.1 The Parties acknowledge that
- (a) the Transparency Reports; and
  - (b) the content of this Call Off Contract, including any changes to this Call Off Contract agreed from time to time, except for –
    - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Customer; and
    - (ii) Commercially Sensitive Information;
- (together the "Transparency Information") are not Confidential Information.
- 34.4.2 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 34.4.3 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Call Off Schedule 13 (Transparency Reports).
- 34.4.4 If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 34.4.5 The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Call Off Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 34.4.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under

section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 34.3.7(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Customer within 5 working days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.

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

- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;
- (b) transfer to the Customer all Requests for Information relating to this Call Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Customer with a copy of all Information held on behalf of the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- (d) not respond directly to a Request for Information addressed to the Customer unless authorised in writing to do so by the Customer.

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

### **34.5 Protection of Personal Data**

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

34.5.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call Off Contract;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set

- out in Clauses 34.1 (Security Requirements) and 34.2 (Protection of Customer Data);
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call Off Contract)
  - (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
    - (i) are aware of and comply with the Supplier's duties under Clause 34.5.2 and Clauses 34.1 (Security Requirements), 34.2 (Protection of Customer Data) and 34.3 (Confidentiality);
    - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and
    - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
  - (e) notify the Customer within five (5) Working Days if it receives:
    - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;
    - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
    - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
  - (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint, communication or request made (as referred to at Clause 34.5.2(e)), including by promptly providing:
    - (i) the Customer with full details and copies of the complaint, communication or request;
    - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
    - (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and

- (g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 34.5.2 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

34.5.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Call Off Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a Variation to the Customer which, if it is agreed by the Customer, shall be dealt with in accordance with the Variation Procedure and Clauses 34.5.3(b) to 34.5.3(c);
- (b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
  - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
  - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
  - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and
  - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - (A) a direct data processing agreement with the Customer on such terms as may be required by the Customer; or

(B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-Contractor relating to the relevant Personal Data transfer, and

(iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

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

## **35. PUBLICITY AND BRANDING**

35.1 The Supplier shall not:

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

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

35.1.3 without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed).

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

## **I. LIABILITY AND INSURANCE**

### **36. LIABILITY**

36.1 Unlimited Liability

36.1.1 Neither Party excludes or limits its liability for:

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

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

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

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

36.1.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clauses 33.9 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

## 36.2 Financial Limits

36.2.1 Subject to Clause 36.1 (Unlimited Liability), the Supplier's total aggregate liability:

(a) in respect of all:

(i) Service Credits; and

(ii) Compensation for Critical Service Level Failure;

incurred in any rolling period of 12 Months shall be subject in aggregate to the Service Credit Cap;

(b) in respect of all other Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:

(i) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, the higher of ten million pounds (£10,000,000) or a sum equal to one hundred and fifty per cent (150%) of the Estimated Year 1 Call Off Contract Charges;

(ii) in relation to any Defaults occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, the higher of ten million pounds (£10,000,000) in each such Call Off Contract Year or a sum equal to one hundred and fifty per cent (150%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and

(iii) in relation to any Defaults occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, the higher of ten million pounds (£10,000,000) in each such Call Off Contract Year or a sum equal to one hundred and fifty per cent (150%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period;

unless the Customer has specified different financial limits in the Call Off Order Form.

36.2.2 Subject to Clauses 36.1 (Unlimited Liability) and 36.2 (Financial Limits) and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:

(a) in relation to any Customer Causes occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, a sum equal to the Estimated Year 1 Call Off Contract Charges;

(b) in relation to any Customer Causes occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call

Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and

- (c) in relation to any Customer Causes occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.

### 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 Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

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

### 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).

36.5.3 Subject to any rights of the Customer under this Call Off Contract (including in respect of an IPR Claim), any claims by a third party where an indemnity is sought by that third party from a Party to this Call Off Contract shall be dealt with in accordance with the provisions of Framework Schedule 20 (Conduct of Claims).

## **37. INSURANCE**

- 37.1 This Clause 37 will only apply where specified in the Call Off Order Form or elsewhere in this Call Off Contract.
- 37.2 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 31 (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 stipulated in the Call Off Order Form.
- 37.4 The Supplier shall effect and maintain the policy or policies of insurance referred to in 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 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 Clause 37 the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 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 Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

## **J. REMEDIES AND RELIEF**

### **38. CUSTOMER REMEDIES FOR DEFAULT**

#### **38.1 Remedies**

- 38.1.1 Without prejudice to any other right or remedy of the Customer 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 13.6 (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 Customer may (whether or not any part of the Goods and/or Services have been Delivered) do any of the following:

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

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

## 38.2 Rectification Plan Process

38.2.1 Where the Customer 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 Customer for it to review as soon as possible and in any event within 10 (ten) Working Days (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.
- (b) the draft Rectification Plan shall set out:

- (i) full details of the Default that has occurred, including a 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 Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of this Call Off Schedule 11 (Dispute Resolution Procedure).
- 38.2.3 The Customer 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 Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.
- 38.2.5 If the Customer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

### **39. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE**

39.1 If the Supplier has failed to:

- 39.1.1 Achieve a Milestone by its Milestone Date;
- 39.1.2 provide the Goods and/or 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 Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 17 (Supplier Notification of Customer Cause)):

- (a) the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (b) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.7 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
  - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
  - (ii) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;
  - (iii) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and/or
- (d) where the Supplier Non-Performance constitutes a Service Level Failure:
  - (i) the Supplier shall not be liable to accrue Service Credits;
  - (ii) the Customer shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 14 (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 Goods and/or Services affected by the Customer Cause,

in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Customer Cause.

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

- 39.3 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief, consulting with the Supplier where necessary.
- 39.4 Without prejudice to Clauses 8.6 (Continuing obligation to provide the Services) and 9.11 (Continuing obligation to provide the Goods), if a Dispute arises as to:
- 39.4.1 whether a Supplier Non-Performance would not have occurred but for a Customer 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 Clause 39 shall be implemented in accordance with the Variation Procedure.

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

- 40.1 Subject to the remainder of 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 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 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 Goods and/or Services, including any BCDR Goods and/or 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 goods and/or services similar to the Goods and/or 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 Goods and/or 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 Goods and/or Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
  - (b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Cause arising as a result of such failure;
- 40.6.2 the Supplier fails to perform its obligations in accordance with this Call Off Contract:
- (a) the Customer 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) (Customer 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 Goods and/or Services (or part of the Goods and/or 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 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. CUSTOMER TERMINATION RIGHTS

### 41.1 Termination in Relation to Call Off 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 Customer 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 Customer 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 Customer are acceptable;
- (c) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed 80% (unless stated differently in the Call Off Order Form) 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 Customer 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), 8.4.2 (Services), 9.4.2 and 9.6.1 (Goods), 10.3 (Installation Works), 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 10 (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 Customer is remediable but has not remedied such Default to the satisfaction of the Customer 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 Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Customer there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- (a) adversely impacts on the Supplier's ability to supply the Goods and/or Services under this Call Off Contract; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and/or Services under this Call Off Contract.

#### 41.4 Termination on Insolvency

41.4.1 The Customer 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 Customer immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.

41.5.2 The Supplier shall ensure that any notification made pursuant to Clause 41.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

41.5.3 The Customer may terminate this Call Off Contract by issuing a Termination Notice under Clause 41.5 to the Supplier within six (6) Months of:

- (a) being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
- (b) where no notification has been made, the date that the Customer becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

#### 41.6 Termination for breach of Regulations

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

41.7 Termination Without Cause

41.7.1 The Customer shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving at least thirty (30) Working Days written notice (unless stated differently in the Call Off Order Form).

41.8 Termination in Relation to Framework Agreement

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

41.9 Termination In Relation to Benchmarking

41.9.1 The Customer 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 Framework Schedule 12 (Continuous Improvement and Benchmarking).

41.10 Termination in Relation to Variation

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

**42. SUPPLIER TERMINATION RIGHTS**

42.1 Termination on Customer 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 Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract which in aggregate exceeds an amount equal to one month's average Call Off Contract Charges (unless a different amount has been specified in the Call Off Order Form), for the purposes of this Clause 42.1.1 (the "**Undisputed Sums Limit**"), and the said undisputed sum due remains outstanding for forty (40) Working Days (the "**Undisputed Sums Time Period**") after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

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

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 23.3 (Retention and Set off).

- 42.1.2 The Supplier shall not suspend the supply of the Goods and/or Services for failure of the Customer 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 in accordance with Clause 40.6.1(a) (Force Majeure).

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

44.1 Where the Customer has the right to terminate this Call Off Contract, the Customer shall be entitled to terminate or suspend all or part of this Call Off Contract provided always that, if the Customer elects to terminate or suspend this Call Off Contract in part, the parts of this Call Off Contract not terminated or suspended can, in the Customer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Call Off Contract.

44.2 Any suspension of this Call Off Contract under Clause 44.1 shall be for such period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

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 Goods and/or 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 Goods and/or Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 41 (Customer Termination Rights) except Clause 41.7 (Termination Without Cause); and

- 44.3.2 reject the Variation.

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

45.1 Consequences of termination under Clauses 41.1 (Termination in Relation to Guarantee), 41.2 (Termination on Material Default), 41.3 (Termination in Relation to Financial Standing), 41.8 (Termination in Relation to Framework Agreement), 41.9 (Termination in Relation to Benchmarking) and 41.10 (Termination in Relation to Variation)

45.1.1 Where the Customer:

- (a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 45.1; and
- (b) then makes other arrangements for the supply of the Goods and/or Services,

the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred

by the Customer throughout the remainder of the Call Off Contract Period provided that Customer shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

45.2 Consequences of termination under Clauses 41.7 (Termination without Cause) and 42.1 (Termination on Customer Cause for Failure to Pay)

45.2.1 Where:

- (a) the Customer terminates (in whole or in part) this Call Off Contract under Clause 41.7 (Termination without Cause); or
- (b) the Supplier terminates this Call Off Contract pursuant to Clause 42.1 (Termination on Customer Cause for Failure to Pay),

the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 41.7 (Termination without Cause).

45.2.2 The Customer 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 Call Off Contract 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 Customer or the Supplier under Clauses 21 (Records, Audit Access & Open Book Data),

33 (Intellectual Property Rights), 34.3 (Confidentiality), 34.4 (Transparency and Freedom of Information) 34.5 (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 9 (Exit Management), Call Off Schedule 10 (Staff Transfer), Call Off Schedule 11 (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 9 (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 Goods and/or Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Customer's health and safety policy (as provided to the Supplier from time to time) whilst at the Customer 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 Customer 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 Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Personnel and other persons working there and any instructions from the Customer 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 Goods and/or 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 Customer reasonably imposes in connection with any equality

obligations imposed on the Customer at any time under applicable equality Law;

- (b) take all necessary steps, and inform the Customer 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 Customer 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 Customer may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Call Off Contract or any part thereof to:

- 47.2.1 any other Contracting Authority; or
- 47.2.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
- 47.2.3 any private sector body which substantially performs the functions of the Customer,

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

47.3 A change in the legal status of the Customer 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 body to the Customer.

47.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a private sector body in accordance with Clause 47.2.3 (the "Transferee" in the rest of this Clause 47.4) the right of termination of the Customer 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 that right or remedy.
- 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 Customer or any of the Customer'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 Customer 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 Customer in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Goods and/or Services in connection with this Call Off Contract are compliant with the Relevant

- Requirements. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
- 50.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer 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 Customer 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 Customer pursuant to Clause 50.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer 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 Customer 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 Customer under Clause 50.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer 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 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 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 supersede and extinguish 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 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 10 (Staff Transfer) and the provisions of paragraph 9.9 of Call Off Schedule 9 (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 Customer 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 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 41 (Customer 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 Customer 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™ 1st 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 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 Clause 55, the address and email address of each Party shall be as specified in the Call Off 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 Goods and/or 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 Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales (unless stated differently in the Call Off Order Form) 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 Interpretation) 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 Call Off 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 body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"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 Call Off Order Form or elsewhere in this Call Off Contract;
<b>"Approval"</b>	means the prior written consent of the Customer and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Approved Sub-Licensee"</b>	means any of the following: <ol style="list-style-type: none"><li>a) a Central Government Body;</li><li>b) any third party providing goods and/or services to a Central Government Body; and/or</li><li>c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;</li></ol>
<b>"Auditor"</b>	means: <ol style="list-style-type: none"><li>a) the Customer's internal and external auditors;</li><li>b) the Customer's statutory or regulatory auditors;</li><li>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit</li></ol>

	Office;
	d) HM Treasury or the Cabinet Office;
	e) any party formally appointed by the Customer to carry out audit or similar review functions; and
	f) successors or assigns of any of the above;
<b>"Authority"</b>	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;
<b>"BACS"</b>	means the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
<b>"BCDR Goods and/or Services"</b>	means the Business Continuity Goods and/or Services and Disaster Recovery Goods and/or Services;
<b>"BCDR Plan"</b>	means the plan prepared pursuant to paragraph 2 of Call Off Schedule 8 (Business Continuity and Disaster Recovery), as may be amended from time to time;
<b>"Business Continuity Goods and/or Services"</b>	has the meaning given to it in paragraph 4.2.2 of Call Off Schedule 8 (Business Continuity and Disaster Recovery);
<b>"Call Off Commencement Date"</b>	means the date of commencement of this Call Off Contract set out in the Call Off Order Form;
<b>"Call Off Contract"</b>	means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement), which consists of the terms set out in the Call Off Order Form and the Call Off Terms;
<b>"Call Off Contract Charges"</b>	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Customer 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;
<b>"Call Off Contract Period"</b>	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date;
<b>"Call Off Contract Year"</b>	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;
<b>"Call Off Expiry Date"</b>	means: <ul style="list-style-type: none"> <li>(a) the end date of the Call Off Initial Period or any Call Off Extension Period; or</li> <li>(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;</li> </ul>

<b>"Call Off Extension Period"</b>	means such period or periods up to a maximum of the number of years in total as may be specified by the Customer, pursuant to Clause 5.2 and in the Call Off 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 Customer 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 acceptable to the Customer 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 Call Off Order Form;
<b>"Call Off Order Form"</b>	means the order form applicable to and set out in Part 1 of this Call Off Contract;
<b>"Call Off Procedure"</b>	means the process for awarding a call off contract pursuant to Clause 5 (Call Off Procedure) of the Framework Agreement and Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Schedule"</b>	means a schedule to this Call Off Contract;
<b>"Call Off Tender"</b>	means the tender submitted by the Supplier in response to the Customer's Statement of Requirements following a Further Competition Procedure and set out at Call Off Schedule 15 (Call Off Tender);
<b>"Call Off Terms"</b>	means the terms applicable to and set out in Part 2 of this Call Off Contract;
<b>"Central Government Body"</b>	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul>
<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 this Call Off Contract from time to time, which shall be calculated in a manner that 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 the Call Off Contract, which is set out in Framework Schedule 3 (Framework Prices and Charging Structure);

<b>"Commercially Sensitive Information"</b>	<p>means the Confidential Information listed in the Call Off Order Form (if any) comprising of commercially sensitive information relating to: -</p> <p>(a) the pricing of the Services;</p> <p>(b) details of the Supplier's IPR;</p> <p>(c) the Supplier's business and investment plans; and/or</p> <p>(d) the Supplier's trade secrets;</p> <p>which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
<b>"Comparable Supply"</b>	<p>means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services;</p>
<b>"Compensation for Critical Service Level Failure"</b>	<p>has the meaning given to it in Clause 14.2.2 (Critical Service Level Failure);</p>
<b>"Confidential Information"</b>	<p>means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;</p>
<b>"Continuous Improvement Plan"</b>	<p>means a plan for improving the provision of the Goods and/or Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);</p>
<b>"Contracting Authority"</b>	<p>means the Authority, the Customer and any other bodies listed in the OJEU Notice;</p>
<b>"Control"</b>	<p>means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;</p>
<b>"Conviction"</b>	<p>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;</p>
<b>"Costs"</b>	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Goods and/or Services:</p> <p>a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:</p>

- i) base salary paid to the Supplier Personnel;
  - ii) employer's national insurance contributions;
  - iii) pension contributions;
  - iv) car allowances;
  - v) any other contractual employment benefits;
  - vi) staff training;
  - vii) work place accommodation;
  - viii) work place IT equipment and tools reasonably necessary to provide the Goods and/or Services (but not including items included within limb (b) below); and
  - ix) reasonable recruitment costs, as agreed with the Customer;
- 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 Customer 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; and
  - 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 Goods and/or Services;

but excluding:

- a) Overhead;
- b) financing or similar costs;
- c) maintenance and support costs to the extent that these relate to maintenance and/or support Goods and/or Services provided beyond the Call Off Contract Period whether in relation to Supplier Assets or otherwise;
- d) taxation;
- e) fines and penalties;
- f) amounts payable under Clause 25 (Benchmarking); and
- g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

**"Critical Service Level Failure"**

means any instance of critical service level failure specified in the Call Off Order Form;

**"Crown"**

means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the

	Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Crown Body"</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 Call Off Order Form;
<b>"Customer Assets"</b>	means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Goods and/or Services;
<b>"Customer Background IPR"</b>	means: <ul style="list-style-type: none"> <li>a) IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, software, processes and procedures;</li> <li>b) IPRs created by the Customer 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>"Customer Cause"</b>	means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Customer is liable to the Supplier;
<b>"Customer 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 Customer's 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 Customer is the Data Controller;</li> </ul>
<b>"Customer Premises"</b>	means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for the provision of the Goods and/or

	Services (or any of them);
<b>"Customer Property"</b>	means the property, other than real property and IPR, including any equipment issued or made available to the Supplier by the Customer in connection with this Call Off Contract;
<b>"Customer Representative"</b>	means the representative appointed by the Customer from time to time in relation to this Call Off Contract;
<b>"Customer Responsibilities"</b>	means the responsibilities of the Customer set out in Call Off Schedule 4 (Implementation Plan) and any other responsibilities of the Customer in the Call Off Order Form or agreed in writing between the Parties from time to time in connection with this Call Off Contract;
<b>"Customer's Confidential Information"</b>	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 Customer (including all Customer 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 Customer's attention or into the Customer's possession in connection with this Call Off Contract; and</li> <li>c) information derived from any of the above;</li> </ul>
<b>"Customer User Agreement Form"</b>	means the document, in form set out at Annex 1 to Framework Schedule 5, that a Contracting Authority is required to complete and submit to the Authority prior to undertaking a Further Competition Procedure;
<b>"Data Controller"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Processor"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Protection Legislation" or "DPA"</b>	means the Data Protection Act 1998, as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Data Subject"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Subject Access Request"</b>	means a request made by a Data Subject in accordance 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 Customer 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), 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 Customer 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 Call Off Schedule 4 (Implementation Plan) for the purposes of Clause 6.4.1(b)(ii);
<b>"Deliverable"</b>	means an item or feature in the supply of the Goods and/or 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 delivery in accordance with the terms of this Call Off Contract as confirmed by the issue by the Customer of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Call Off Contract and accepted by the Customer and <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;
<b>"Disaster"</b>	means the occurrence of one or more events which, either separately or cumulatively, mean that the Goods and/or Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Call Off Order Form (for the purposes of this definition the <b>"Disaster Period"</b> );
<b>"Disaster Recovery Goods and/or Services"</b>	means the Goods and/or Services embodied in the processes and procedures for restoring the provision of Goods and/or Services following the occurrence of a Disaster, as detailed further in Call Off Schedule 8 (Business Continuity and Disaster Recovery);
<b>"Disclosing Party"</b>	means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient;

<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 Goods and/or 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 11 (Dispute Resolution Procedure);
<b>"Documentation"</b>	means descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) as: <ul style="list-style-type: none"> <li>a) is required to be supplied by the Supplier to the Customer 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 Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Goods and/or Services;</li> <li>c) is required by the Supplier in order to provide the Goods and/or Services; and/or</li> <li>d) has been or shall be generated for the purpose of providing the Goods and/or 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 Customer prior to the Call Off Commencement Date;
<b>"Employee Liabilities"</b>	means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement

and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- f) claims whether in tort, contract or statute or otherwise;
- g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**"Employment Regulations"**

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

**"Environmental Policy"**

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;

**"Environmental Information Regulations or EIRs"**

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

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

means the sum in pounds estimated by the Customer to be payable by it to the Supplier as the total aggregate Call Off Contract Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year stipulated in the Call

	Off Order Form;
<b>"Exit Plan"</b>	means the exit plan described in paragraph 5 of Call Off Schedule 9 (Exit Management);
<b>"Expedited Dispute Timetable"</b>	means the timetable set out in paragraph 5 of Call Off Schedule 11 (Dispute Resolution Procedure);
<b>"FOIA"</b>	means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Force Majeure"</b>	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer 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 goods and/or Services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Goods and/or Services (or any part of the Goods and/or 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 Call Off Order Form;
<b>"Framework Commencement Date"</b>	means 04/09/2017;
<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 Goods and/or 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 further competition 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 (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 body engaged within the relevant industry or business sector;
<b>"Goods"</b>	means the goods to be provided by the Supplier to the Customer as specified in Annex 2 of Call Off Schedule 2 (Goods and and/or Services);
<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>"Government Procurement Card"</b>	means the Government's preferred method of purchasing and payment for low value goods or services <a href="https://www.gov.uk/government/publications/government-procurement-card--2">https://www.gov.uk/government/publications/government-procurement-card--2</a> ;

<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 Customer's policy in respect of information and communications technology, referred to in the Call Off Order Form, which is 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 Call Off Schedule 4 (Implementation Plan);
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
<b>"Installation Works"</b>	means all works which the Supplier is to carry out at the beginning of the Call Off Contract Period to install the Goods in accordance with the Call Off Order Form;
<b>"Insolvency Event"</b>	means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable): <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a 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</li> </ul>

section 123 of the Insolvency Act 1986; or

- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) where the Supplier or Framework Guarantor or Call Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

**"Intellectual Property Rights" or "IPR"**

means

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

**"IPR Claim"**

means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Goods and/or Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer (including any claims arising from the publication of the Project Specific IPRs as Open Source) in the fulfilment of its obligations under this Call Off Contract;

**"Key Performance Indicators" or "KPIs"**

means the performance measurements and targets in respect of the Supplier's performance of the Framework Agreement set out in Part B of Framework Schedule 2 (Goods and/or Services and Key Performance Indicators);

**"Key Personnel"**

means the individuals (if any) identified as such in the Call Off Order Form;

**"Key Role(s) "**

has the meaning given to it in Clause 26.1 (Key Personnel);

**"Key Sub-Contract"**

means each Sub-Contract with a Key Sub-Contractor;

**"Key Sub-Contractor"**

means any Sub-Contractor:

- a) listed in Framework Schedule 7 (Key Sub-Contractors);

- b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Goods and/or Services; and/or
- c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;

<b>"Know-How"</b>	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;
<b>"Law"</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
<b>"Losses"</b>	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 <b>"Loss"</b> shall be interpreted accordingly;
<b>"Man Day"</b>	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Man Hours"</b>	means the hours spent by the Supplier Personnel properly working on the provision of the Goods and/or Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<b>"Milestone"</b>	means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;
<b>"Milestone Date"</b>	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>"Milestone Payment"</b>	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;
<b>"Month"</b>	means a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;

**"Occasion of Tax Non-Compliance"**

means:

- a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
  - i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- 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;

**"Open Book Data "**

means complete and accurate financial and non-financial information which is sufficient to enable the Customer 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:

- a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all goods and/or services;
- b) operating expenditure relating to the provision of the Goods and/or Services including an analysis showing:
  - i) the unit costs and quantity of Goods and any other consumables and bought-in goods and/or services;
  - 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; and
  - iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin;
- c) Overheads;
- d) all interest, expenses and any other third party financing costs incurred in relation to the provision of

the Goods and/or Services;

- e) the Supplier Profit achieved over the Call Off Contract Period and on an annual basis;
- 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;
- g) an explanation of the type and value of risk and contingencies associated with the provision of the Goods and/or Services, including the amount of money attributed to each risk and/or contingency; and
- h) the actual Costs profile for each Service Period.

**"Open Source"**

means computer software, computer program, and any other material that is published for use, with rights to access and modify, by any person for free, under a generally recognised open source licence;

**"Open Standards"**

means the open standards principles as described by Government and further detailed at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles> (as may be updated from time to time);

**"Order"**

means the order for the provision of the Goods and/or Services placed by the Customer with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;

**"Other Supplier"**

means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;

**"Over-Delivered Goods"**

has the meaning given to it in Clause 9.5.1 (Over-Delivered Goods);

**"Overhead"**

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";

**"Parent Company"**

means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;

<b>"Party"</b>	means the Customer or the Supplier and <b>"Parties"</b> shall mean both of them;
<b>"Performance Monitoring System"</b>	has the meaning given to it in paragraph 1.1.2 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 3.1 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 as amended from time to time;
<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 <b>"Process"</b> and <b>"Processed"</b> shall be interpreted accordingly;
<b>"Prohibited Act"</b>	<p>means any of the following:</p> <ul style="list-style-type: none"> <li>a) to directly or indirectly offer, promise or give any person working for or engaged by a Contracting Authority or any other public body a financial or other advantage to: <ul style="list-style-type: none"> <li>i) induce that person to perform improperly a relevant function or activity; or</li> <li>ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</li> <li>c) committing any offence: <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>ii) under legislation or common law concerning fraudulent acts; or</li> <li>iii) defrauding, attempting to defraud or conspiring to defraud a Contracting Authority or other public body; 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> </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</li> </ul>

Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or

- b) IPR in or arising as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same;

but shall not include the Supplier Background IPR;

<b>"Project Specific IPR Items"</b>	means the items in which the Project Specific IPRs subsist;
<b>"Recipient"</b>	mean the Party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party;);
<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 9 (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>"Related Supplier"</b>	means any person who provides goods and/or services to the Customer which are related to the Goods and/or Services from time to time;
<b>"Relevant Conviction"</b>	means a Conviction that is relevant to the nature of the Goods and/or Services to be provided or as specified in the Call Off Order Form;
<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 Customer Cause);
<b>"Replacement Goods"</b>	means any goods which are substantially similar to any of the Goods and which the Customer receives in substitution for any of the Goods following the Call Off Expiry Date, whether those goods are provided by the Customer 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 Customer receives in substitution for any of the Services following the Call Off Expiry Date, whether those services are provided by the Customer internally and/or by any third party;
<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 Goods and/or Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Goods and/or 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 Goods and/or Services or an apparent request for such information under the FOIA or the EIRs;
<b>"Restricted Countries"</b>	means a country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;
<b>"Satisfaction Certificate"</b>	means the certificate materially in the form of the document contained in Call Off Schedule 5 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;
<b>"Security Management Plan"</b>	means the Supplier's security management plan prepared pursuant to paragraph <b>Error! Reference source not found.</b> of Call Off Schedule 7 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph <b>Error! Reference source not found.</b> of Call Off Schedule 7 (Security) and as updated from time to time;
<b>"Security Policy"</b>	means the Customer's security policy, referred to in the Call Off Order Form, 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 current HMG Security Policy Framework that can be found at <a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a> ;
<b>"Service Credit Cap"</b>	has the meaning given to it in the Call Off Order Form;
<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 Customer 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 Goods and/or Services, reduction in the quality of the provision of the Goods and/or Services or event which could affect the provision of the Goods and/or 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 4.2 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 Goods and/or 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);
<b>"Service Period"</b>	has the meaning given to in paragraph 5.1 of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Service Transfer"</b>	means any transfer of the Goods and/or Services (or any part of the Goods and/or Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
<b>"Service Transfer Date"</b>	means the date of a Service Transfer;
<b>"Services"</b>	means the services to be provided by the Supplier to the Customer as referred to in Annex 1 of Call Off Schedule 2 (Goods and Services);
<b>"Sites"</b>	means any premises (including the Customer Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> <li>a) the Goods and/or Services are (or are to be) provided; or</li> <li>b) the Supplier manages, organises or otherwise directs the provision or the use of the Goods and/or Services.</li> </ul>
<b>"Specific Change in Law"</b>	means a Change in Law that relates specifically to the business of the Customer and which would not affect a

	Comparable Supply;
<b>"Staffing Information"</b>	has the meaning give to it in Call Off Schedule 10 (Staff Transfer);
<b>"Standards"</b>	means any: <ul style="list-style-type: none"> <li>a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>b) standards detailed in the specification in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators);</li> <li>c) standards detailed by the Customer in the Call Off Order Form 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>
<b>"Statement of Requirements"</b>	means a statement issued by the Customer detailing its requirements in respect of Goods and/or Services issued in accordance with the Call Off Procedure;
<b>"Sub-Contract"</b>	means any contract or agreement (or proposed contract or agreement) pursuant to which a third party: <ul style="list-style-type: none"> <li>a) provides the Goods and/or Services (or any part of them);</li> <li>b) provides facilities or services necessary for the provision of the Goods and/or Services (or any part of them); and/or</li> <li>c) is responsible for the management, direction or control of the provision of the Goods and/or Services (or any part of them);</li> </ul>
<b>"Sub-Contractor"</b>	means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>"Supplier"</b>	means the person, firm or company with whom the Customer enters into this Call Off Contract as identified in the Call Off Order Form;
<b>"Supplier Assets"</b>	means all assets and rights used by the Supplier to provide the Goods and/or Services in accordance with this Call Off Contract but excluding the Customer Assets;
<b>"Supplier Background"</b>	means

<b>IPR"</b>	<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 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 Customer Cause);
<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 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 Call Off Order Form;
<b>"Supplier's Confidential Information"</b>	<p>means</p> <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 Order"</b>	means the template Call Off Order Form in Annex 1 of Framework Schedule 4 (Template Call Off Order Form and

<b>Form"</b>	Template Call Off Terms);
<b>"Template Call Off Terms"</b>	means the template terms and conditions in Annex 2 of Framework Schedule 4 (Template Call Off Order Form and Template Call Off Terms);
<b>"Tender"</b>	means the tender submitted by the Supplier to the Authority, a copy of which is annexed or referred to in Framework Schedule 21;
<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>"Test Issue"</b>	means any variance or non-conformity of the Goods and/or 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>"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>"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 Goods and/or Services;
<b>"Transferring Customer Employees"</b>	those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>"Transferring Former Supplier Employees"</b>	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;
<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>"Transparency Reports"</b>	means the information relating to the Services and performance of this Call Off Contract which the Supplier is required to provide to the Customer in accordance with the reporting requirements in Schedule 13;
<b>"Undelivered Goods"</b>	has the meaning given to it in Clause 9.4.1 (Goods);

<b>"Undelivered Goods and/or Services"</b>	has the meaning given to it in Clause 8.4.1 (Goods and/or Services);
<b>"Undisputed Sums Time Period"</b>	has the meaning given to it Clause 42.1.1 (Termination of Customer Cause for Failure to Pay);
<b>"Valid Invoice"</b>	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph 6 (Invoicing Procedure) of Call Off Schedule 3 (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 12 (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 Call Off 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 08/15 (Tax Arrangements of Public Appointees) <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> applies in respect of the Goods and/or Services.
<b>"Working Day"</b>	means any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by Parties in this Call Off Contract.

## **CALL OFF SCHEDULE 2: GOODS AND/OR SERVICES**

### **1. INTRODUCTION**

1.1 This Call Off Schedule 2 specifies the:

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

1.1.2 Goods to be provided under this Call Off Contract, in Annex 2.

## ANNEX 1: THE SERVICES

### Imperial Court, Liverpool Refurbishment Project for FFE - Business Specification:

#### Purpose

Imperial Court, 2-24 Exchange Street East, Liverpool, L23PQ is an existing site on the HMRC estate with the potential to become a second building to the Regional Centre for the HMRC Locations Programme and will be fitted out to part regional centre standard. This requirement is:

- To supply, store, deliver and install furniture as per the Government Hubs Lot 1 Furniture Specification for desks, chairs, monitor arms and lockers, to floor 1-8 (1/2 floor 7) Imperial Court, 2-24 Exchange Street East, Liverpool, L23PQ. Current FTE is 759, the aim is to maintain the existing capacity, by replacing desks in the current layout but to RC standard.
- The manufacture of all furniture should be completed by 31<sup>st</sup> March 2019. The installation programme should be achieved by 26<sup>th</sup> July 2019 via rolling programme. This date will be monitored as the Project progresses.
- To store furniture required for the project in a secure warehouse as it will be required for installation in phases, sympathetic to very limited decant space.

#### Background to the Contracting Authority

2. The Contracting Authority shall be HMRC. As a department its purpose is to maximise revenues and bear down on tax avoidance, tax evasion and other non-compliance through well-designed tax policy, a transformed compliance strategy and effective delivery through digital channels.

#### Background to the Requirement/Overview of Requirement

3. The programme should be targeted to deliver Phase 1 before the end of 2018/19 Financial Year and rolling straight into a second Phase 2 taking us in to Financial Year 2019/20. The details of which floors/spaces will be in each phase and the sequential order has not yet been finalised with the fit-out contractor's planning team. This will be confirmed post award.
4. The requirement will be a call-off from the CCS Supply, Delivery and Installation of Furniture and Associated Services Framework (RM3812) Lot 1 Government Hubs Programme.
5. The square meterage for this project is 6477.51m<sup>2</sup>, arranged as follows:
  - First Floor – 1202.67 m<sup>2</sup>
  - Second Floor- 1202.67m<sup>2</sup>
  - Third Floor - 1034.99m<sup>2</sup>
  - Fourth Floor - 1032.20m<sup>2</sup>
  - Fifth Floor- 943.39m<sup>2</sup>
  - Sixth Floor – 383.96m<sup>2</sup>
  - Seventh Floor- 342.30m<sup>2</sup>
  - Eighth Floor- 335.32m<sup>2</sup>

6. The successful contractor will need to provide a “mock-up” prior to installation. Furniture will be checked for compliance to project FFE Schedule, FFE Framework Specification for compliance prior to completion of the evaluation – this check will be undertaken against the submitted tender pricing schedule where images of all products and specification details will need to be provided.
7. Compliance to fabric and finishes as specified in FFE Furniture Schedule will be checked against the Suppliers furniture schedule returns. Suppliers will need to confirm Fabric Bands/Classes being applied to pricing.
8. It should be noted that an e-Auction may be applied to this tender following completion of the tender evaluation.

9. Definitions

Expression or Acronym	Definition
NIA	Net Internal Area

Scope of Requirement

10. The scope of the works are detailed in the schedules and floor plans attached, together with other key documents.
  - Furniture Schedule
  - Floor Plan Ground floor
  - Floor Plan First floor
  - Floor Plan Second floor
  - Floor Plan third floor
  - Floor Plan fourth floor
  - Floor Plan fifth floor
  - Floor Plan 6<sup>th</sup> floor
  - Floor Plan 7<sup>th</sup> floor
  - Floor Plan 8<sup>th</sup> floor.
  - Removal and Disposal Furniture Schedule. To be provided at later date for information. Expected to be a rolling programme 40-60 per day.
  - Asset Inventory.
  - KPIs

The Requirement

11. The requirement is for the manufacture, supply and install (including fixing and fitting on-site where necessary) the office and associated furniture to the site in accordance with the CCS Supply, Delivery and Installation Furniture & Associated Products Framework.
12. The Contractor will need to provide storage for furniture that is to be manufactured earlier than the programme requires its installation. Furniture stored in a warehouse will need to be asset tagged as being HMRC's asset and will need to be inspected/provide visible proof prior to invoicing and payment taking place.

13. The Contractor shall provide operational support and maintenance to all items supplied as defined in Section 5 for the term detailed in the supply framework.
14. The Contractor shall provide the ancillary items to the furniture such as locker inserts/graphics and numbers and also as indicated on the schedules under 'Power, data, cabling requirements', to include monitor arms, power modules, data cable trays vertical and horizontal cable management and risers. Providing all cables and cable management from desk to floor box. The Contractor will be expected to connect the cables from desk to floor box. The Client's IT contractor will make all IT connections to monitor.
15. The Contractor shall provide all assets in the Asset Inventory supplied and all furniture should be asset tagged in line with framework requirements. Please note that no manufacturers' labels should appear on any items.
16. The Contractor shall provide all asset information on furniture via the provided assets inventory.
17. The requirement will include storage of furniture that is required to be installed later during the fit-out. The Contractor will be asked to confirm the costs per pallet, per week, in the pricing schedule and will need to confirm the loading per pallet. All furniture will be required to be manufactured and stored before the end of financial year 2018/19 to enable payment of all invoices before the end of the financial year.

Key Milestones

18. The start and completion dates as referenced below should be regarded as the key on-site milestones.
19. The Contractor shall indicate lead in, manufacture and logistic milestones that enable the on-site milestones to be achieved, these lead-times should include lead times on third party supplied products and sundry items where necessary.
20. Additionally the Contractor should note the following project milestones that the Authority has regarding the project administration and project delivery.

Milestone	Description	Timeframe
1	Provision of the detailed delivery programme for the supply and installation of all furniture, team structure,	Within 1 week of award
2	Quality Plan and Security compliance requirement – including Single Point of Contact and reporting framework performance.	Within 1 week of award
3	Full RAMS and coordinated logistics schedule, including compliance with the security requirements for the project team.	Within 1 week of award

Activity – Phase 1 (Manufacture)	Start	End
<b>Manufacturing Lead Time</b> flexibility on the timescale is essential as the earliest possible manufacture timescale is required, however not to exceed.	11/02/2019	08/03/2019
<b>All furniture will need to be built by 31/03/19 - Invoicing &amp; payment for furniture will need to be completed before the end of this financial year.</b>		

Activity – Phase 2 (Delivery & Installations/Storage)	Start	End
<b>Delivery and Installation</b> – Furniture installation and all snagging to be completed prior to end of project date of <b>26/07/2019</b> . This date is currently indicative for planning purposes.	11/03/2019	26/07/2019
<b>Storage</b> All furniture to be manufactured and stored by 31/03/19. We will then move in to a rolling Programme of delivery & installation through to Financial Year 19/20.	31/3/2019	Until final phase of furniture install is completed.

<b>Delivery Times:</b>	Monday – Friday 16:00 – 20:00
<b>Installation times:</b>	Monday – Friday 08:00 – 19:00

#### Visit to Imperial Court, Liverpool

A visit to the premises and the floors as part of this project TBC to:

- Look at the delivery route.
- Look at the furniture for removal and disposal
- View the Project Area.

#### Authority's Responsibilities

21. The Authority and by definition all of the Contractors working for the Authority are obligated to work within the rules imposed for Imperial Court, Liverpool appended to this document. The Contractor shall review this document and comply with the requirements.

#### Reporting

22. A formal weekly report covering the full scope of the services will be expected in line with the requirements of the framework. The content of the reports will be developed prior to project commencement to enable a full understanding of actual progress against the project plan. Weekly rather than monthly is required due to the requirements for this project.

23. The Contractor shall outline their reporting format and methodology within their Draft Project Execution Plan for review and approval by the Authority.

24. The Contractor will need to work collaboratively on site with all other trades and HMRC.

Sustainability

25. The Contractor shall comply with the obligations within the framework in terms of sustainability and with compliance to the Government Greening Policy.

26. During the works on site, the Contractor shall minimise the quantity of packing material and maximise the recyclable proportion of that needed. The Contractor shall make arrangements for removal from site and appropriate reuse/disposal

Quality

27. The Quality of the product and the service shall be as defined in the framework document.

Price

28. The Contractor shall complete all Pricing Schedule **columns J and K** of the Pricing Schedule.

29. Prices are to be submitted via the e-Sourcing Suite excluding VAT.

Payment

30. Invoices shall only be raised once the assurance has been completed and approved. Payment will follow in accordance with the terms in the Framework. Invoices should be submitted to the Hub or once implemented through the SAP Ariba S2P system, which is due to be rolled out in 2019.

Additional Information

31. The Contractor shall comply with the requirements and obligations of working at Imperial Court, Liverpool, and within the site curtilage. The Contractor shall review the contractor obligations included as an exhibit and ensure that they can comply with all obligations and ensure that they understand the scheduling implications of all aspects. No additional time or cost will be considered beyond the quotation for complying with these requirements.

Location

32. The locations of the Services will be carried out at;

<b>Imperial Court, 2-24 Exchange Street East Liverpool L23PQ</b>	
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### **Annex 1 – Furniture Logistics: Imperial Court, Liverpool;**

1. It should be assumed that furniture deliveries are undertaken Out of Hours (OOH) and installation can progress Monday-Friday 08:00-19:00.
2. There are 4 passenger 8 person lifts in the building, one can be locked off for designated use by the contractor.
3. There is one staircases in the building, width TBC.
4. The furniture contractor will need to provide protection for the routes which could be hardboard to all routes across finished floors, hardboard storage area, foam/corex to doors and frames.
5. The furniture contractor must provide a qualified Banksman for the control of vehicle movements during their deliveries.
6. All HMRC contractors must have CSCS accreditation certs or another recognised form of proving competence.
7. Power and data grommet setting out is to be done by the furniture contractor to suit their bespoke furniture. Como will provide base drawings with raised access floor grid.
8. Vehicle access to the building can only be made via Hackings Hey. The maximum size of a vehicle would be a large transit van. This access should be considered during the site visit to be arranged.
9. There is a loading bay outside the building on the public road. Advance permission for use will need to be sought via Liverpool City Council. Time is limited to 30 minutes.

#### Access Booking:

1. Company would contact site BRM's with
  - Name of Driver
  - Make of Vehicle
  - Size
  - Reg. Number

#### Access and Security

2. Via a nominated security procedure set by the property FM team/or equivalent during Fit-Out. The following will be required for operatives:
  - Full name
  - Photo ID (e.g. Driver's license, passport, CSCS card)
3. The property operates a strict **NO SMOKING** policy in accordance with the Health & Safety at Work Act.
4. The use of illegal drugs, controlled substances and the consumption of alcohol on site are expressly prohibited. Any persons identified as being under the influence of any of these substances will be removed from site immediately.
5. All contractors working on site must be SC cleared.

### Waste Removal

6. All suppliers are required to remove their waste at regular intervals and not leave stored items within the working areas.

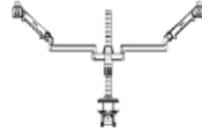
ANNEX 2: THE GOODS

## Liverpool Imperial Court Furniture Schedule Template

CCS Framework Ref: FURN-0127-2018

Please note: Images are for reference only

Please note: That the RM3812 Lot 1 Framework FFE Specification and Standards shall apply.

HMRC/GPU Code	Quantity	Location	Task or Loose	TYPE	PRODUCT SPECIFICATION Including DIMS	IMAGE	Power / Data Cable Requirements	Dimensions mm
CORE-01-MS	720	Floors 1-8 Imperial Court Liverpool	Task	Task	<p>MONITOR ARMS IN DOUBLE CONFIGURATIONS</p> <p>Colour/finish: white/black/metallic finish.                      Arm rotation to allow for monitor position in landscape and portrait format.                      Freely adjustable for height and reach by user.                      Fixed to desk via clamp mechanism.                      Monitor arms to be fitted to desk tops as required.                      Monitor arms to be able to move independently of each other and prevent transference of movement or clashing with neighbouring user equipment.                      Triple and quadruple configurations should have the ability to support 3 or 4 monitors weighing up to approx 9kg in both horizontal and 2 over 2 configuration.</p>		N/A	Double

CORE-01-STC	720	Floors 1-8 Imperial Court Liverpool	Task	Seating	<p>FULLY ERGONOMIC TASK CHAIR - CORE</p> <p>Fabric 40,000 rub (martindale). Manufactures fabric bands 3 or below. Camira Urban Square Manufacturer standard accent colour upholstery seat. Technical fabric mesh back with adjustable seat slide. Upholstered CMHR foam seat base. Seat shell and back frame in range of standard colours. 5 star base with soft break castors. Black adjustable arm. Adjustable lumbar support. Range 0-100mm Synchronous and weight balancing action with up to 20 degrees of incline – with locking capability.</p>		N/A	Adjustable seat height: Min 400mm - 530mm max Adjustable arm (H100 X W35 option available, pad rotation: 180 degree).
SUNT-03	720	Floors 1-8 Imperial Court Liverpool	Task	Accessories	<p>POWER MODULE</p> <p>Manufacturer standard finish: socket – white encasing – grey / brushed steel facing. Desk top fixing bracket: clamp bracket. 2x power plug and 2x usb with fast charge power.</p>		2x power plug and 2x usb per person,	N/A

CORE-01-TWD	144	Floors 1-8 Imperial Court Liverpool	Task	Workstation	<p>1 Person Sit Standing Desking</p> <p>Core Electric height adjustable work desk. Each desk to have desktop power supply and a 4 gang under desk power supply, 5 metre mains cable and plug with associated cable management/tray</p> <p>Finish: white high pressure laminate. Base mat'l/finish: powder coated manufacture standard finish. Electric height adjustable work desk. Baseline specification to include: desk top presented power to provide 2x usb power ports, 2x power point per desk. Vertical cable distribution shall allow for flexible, concealed and protect connection from floor box/grommet to horizontal cable management with segregated distribution. Cantilevered desk surface to allow for free movement or user without knee clashes. Anti-collision sensor. Back-to-back module as standard and single unit as required. Desks to allow integration with monitor arms (refer to core-01-ms). Horizontal cable management underneath of each desk surface. Desk to allow for option of integration of privacy and acoustic divider screens. Protective edge-banding.</p>		<p>1 x power module per desk to provide 2 x power and 2 x USB.</p> <p>Horizontal and Vertical cable management/tray solution required. Each desk to include 4 gang power, 5 metre mains cable and plug under desk power supply.</p>	<p>W1400 X D800 X H650-1250</p>
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	57	Floors 1-8 Imperial Court Liverpool	Task	Lockers	<p>PERSONAL LOCKERS UNITS - 4H (8L)</p> <p>All locker carcasses to be in finished manufacturer standard powder coated steel in white.</p> <p>30, 30, 30 split of Ral colours randomly configured</p> <p>RAL 9016 Traffic White RAL 7040 Window Grey RAL 3005 Wine Red</p> <p>4 swing doors and 2 top access bottom drawers. Recessed handles to ALL Openings Lockers to be located in built-in niches where possible. Individual compartments to be lockable, digital system with master key only. 10 digi pad with 4 digi code. Locks to be suitable for single user usage. Shelf for each locker. Verify project specific program requirements for final locker sizes and configuration. Doors to be capable of receiving applied permanent, large scale graphic labelling OR numbered discs diameter project specific.</p> <p>Approx unit DIMS: W400 X D500 X H400 mm Max 1800 mm High</p>			<p>Maximum 1800mm high. Approx unit dimensions: W800 X D500 X H400</p>
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CORE-01-TWB	576	Floors 1-8 Imperial Court Liverpool	Task	Workstation	<p>1 Person Workbench 1400 Desks W4200 x D1600 x H720. Each desk to have desktop power supply and a 4 gang under desk power supply, 5 metre mains cable and plug with associated cable management/tray</p> <p>Top mat'l/finish: white high pressure laminate mdf, base mat'l/finish: powder coated white manufacture standard finish. Frame to co-ordinate with sit-stand desk. Desk top presented power to provide 2 x usb power ports and 2 x power point per desk. Vertical cable distribution shall allow for flexible, concealed and protect connection from floor box/grommet to horizontal cable management with segregated distribution. Cable basket underneath of each desk surface for horizontal cable management. Desks to allow integration with monitor arms (refer to core-01-ms). Desk to allow for integration of acoustic and privacy divider screens.</p>		<p>1 x power module per desk to provide 2 x power and 2 x USB. Horizontal and Vertical cable management/tray solution required. Each desk to include 4 gang power, 5 metre mains cable and plug under desk power supply.</p>	W1400 X D800 X H720
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## **CALL OFF SCHEDULE 3: CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING**

### **1. DEFINITIONS**

1.1 The following terms used in this Call Off Schedule 3 shall have the following meaning:

**"Review Adjustment Date"** has the meaning given to it in paragraph 9.1.2 of this Call Off Schedule 3

### **2. GENERAL PROVISIONS**

2.1 This Call Off Schedule 3 details:

- 2.1.1 the Call Off Contract Charges for the Goods and/or 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.

3.2 The Supplier acknowledges and agrees that:

- 3.2.1 in accordance with paragraph 1 (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 1 to Framework Schedule 3 (Framework Prices and Charging Structure); and
- 3.2.2 subject to paragraph 7 of this Call Off Schedule 3 (Adjustment of Call Off Contract Charges), the Call Off Contract Charges cannot be increased during the Call Off Contract Period.

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

4.1 The Call Off Contract Charges include all costs and expenses relating to the Goods and/or Services and/or the Supplier's performance of its obligations under this Call Off Contract and no further amounts shall be payable by the Customer to the Supplier in respect of such performance, including in respect of matters such as:

- 4.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
- 4.1.2 any amount for any services provided or costs incurred by the Supplier prior to the Call Off Commencement Date.

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

- 5.1 The payment terms/profile which are applicable to this Call Off Contract are set out in Annex 2 of this Call Off Schedule 3.

## 6. INVOICING PROCEDURE

- 6.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Customer in paragraph 6.6 of this Call Off Schedule 3 and in accordance with the provisions of this Call Off Contract.
- 6.2 The Supplier shall ensure that each invoice (whether submitted electronically through a purchase-to-pay (P2P) automated system (or similar) or in a paper form, as the Customer may specify (but, in respect of paper form, subject to paragraph 6.3 below)):
- 6.2.1 contains:
- (a) all appropriate references, including the unique order reference number set out in the Call Off Order Form; and
  - (b) a detailed breakdown of the Delivered Goods and/or Services, including the Milestone(s) (if any) and Deliverable(s) within this Call Off Contract to which the Delivered Goods and/or 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 Customer 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 Customer to substantiate that the invoice is a Valid Invoice.
- 6.3 If the Customer is a Central Government Body, the Customer's right to request paper form invoicing shall be subject to procurement policy note 11/15 (available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/437471/PPN\\_e-invoicing.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437471/PPN_e-invoicing.pdf)), which sets out the policy in respect of unstructured electronic invoices submitted by the Supplier to the Customer (as may be amended from time to time).
- 6.4 The Supplier shall accept the Government Procurement Card as a means of payment for the Goods and/or Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.
- 6.5 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.

- 6.6 The Supplier shall submit invoices directly to the Customer's billing address set out in the Call Off Order Form.

## **7. ADJUSTMENT OF CALL OFF CONTRACT CHARGES**

- 7.1 The Call Off Contract Charges shall only be varied:
- 7.1.1 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);
  - 7.1.2 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;
  - 7.1.3 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);
  - 7.1.4 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 25 of this Call Off Contract (Benchmarking);
  - 7.1.5 where all or part of the Call Off Contract Charges are reviewed and reduced in accordance with paragraph 8 of this Call Off Schedule 3; or
  - 7.1.6 where a review and increase of Call Off Contract Charges is requested by the Supplier and Approved, in accordance with the provisions of paragraph 9 of this Call Off Schedule 3.
- 7.2 Subject to paragraphs 7.1.1 to 7.1.5 of this Call Off Schedule 3, the Call Off Contract Charges will remain fixed for the number of Contract Years specified in the Call Off Order Form.

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

- 8.1 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.
- 8.2 Such assessments by the Supplier under paragraph 8 of this Call Off Schedule 3 shall be carried out on the dates specified in the Call Off Order Form 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 Customer in writing and such reduction shall be implemented in accordance with paragraph 10.1.5 of this Call Off Schedule 3 below.

## **9. SUPPLIER REQUEST FOR INCREASE OF THE CALL OFF CONTRACT CHARGES**

- 9.1 If the Customer has so specified in the Call Off Order Form, the Supplier may request an increase in all or part of the Call Off Contract Charges in accordance with the remaining provisions of this paragraph 9 subject always to:
- 9.1.1 paragraph 3.2 of this Call Off Schedule 3;

- 9.1.2 the Supplier's request being submitted in writing at least three (3) Months before the effective date for the proposed increase in the relevant Call Off Contract Charges ("**Review Adjustment Date**") which shall be subject to paragraph 9.2 of this Call Off Schedule 3; and
  - 9.1.3 the Approval of the Customer which shall be granted in the Customer's sole discretion.
- 9.2 The earliest Review Adjustment Date will be the first (1st) Working Day following the anniversary of the Call Off Commencement Date after the expiry of the period specified in paragraph 7.2 of this Schedule 3 during which the Contract Charges shall remain fixed (and no review under this paragraph 9 is permitted). Thereafter any subsequent increase to any of the Call Off Contract Charges in accordance with this paragraph 9 of this Call Off Schedule 3 shall not occur before the anniversary of the previous Review Adjustment Date during the Call Off Contract Period.
- 9.3 To make a request for an increase of some or all of the Call Off Contract Charges in accordance with this paragraph 9, the Supplier shall provide the Customer with:
- 9.3.1 a list of the Call Off Contract Charges it wishes to review;
  - 9.3.2 for each of the Call Off Contract Charges under review, written evidence of the justification for the requested increase including:
    - (a) a breakdown of the profit and cost components that comprise the relevant Call Off Contract Charge;
    - (b) details of the movement in the different identified cost components of the relevant Call Off Contract Charge;
    - (c) reasons for the movement in the different identified cost components of the relevant Call Off Contract Charge;
    - (d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and
    - (e) evidence that the Supplier's profit component of the relevant Call Off Contract Charge is no greater than that applying to Call Off Contract Charges using the same pricing mechanism as at the Call Off Commencement Date.

## **10. IMPLEMENTATION OF ADJUSTED CALL OFF CONTRACT CHARGES**

- 10.1 Variations in accordance with the provisions of this Call Off Schedule 3 to all or part the Call Off Contract Charges (as the case may be) shall be made by the Customer to take effect:
- 10.1.1 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 7.1.1 of this Call Off Schedule 3;
  - 10.1.2 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 7.1.2 of this Call Off Schedule 3;
  - 10.1.3 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 7.1.3 of this Call Off Schedule 3;

- 10.1.4 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 7.1.4 of this Call Off Schedule 3;
- 10.1.5 on the dates specified in the Call Off Order Form where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 7.1.5 of this Call Off Schedule 3;
- 10.1.6 on the Review Adjustment Date where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 7.1.6 of this Call Off Schedule 3;

and the Parties shall amend the Call Off Contract Charges shown in Annex 1 to this Call Off Schedule 3 to reflect such variations.

**ANNEX 1: CALL OFF CONTRACT CHARGES**

## Liverpool Imperial Court Furniture Schedule Template

CCS Framework Ref: FURN-0127-2018

Please note: Images are for reference only

Please note: That the RM3812 Lot 1 Framework FFE Specification and Standards shall apply.

HMRC/GPU Code	Quantity	Location	TYPE	PRODUCT SPECIFICATION Including DIMS	Power / Data Cable Requirements	Dimensions mm	Price per Unit	Price
CORE-01-MS	720	Floors 1-8 Imperial Court Liverpool	Task	<p>MONITOR ARMS IN DOUBLE CONFIGURATIONS</p> <p>Colour/finish: white/black/metallic finish. Arm rotation to allow for monitor position in landscape and portrait format. Freely adjustable for height and reach by user. Fixed to desk via clamp mechanism. Monitor arms to be fitted to desk tops as required. Monitor arms to be able to move independently of each other and prevent transference of movement or clashing with neighbouring user equipment. Triple and quadruple configurations should have the ability to support 3 or 4 monitors weighing up to approx 9kg in both horizontal and 2 over 2 configuration.</p>	N/A	Double	This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the commercial interests of the parties.	This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the commercial interests of the parties.

CORE-01-STC	720	Floors 1-8 Imperial Court Liverpool	Seating	<p>FULLY ERGONOMIC TASK CHAIR - CORE</p> <p>Fabric 40,000 rub (martindale). Manufactures fabric bands 3 or below. Camira Urban Square Manufacturer standard accent colour upholstery seat. Technical fabric mesh back with adjustable seat slide. Upholstered CMHR foam seat base. Seat shell and back frame in range of standard colours. 5 star base with soft break castors. Black adjustable arm. Adjustable lumbar support. Range 0-100mm Synchronous and weight balancing action with up to 20 degrees of incline – with locking capability.</p>	N/A	Adjustable seat height: Min 400mm - 530mm max Adjustable arm (H100 X W35 option available, pad rotation: 180 degree).	This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the commercial interests of the parties.	This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the commercial interests of the parties.
SUNT-03	720	Floors 1-8 Imperial Court Liverpool	Accessories	<p>POWER MODULE</p> <p>Manufacturer standard finish: socket – white encasing – grey / brushed steel facing. Desk top fixing bracket: clamp bracket. 2x power plug and 2x usb with fast charge power.</p>	2x power plug and 2x usb per person,	N/A	This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the commercial interests of the parties.	This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the commercial interests of the parties.

CORE-01-TWD	144	Floors 1-8 Imperial Court Liverpool	Workstation	<p>1 Person Sit Standing Desking</p> <p>Core Electric height adjustable work desk. Each desk to have desktop power supply and a 4 gang under desk power supply, 5 metre mains cable and plug with associated cable management/tray</p> <p>Finish: white high pressure laminate. Base mat'l/finish: powder coated manufacture standard finish. Electric height adjustable work desk. Baseline specification to include: desk top presented power to provide 2x usb power ports, 2x power point per desk. Vertical cable distribution shall allow for flexible, concealed and protect connection from floor box/grommet to horizontal cable management with segregated distribution. Cantilevered desk surface to allow for free movement or user without knee clashes. Anti-collision sensor. Back-to-back module as standard and single unit as required. Desks to allow integration with monitor arms (refer to core-01-ms). Horizontal cable management underneath of each desk surface. Desk to allow for option of integration of privacy and acoustic divider screens. Protective edge-banding.</p>	<p>1 x power module per desk to provide 2 x power and 2 x USB. Horizontal and Vertical cable management/tray solution required. Each desk to include 4 gang power, 5 metre mains cable and plug under desk power supply.</p>	W1400 X D800 X H650-1250	This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the commercial interests of the parties.	This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the commercial interests of the parties.
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	57	Floors 1-8 Imperial Court Liverpool	Lockers	<p>PERSONAL LOCKERS UNITS - 4H (8L)</p> <p>All locker carcasses to be in finished manufacturer standard powder coated steel in white.</p> <p>30, 30, 30 split of Ral colours randomly configured</p> <p>RAL 9016 Traffic White RAL 7040 Window Grey RAL 3005 Wine Red</p> <p>4 swing doors and 2 top access bottom drawers. Recessed handles to ALL Openings Lockers to be located in built-in niches where possible. Individual compartments to be lockable, digital system with master key only. 10 digi pad with 4 digi code. Locks to be suitable for single user usage. Shelf for each locker. Verify project specific program requirements for final locker sizes and configuration. Doors to be capable of receiving applied permanent, large scale graphic labelling OR numbered discs diameter project specific.</p> <p>Approx unit DIMS: W400 X D500 X H400 mm Max 1800 mm High</p>	Maximum 1800mm high. Approx unit dimensions: W800 X D500 X H400 .	This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the commercial interests of the parties.	This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the commercial interests of the parties.
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CORE-01-TWB	576	Floors 1-8 Imperial Court Liverpool	Workstation	<p>1 Person Workbench 1400 Desks W4200 x D1600 x H720. Each desk to have desktop power supply and a 4 gang under desk power supply, 5 metre mains cable and plug with associated cable management/tray</p> <p>Top mat'l/finish: white high pressure laminate mdf, base mat'l/finish: powder coated white manufacture standard finish. Frame to co-ordinate with sit-stand desk. Desk top presented power to provide 2 x usb power ports and 2 x power point per desk. Vertical cable distribution shall allow for flexible, concealed and protect connection from floor box/grommet to horizontal cable management with segregated distribution. Cable basket underneath of each desk surface for horizontal cable management. Desks to allow integration with monitor arms (refer to core-01-ms). Desk to allow for integration of acoustic and privacy divider screens.</p>	<p>1 x power module per desk to provide 2 x power and 2 x USB. Horizontal and Vertical cable management/tray solution required.</p> <p>Each desk to include 4 gang power, 5 metre mains cable and plug under desk power supply.</p>	W1400 X D800 X H720	This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the commercial interests of the parties.	This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the commercial interests of the parties.
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**TOTAL**

This content has been removed, under the Freedom of Information Act 2000, Part II, Section 43(2) as being prejudicial to the

commercial  
interests of the  
parties.

<b>Delivery</b>	<b>INCLUDED</b>
<b>Installation</b>	<b>INCLUDED</b>
<b>Grand</b>	
<b>Total</b>	<b>£429,525.00</b>

## **ANNEX 2: PAYMENT TERMS/PROFILE**

## **CALL OFF SCHEDULE 4: IMPLEMENTATION PLAN**

### **1. INTRODUCTION**

- 1.1 This Call Off Schedule 4 specifies the Implementation Plan in accordance with which the Supplier shall provide the Goods and/or Services.

### **2. IMPLEMENTATION PLAN**

*Not Applied*

## CALL OFF SCHEDULE 5: TESTING

### 3. INTRODUCTION

- 3.1 This Call Off Schedule 5 (Testing) sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Test Plans.

### 4. TESTING OVERVIEW

- 4.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy and the Test Plans.
- 4.2 Any Disputes between the Supplier and the Customer regarding this Testing shall be referred to the Dispute Resolution Procedure.

### 5. TEST STRATEGY

- 5.1 The Supplier shall develop the final Test Strategy as soon as practicable but in any case no later than sixty (60) Working Days (or such other period as the Parties may agree) after the Call Off Commencement Date.
- 5.2 The final Test Strategy shall include:
- 5.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;
  - 5.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
  - 5.2.3 the procedure to be followed should a Deliverable fail a Test or where the Testing of a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
  - 5.2.4 the procedure to be followed to sign off each Test; and
  - 5.2.5 the process for the production and maintenance of reports relating to Tests.

### 6. TEST PLANS

- 6.1 The Supplier shall develop Test Plans for the approval of the Customer as soon as practicable but in any case no later than sixty (60) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.
- 6.2 Each Test Plan shall include as a minimum:
- 6.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested;
  - 6.2.2 a detailed procedure for the Tests to be carried out, including:
    - (a) the timetable for the Tests including start and end dates;
    - (b) the Testing mechanism;
    - (c) dates and methods by which the Customer can inspect Test results;
    - (d) the mechanism for ensuring the quality, completeness and relevance of the Tests;

- (e) the process with which the Customer will review Test Issues and progress on a timely basis; and
  - (f) the re-Test procedure, the timetable and the resources which would be required for re-Testing.
- 6.3 The Customer shall not unreasonably withhold or delay its approval of the Test Plans and the Supplier shall implement any reasonable requirements of the Customer in the Test Plans.

## **7. TESTING**

- 7.1 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 7.2 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Customer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 7.3 If the Supplier successfully completes the requisite Tests, the Customer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Goods and/or Services are implemented in accordance with this Call Off Contract.

## **8. TEST ISSUES**

- 8.1 Where a Test Issue is identified by the Supplier, the Parties shall agree how such Test Issue shall be dealt with and any failure to agree by the Parties shall be resolved in accordance with the Dispute Resolution Procedure.

## **9. TEST QUALITY AUDIT**

- 9.1 Without prejudice to its rights pursuant to Clause 21 (Records, Audit Access and Open Book Data), the Customer or an agent or contractor appointed by the Customer may perform on-going quality audits in respect of any part of the Testing.
- 9.2 If the Customer has any concerns following an audit in accordance with paragraph 9.1 above the Customer will discuss such concerns with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Supplier detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.
- 9.3 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

## **10. OUTCOME OF TESTING**

- 10.1 The Customer will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.
- 10.2 If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:

- 10.2.1 the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or
- 10.2.2 the Parties shall treat the failure as a Supplier Default.

**ANNEX 1: SATISFACTION CERTIFICATE**

To: [insert name of Supplier]

FROM: [insert name of Customer]

[insert Date: dd/mm/yyyy]

Dear Sirs,

**SATISFACTION CERTIFICATE**

[Deliverable(s)/Milestone(s)]: *[Insert relevant description of the agreed Deliverables/Milestones]*

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

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

We confirm that all the [Deliverables/Milestones] relating to [ ] *[insert relevant description of agreed Deliverables/Milestones and/or reference numbers(s) from the Implementation Plan]* have been completed.

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

## **CALL OFF SCHEDULE 6: SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING**

### **1. SCOPE**

- 1.1 This Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) sets out the Service Levels which the Supplier is required to achieve when providing the Goods and/or Services, the mechanism by which Service Level Failures and Critical Service Level Failures will be managed and the method by which the Supplier's performance in the provision by it of the Goods and/or Services will be monitored.
- 1.2 This Call Off Schedule 6 comprises:
  - 1.2.1 Part A: Service Levels and Service Credits;
  - 1.2.2 Annex 1 to Part A - Service Levels and Service Credits Table; and
  - 1.2.3 Annex 1 to Part B: Performance Monitoring.

## PART A: SERVICE LEVELS AND SERVICE CREDITS

### 2. GENERAL PROVISIONS

- 2.1 The Supplier shall provide a proactive Call Off Contract manager to ensure that all Service Levels in this Call Off Contract and Key Performance Indicators in the Framework Agreement are achieved to the highest standard throughout, respectively, the Call Off Contract Period and the Framework Period.
- 2.2 The Supplier shall provide a managed service through the provision of a dedicated Call Off Contract manager where required on matters relating to:
- 2.2.1 Supply performance;
  - 2.2.2 Quality of [Goods and/or Services];
  - 2.2.3 Customer support;
  - 2.2.4 Complaints handling; and
  - 2.2.5 Accurate and timely invoices.
- 2.3 The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Annex 1 to this Part A of this Call Off Schedule 6 will result in Service Credits being issued to Customers.

### 3. PRINCIPAL POINTS

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

### 4. SERVICE LEVELS

- 4.1 Annex 1 to this Part A of this Call Off Schedule 6 sets out the Service Levels the performance of which the Parties have agreed to measure.
- 4.2 The Supplier shall monitor its performance of this Call Off Contract by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Call Off Schedule 6 (the "**Service Level Performance Criteria**") and shall send the Customer a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Call Off Schedule 6.
- 4.3 The Supplier shall, at all times, provide the Goods and/or Services in such a manner that the Service Levels Performance Measures are achieved.
- 4.4 If the level of performance of the Supplier of any element of the provision by it of the Goods and/or Services during the Call Off Contract Period:
- 4.4.1 is likely to or fails to meet any Service Level Performance Measure or

- 4.4.2 is likely to cause or causes a Critical Service Failure to occur,
- 4.4.3 the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under Clause 13 of this Call Off Contract (Service Levels and Service Credits), may:
- (a) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and
  - (b) if the action taken under paragraph (a) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Customer shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or
  - (c) if a Service Level Failure has occurred, deduct from the Call Off Contract Charges the applicable Service Level Credits payable by the Supplier to the Customer in accordance with the calculation formula set out in Annex 1 of this Part A of this Call Off Schedule 6; or
  - (d) if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause 14 of this Call Off Contract (Critical Service Level Failure) (including subject, for the avoidance of doubt, the proviso in Clause 14.2.2 of this Call Off Contract in relation to Material Breach).
- 4.5 Approval and implementation by the Customer of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Customer.

## 5. SERVICE CREDITS

- 5.1 Annex 1 to this Part A of this Call Off Schedule 6 sets out the formula used to calculate a Service Credit payable to the Customer as a result of a Service Level Failure in a given service period which, for the purpose of this Call Off Schedule 6, shall be a recurrent period of **one Month** during the Call Off Contract Period (the “**Service Period**”).
- 5.2 Annex 1 to this Part A of this Call Off Schedule 6 includes details of each Service Credit available to each Service Level Performance Criterion if the applicable Service Level Performance Measure is not met by the Supplier.
- 5.3 The Customer shall use the Performance Monitoring Reports supplied by the Supplier under Part B (Performance Monitoring) of this Call Off Schedule 6 to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
- 5.4 Service Credits are a reduction of the amounts payable in respect of the Goods and/or Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in Annex 1 of Part A of this Call Off Schedule 6.

## 6. NATURE OF SERVICE CREDITS

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

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

Service Levels			
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Credit for each Service Period
<b>1. PRODUCT</b>	1.1: Supply, delivery and installation of all furniture within agreed timeframes* from receipt of order. *Standard = 28 day	100% at all times	100% of all orders are delivered and installed on time and in full as agreed between the parties and specified on the Purchase order.
	1.2: Supplier to resolve issues identified on snagging report within 72 hours from acknowledgement.	At least 98% at all times	Resolution of all snags to be resolved to the satisfaction of the Customer.
<b>2.POST INSTALLATION (Live Service)</b>	2.1: Supplier to acknowledge customer complaints/feedback within 1 working day of receipt.  Customer Support to be available to respond between 8am and 6pm, Monday – Friday.	100% at all times	Written acknowledgement to be provided to the Customer.
	2.2: Supplier to respond and resolve defects, including repairs; <ul style="list-style-type: none"> <li>• Priority 1 = 24 hours</li> <li>• Priority 2 – Task Furniture = 3 working days Loose Furniture = 5 working days</li> <li>• Project specific =Timeline to be agreed on a case by case basis.</li> </ul>	At least 98% at all times	Resolution of all issues to be resolved to the satisfaction of the Customer.

Service Levels			
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Credit for each Service Period
	<p>2.3: Supplier to respond and resolve warranty issues;</p> <p>1. First Response – 24 hours 2. Site Visit – Within 2 working days 3. Resolution – Standard 5 working days Resolution - Non Standard to be agreed on a case by case basis.</p>	At least 98% at all times	Resolution of all issues to be resolved to the satisfaction of the Customer.
<b>3. CUSTOMER SERVICE</b>	3.1: Resolution of complaints within agreed timeline as stipulated at 2.2 or 2.3 (whichever is appropriate)	At least 98% at all times	<p>Resolution of complaints to the satisfaction of the Customer.</p> <p>The supplier to log complaints / feedback in as set out at Schedule 6 of the Call Off.</p> <p>Supplier to provide Customer with update if the complaint is not resolved within the estimated timescale as stipulated at 2.2 or 2.3 (whichever is appropriate).</p>

## ANNEX 1 TO PART B: PERFORMANCE MONITORING

### 1. PRINCIPAL POINTS

- 1.1 Part B to this Call Off Schedule 6 provides the methodology for monitoring the provision of the Goods and/or Services:
  - 1.1.1 to ensure that the Supplier is complying with the Service Levels; and
  - 1.1.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Goods and/or Services ("**Performance Monitoring System**").
- 1.2 Within twenty (20) Working Days of the Call Off Commencement Date the Supplier shall provide the Customer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

### 2. REPORTING OF SERVICE FAILURES

- 2.1 The Supplier shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Customer in accordance with the processes agreed in paragraph 1.2 of Part B of this Call Off Schedule 6 above.

### 3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 3.1 The Supplier shall provide the Customer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 1.2 of Part B of this Call Off Schedule 6 above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
  - 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
  - 3.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
  - 3.1.3 any Critical Service Level Failures and details in relation thereto;
  - 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 3.1.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
  - 3.1.6 such other details as the Customer may reasonably require from time to time.
- 3.2 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
  - 3.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;

- 3.2.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
- 3.2.3 be attended by the Supplier's Representative and the Customer's Representative; and

- 3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Customer's Representative at each meeting.
- 3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 3.4 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

#### **4. SATISFACTION SURVEYS**

- 4.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Goods and/or Services.
- 4.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Goods and/or Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Call Off Contract.
- 4.3 All other suggestions for improvements to the provision of Goods and/or Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 18 of this Call Off Contract (Continuous Improvement).

## CALL OFF SCHEDULE 7: SECURITY

### 1. DEFINITIONS

1.1 In this Call Off Schedule 7, the following definitions shall apply:

- "Breach of Security"** means the occurrence of:
- a) any unauthorised access to or use of the Goods and/or Services, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Call Off Contract; and/or
  - b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Call Off Contract,
- in either case as more particularly set out in the Security Policy;

### 2. INTRODUCTION

- 2.1 The purpose of this Call Off Schedule 7 is to ensure a good organisational approach to security under which the specific requirements of this Call Off Contract will be met;
- 2.2 This Call Off Schedule 7 covers:
- 2.2.1 principles of protective security to be applied in delivering the Goods and/or Services;
  - 2.2.2 the creation and maintenance of the Security Management Plan; and
  - 2.2.3 obligations in the event of actual or attempted Breaches of Security.

### 3. PRINCIPLES OF SECURITY

- 3.1 The Supplier acknowledges that the Customer places great emphasis on the reliability of the performance of the Goods and/or Services, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
- 3.2.1 is in accordance with the Law and this Call Off Contract;
  - 3.2.2 as a minimum demonstrates Good Industry Practice;
  - 3.2.3 complies with the Security Policy;
  - 3.2.4 meets any specific security threats of immediate relevance to the Goods and/or Services and/or the Customer Data; and

- 3.2.5 complies with the Customer's ICT Policy.
- 3.3 Subject to Clause 34 of this Call Off Contract (Security and Protection of Information) the references to standards, guidance and policies contained or set out in paragraph 3.2 of this Call Off Schedule 7 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Customer's Representative of such inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

#### **4. SECURITY MANAGEMENT PLAN**

##### 4.1 Introduction

- 4.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Call Off Schedule 7. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

##### 4.2 Content of the Security Management Plan

###### 4.2.1 The Security Management Plan shall:

- (a) comply with the principles of security set out in paragraph 3 of this Call Off Schedule 7 and any other provisions of this Call Off Contract relevant to security;
- (b) identify the necessary delegated organisational roles defined for those responsible for ensuring it is complied with by the Supplier;
- (c) detail the process for managing any security risks from Sub-Contractors and third parties authorised by the Customer with access to the Goods and/or Services, processes associated with the provision of the Goods and/or Services, the Customer Premises, the Sites and any ICT, Information and data (including the Customer's Confidential Information and the Customer Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Goods and/or Services;
- (d) unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Goods and/or Services and all processes associated with the provision of the Goods and/or Services, including the Customer Premises, the Sites, and any ICT, Information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Goods and/or Services;
- (e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Goods and/or Services and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the

Goods and/or Services comply with the provisions of this Call Off Contract;

- (f) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Call Off Contract and the Security Policy; and
- (g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the provision of the Goods and/or Services and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Call Off Schedule 7.

#### 4.3 Development of the Security Management Plan

4.3.1 Within twenty (20) Working Days after the Call Off Commencement Date (or such other period agreed by the Parties in writing) and in accordance with paragraph 4.4 (Amendment and Revision of the Security Management Plan), the Supplier shall prepare and deliver to the Customer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.

4.3.2 If the Security Management Plan submitted to the Customer in accordance with paragraph 4.3.1, or any subsequent revision to it in accordance with paragraph 4.4 (Amendment and Revision of the Security Management Plan), is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Call Off Schedule 7. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for Approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.

4.3.3 The Customer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to paragraph 4.3.2. However a refusal by the Customer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 shall be deemed to be reasonable.

4.3.4 Approval by the Customer of the Security Management Plan pursuant to paragraph 4.3.2 of this Call Off Schedule 7 or of any change to the Security Management Plan in accordance with paragraph 4.4 shall not relieve the Supplier of its obligations under this Call Off Schedule 7.

#### 4.4 Amendment and Revision of the Security Management Plan

4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:

- (a) emerging changes in Good Industry Practice;

- (b) any change or proposed change to the Goods and/or Services and/or associated processes;
  - (c) any change to the Security Policy;
  - (d) any new perceived or changed security threats; and
  - (e) any reasonable change in requirements requested by the Customer.
- 4.4.2 The Supplier shall provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Customer. The results of the review shall include, without limitation:
- (a) suggested improvements to the effectiveness of the Security Management Plan;
  - (b) updates to the risk assessments; and
  - (c) suggested improvements in measuring the effectiveness of controls.
- 4.4.3 Subject to paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with paragraph 4.4.1, a request by the Customer or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved by the Customer.
- 4.4.4 The Customer may, where it is reasonable to do so, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Call Off Contract.

## **5. BREACH OF SECURITY**

- 5.1 Either party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan if one exists) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 5.1, the Supplier shall:
- 5.2.1 immediately take all reasonable steps(which shall include any action or changes reasonably required by the Customer) necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
  - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Customer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
  - (c) prevent an equivalent breach in the future exploiting the same root cause failure; and

- (d) as soon as reasonably practicable provide to the Customer, where the Customer so requests, full details (using the reporting mechanism defined by the Security Management Plan if one exists) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Customer.
- 5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security policy or the requirements of this Call Off Schedule 7, then any required change to the Security Management Plan shall be at no cost to the Customer.

## **ANNEX 1: SECURITY POLICY**

## **ANNEX 2: SECURITY MANAGEMENT PLAN**

## CALL OFF SCHEDULE 8: BUSINESS CONTINUITY AND DISASTER RECOVERY

### 1. DEFINITIONS

1.1 In this Call Off Schedule 8, the following definitions shall apply:

"Business Continuity Plan"	has the meaning given to it in paragraph 2.2.1(b) of this Call Off Schedule 8;
"Disaster Recovery Plan"	has the meaning given to it in 2.2.1(c) of this Call Off Schedule 8;
"Disaster Recovery System"	means the system embodied in the processes and procedures for restoring the provision of Goods and/or Services following the occurrence of a disaster;
"Review Report"	has the meaning given to it in paragraph 6.2 of this Call Off Schedule 8;
"Supplier's Proposals"	has the meaning given to it in paragraph 6.2.3 of this Call Off Schedule 8;

### 2. BCDR PLAN

2.1 Within 30 Working Days from the Call Off Commencement Date the Supplier shall prepare and deliver to the Customer for the Customer's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Goods and/or Services; and

2.1.2 the recovery of the Goods and/or Services in the event of a Disaster.

2.2 The BCDR Plan shall:

2.2.1 be divided into three parts:

(a) Part A which shall set out general principles applicable to the BCDR Plan;

(b) Part B which shall relate to business continuity (the "**Business Continuity Plan**"); and

(c) Part C which shall relate to disaster recovery (the "**Disaster Recovery Plan**"); and

2.2.2 unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.

2.3 Following receipt of the draft BCDR Plan from the Supplier, the Customer shall:

2.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and

- 2.3.2 notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Customer.
- 2.4 If the Customer rejects the draft BCDR Plan:
  - 2.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and
  - 2.4.2 the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Customer's comments) and shall re-submit a revised draft BCDR Plan to the Customer for the Customer's approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraphs 2.3 and 2.4 of this Call Off Schedule 8 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

### **3. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS**

- 3.1 Part A of the BCDR Plan shall:
  - 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
  - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Goods and/or Services and any goods and/or services provided to the Customer by a Related Supplier;
  - 3.1.3 contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;
  - 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Customer and any of its other Related Supplier in each case as notified to the Supplier by the Customer from time to time;
  - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Customer;
  - 3.1.6 contain a risk analysis, including:
    - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
    - (b) identification of any single points of failure within the provision of Goods and/or Services and processes for managing the risks arising therefrom;
    - (c) identification of risks arising from the interaction of the provision of Goods and/or Services and with the goods and/or services provided by a Related Supplier; and

- (d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
  - 3.1.7 provide for documentation of processes, including business processes, and procedures;
  - 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Customer;
  - 3.1.9 identify the procedures for reverting to “normal service”;
  - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
  - 3.1.11 identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
  - 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer’s business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Goods and/or Services are provided in accordance with this Call Off Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
  - 3.2.3 it complies with the relevant provisions of ISO27002 and all other industry standards from time to time in force; and
  - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Goods and/or Services or to the business processes facilitated by and the business operations supported by the provision of Goods and/or Services.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Call Off Contract.

#### **4. BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Goods and/or Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Customer expressly states otherwise in writing:
  - 4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Goods and/or Services; and

- 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Goods and/or Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
  - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Goods and/or Services;
  - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Goods and/or Services (such goods and/or services and steps, the “**Business Continuity Goods and/or Services**”);
  - 4.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Goods and/or Services during any period of invocation of the Business Continuity Plan; and
  - 4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

## 5. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Customer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
  - 5.3.1 the technical design and build specification of the Disaster Recovery System;
  - 5.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
    - (a) data centre and disaster recovery site audits;
    - (b) backup methodology and details of the Supplier's approach to data back-up and data verification;
    - (c) identification of all potential disaster scenarios;
    - (d) risk analysis;
    - (e) documentation of processes and procedures;
    - (f) hardware configuration details;
    - (g) network planning including details of all relevant data networks and communication links;
    - (h) invocation rules;
    - (i) Service recovery procedures; and

- (j) steps to be taken upon resumption of the provision of Goods and/or Services to address any prevailing effect of the failure or disruption of the provision of Goods and/or Services;
- 5.3.3 any applicable Service Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Goods and/or Services during any period of invocation of the Disaster Recovery Plan;
- 5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule 8; and
- 5.3.6 testing and management arrangements.

## 6. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
  - 6.1.1 on a regular basis and as a minimum once every six (6) months;
  - 6.1.2 within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
  - 6.1.3 where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Call Off Schedule 8) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Customer for the Customer's approval. The costs of both Parties of any such additional reviews shall be met by the Customer except that the Supplier shall not be entitled to charge the Customer for any costs that it may incur above any estimate without the Customer's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 of this Call off Schedule 8 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Goods and/or Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Customer shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report (a **"Review Report"**) setting out:
  - 6.2.1 the findings of the review;
  - 6.2.2 any changes in the risk profile associated with the provision of Goods and/or Services; and

- 6.2.3 the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any goods, services or systems provided by a third party.
- 6.3 Following receipt of the Review Report and the Supplier's Proposals, the Customer shall:
  - 6.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
  - 6.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Customer.
- 6.4 If the Customer rejects the Review Report and/or the Supplier's Proposals:
  - 6.4.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and
  - 6.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Customer's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Customer for the Customer's approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraphs 6.3 and 6.4 of this Call Off Schedule 8 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the Customer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Goods and/or Services.

## **7. TESTING OF THE BCDR PLAN**

- 7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 7.2 of this Call Off Schedule 8, the Customer may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers it necessary, including where there has been any change to the Goods and/or Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Customer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.
- 7.4 The Supplier shall ensure that any use by it or any Sub-Contractor of “live” data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
  - 7.5.1 the outcome of the test;
  - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Customer, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.
- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan’s procedures) shall not relieve the Supplier of any of its obligations under this Call Off Contract.
- 7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Goods and/or Services or as otherwise reasonably requested by the Customer.

## **8. INVOCATION OF THE BCDR PLAN**

- 8.1 In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Customer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Customer.

## CALL OFF SCHEDULE 9: EXIT MANAGEMENT

### 1. DEFINITIONS

1.1 In this Call Off Schedule 9, the following definitions shall apply:

<b>"Exclusive Assets"</b>	means those Supplier Assets used by the Supplier or a Key Sub-Contractor which are used exclusively in the provision of the Goods and/or Services;
<b>"Exit Information"</b>	has the meaning given to it in paragraph 4.1 of this Call Off Schedule 9;
<b>"Exit Manager"</b>	means the person appointed by each Party pursuant to paragraph 3.4 of this Call Off Schedule 9 for managing the Parties' respective obligations under this Call Off Schedule 9;
<b>"Net Book Value"</b>	means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Customer of even date with this Call Off Contract;
<b>"Non-Exclusive Assets"</b>	means those Supplier Assets (if any) which are used by the Supplier or a Key Sub-Contractor in connection with the Goods and/or Services but which are also used by the Supplier or Key Sub-Contractor for other purposes;
<b>"Registers"</b>	means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Call Off Schedule 9;
<b>"Termination Assistance"</b>	means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Customer pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Notice"</b>	has the meaning given to it in paragraph 6.1 of this Call Off Schedule 9;
<b>"Termination Assistance Period"</b>	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of this Call Off Schedule 9;
<b>"Transferable Assets"</b>	means those of the Exclusive Assets which are capable of legal transfer to the Customer;
<b>"Transferable Contracts"</b>	means the Sub-Contracts, licences for Supplier Background IPR, Project Specific IPR, licences for Third Party IPR or other agreements which

	are necessary to enable the Customer or any Replacement Supplier to provide the Goods and/or Services or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Assets"</b>	has the meaning given to it in paragraph 9.2.1 of this Call Off Schedule 9;
<b>"Transferring Contracts"</b>	has the meaning given to it in paragraph 9.2.3 of this Call Off Schedule 9.

## 2. INTRODUCTION

- 2.1 This Call Off Schedule 9 describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Customer leading up to and covering the Call Off Expiry Date and the transfer of service provision to the Customer and/or a Replacement Supplier.
- 2.2 The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Goods and/or Services from the Supplier to the Customer and/or a Replacement Supplier at the Call Off Expiry Date.

## 3. OBLIGATIONS DURING THE CALL OFF CONTRACT PERIOD TO FACILITATE EXIT

- 3.1 During the Call Off Contract Period, the Supplier shall:
- 3.1.1 create and maintain a Register of all:
- (a) Supplier Assets, detailing their:
    - (i) make, model and asset number;
    - (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
    - (iii) Net Book Value;
    - (iv) condition and physical location; and
    - (v) use (including technical specifications); and
  - (b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Goods and/or Services;
- 3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Goods and/or Services, which shall contain sufficient detail to permit the Customer and/or Replacement Supplier to understand how the Supplier provides the Goods and/or Services and to enable the smooth transition of the Goods and/or Services with the minimum of disruption;
- 3.1.3 agree the format of the Registers with the Customer as part of the process of agreeing the Exit Plan; and

- 3.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Goods and/or Services.
- 3.2 The Supplier shall:
  - 3.2.1 procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Goods and/or Goods and/or Services under this Call Off Contract; and
  - 3.2.2 (unless otherwise agreed by the Customer in writing) procure that all licences for Third Party IPR and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Customer to the Customer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Goods and/or Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Customer.
- 3.3 Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2.2 of this Call Off Schedule 9 which the Supplier proposes to enter into after the Call Off Commencement Date is assignable and/or capable of novation to the Customer (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Customer of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Customer so directs, may include the Supplier seeking an alternative Sub-Contractor or provider of goods and/or services to which the relevant agreement relates.
- 3.4 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Call Off Schedule 9 and provide written notification of such appointment to the other Party within three (3) months of the Call Off Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Call Off Schedule 9. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Call Off Schedule 9. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Call Off Contract and all matters connected with this Call Off Schedule 9 and each Party's compliance with it.

#### **4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF GOODS AND/OR SERVICES**

- 4.1 On reasonable notice at any point during the Call Off Contract Period, the Supplier shall provide to the Customer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
  - 4.1.1 details of the Service(s);
  - 4.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
  - 4.1.3 an inventory of Customer Data in the Supplier's possession or control;

- 4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- 4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Goods and/or Services;
- 4.1.6 all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees' required to be provided by the Supplier under this Call Off Contract such information to include the Staffing Information as defined in Schedule 10 (Staff Transfer); and
- 4.1.7 such other material and information as the Customer shall reasonably require,

(together, the "Exit Information").

- 4.2 The Supplier acknowledges that the Customer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Customer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Customer may not under this paragraph 4.2 of this Call Off Schedule 9 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).
- 4.3 The Supplier shall:
  - 4.3.1 notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Goods and/or Services and shall consult with the Customer regarding such proposed material changes; and
  - 4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.
- 4.4 The Supplier may charge the Customer for its reasonable additional costs to the extent the Customer requests more than four (4) updates in any six (6) month period.
- 4.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
  - 4.5.1 prepare an informed offer for those Goods and/or Services; and
  - 4.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

## 5. EXIT PLAN

- 5.1 The Supplier shall, within three (3) months after the Call Off Commencement Date, deliver to the Customer an Exit Plan which:
  - 5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Goods and/or Services from the Supplier to the Customer and/or its Replacement Supplier on the expiry or termination of this Call Off Contract;
  - 5.1.2 complies with the requirements set out in paragraph 5.3 of this Call Off Schedule 9;
  - 5.1.3 is otherwise reasonably satisfactory to the Customer.

- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.3 Unless otherwise specified by the Customer or Approved, the Exit Plan shall set out, as a minimum:
- 5.3.1 how the Exit Information is obtained;
  - 5.3.2 the management structure to be employed during both transfer and cessation of the Goods and/or Services;
  - 5.3.3 the management structure to be employed during the Termination Assistance Period;
  - 5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
  - 5.3.5 how the Goods and/or Services will transfer to the Replacement Supplier and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Customer's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
  - 5.3.6 details of contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon the Call Off Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Goods and/or Services will be available for such transfer);
  - 5.3.7 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Goods and/or Services following the Call Off Expiry Date charged at rates agreed between the Parties at that time;
  - 5.3.8 proposals for providing the Customer or a Replacement Supplier copies of all documentation:
    - (a) used in the provision of the Goods and/or Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
    - (b) relating to the use and operation of the Goods and/or Services;
  - 5.3.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Goods and/or Services;
  - 5.3.10 proposals for the identification and return of all Customer Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
  - 5.3.11 proposals for the disposal of any redundant Goods and/or Services and materials;
  - 5.3.12 procedures to:

- (a) deal with requests made by the Customer and/or a Replacement Supplier for Staffing Information pursuant to Call Off Schedule 10 (Staff Transfer);
  - (b) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and
  - (c) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees;
- 5.3.13 how each of the issues set out in this Call Off Schedule 9 will be addressed to facilitate the transition of the Goods and/or Services from the Supplier to the Replacement Supplier and/or the Customer with the aim of ensuring that there is no disruption to or degradation of the Goods and/or Services during the Termination Assistance Period; and
- 5.3.14 proposals for the supply of any other information or assistance reasonably required by the Customer or a Replacement Supplier in order to effect an orderly handover of the provision of the Goods and/or Services.

## 6. TERMINATION ASSISTANCE

- 6.1 The Customer shall be entitled to require the provision of Termination Assistance at any time during the Call Off Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) months prior to the Call Off Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 6.1.1 the date from which Termination Assistance is required;
  - 6.1.2 the nature of the Termination Assistance required; and
  - 6.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Goods and/or Services.
- 6.2 The Customer shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the Goods and/or Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

## 7. TERMINATION ASSISTANCE PERIOD

- 7.1 Throughout the Termination Assistance Period, or such shorter period as the Customer may require, the Supplier shall:
- 7.1.1 continue to provide the Goods and/or Services (as applicable) and, if required by the Customer pursuant to paragraph 6.1 of this Call Off Schedule 9, provide the Termination Assistance;

- 7.1.2 in addition to providing the Goods and/or Services and the Termination Assistance, provide to the Customer any reasonable assistance requested by the Customer to allow the Goods and/or Services to continue without interruption following the termination or expiry of this Call Off Contract and to facilitate the orderly transfer of responsibility for and conduct of the Goods and/or Services to the Customer and/or its Replacement Supplier;
  - 7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Call Off Schedule 9 without additional costs to the Customer;
  - 7.1.4 provide the Goods and/or Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and
  - 7.1.5 at the Customer's request and on reasonable notice, deliver up-to-date Registers to the Customer.
- 7.2 Without prejudice to the Supplier's obligations under paragraph 7.1.3 of this Call Off Schedule 9, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Call Off Schedule 9 without additional costs to the Customer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.
- 7.3 If the Supplier demonstrates to the Customer's reasonable satisfaction that transition of the Goods and/or Services and provision of the Termination Assist during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Level Performance Measure(s), the Parties shall vary the relevant Service Level Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

## **8. TERMINATION OBLIGATIONS**

- 8.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 8.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Goods and/or Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule 9), the Supplier shall:
  - 8.2.1 cease to use the Customer Data;
  - 8.2.2 provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the Customer);
  - 8.2.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Customer Data and promptly certify to the Customer that it has completed such deletion;
  - 8.2.4 return to the Customer such of the following as is in the Supplier's possession or control:
    - (a) all materials created by the Supplier under this Call Off Contract in which the IPRs are owned by the Customer;

- (b) any equipment which belongs to the Customer;
- (c) any items that have been on-charged to the Customer, such as consumables; and
- (d) all Customer Property issued to the Supplier under Clause 31 of this Call Off Contract (Customer Property). Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);
- (e) any sums prepaid by the Customer in respect of Goods and/or Services not Delivered by the Call Off Expiry Date;

8.2.5 vacate any Customer Premises;

8.2.6 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Goods and/or Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;

8.2.7 provide access during normal working hours to the Customer and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:

- (a) such information relating to the Goods and/or Services as remains in the possession or control of the Supplier; and
- (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Goods and/or Services and who are still employed by the Supplier, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.

8.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Goods and/or Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule 9), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Goods and/or Services or termination services or for statutory compliance purposes.

8.4 Except where this Call Off Contract provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Goods and/or Services shall be terminated with effect from the end of the Termination Assistance Period.

## 9. ASSETS AND SUB-CONTRACTS

9.1 Following notice of termination of this Call Off Contract and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:

- 9.1.1 terminate, enter into or vary any Sub-Contract;

- 9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
  - 9.1.3 terminate, enter into or vary any licence for software in connection with the provision of Goods and/or Services.
- 9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5 of this Call Off Schedule 9, the Customer shall provide written notice to the Supplier setting out:
- 9.2.1 which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Supplier ("**Transferring Assets**");
  - 9.2.2 which, if any, of:
    - (a) the Exclusive Assets that are not Transferable Assets; and
    - (b) the Non-Exclusive Assets,
 the Customer and/or the Replacement Supplier requires the continued use of; and
  - 9.2.3 which, if any, of Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Supplier (the "**Transferring Contracts**"),
- in order for the Customer and/or its Replacement Supplier to provide the Goods and/or Services from the expiry of the Termination Assistance Period. Where requested by the Customer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Customer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Customer and/or its Replacement Supplier requires to provide the Goods and/or Services or the Replacement Goods and/or Replacement Services.
- 9.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Customer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Call Off Contract Charges at the Call Off expiry Date, in which case the Customer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Call Off Contract Charges.
- 9.4 Risk in the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) on payment for the same.
- 9.5 Where the Supplier is notified in accordance with paragraph 9.2.2 of this Call Off Schedule 9 that the Customer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 9.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Customer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

- 9.5.2 procure a suitable alternative to such assets and the Customer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 9.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Customer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.
- 9.7 The Customer shall:
  - 9.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
  - 9.7.2 once a Transferring Contract is novated or assigned to the Customer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 9.8 The Supplier shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has been effected.
- 9.9 The Supplier shall indemnify the Customer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Customer (and/or Replacement Supplier) pursuant to paragraph 9.6 of this Call Off Schedule 9 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

## **10. SUPPLIER PERSONNEL**

- 10.1 The Customer and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Goods and/or Services or part of them for any reason, Call Off Schedule 10 (Staff Transfer) shall apply.
- 10.2 The Supplier shall not and shall procure that any relevant Sub-Contractor shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) without the prior written consent of the Customer to dissuade or discourage any employees engaged in the provision of the Goods and/or Services from transferring their employment to the Customer and/or the Replacement Supplier and/or Replacement Sub-Contractor.
- 10.3 During the Termination Assistance Period, the Supplier shall and shall procure that any relevant Sub-Contractor shall:
  - 10.3.1 give the Customer and/or the Replacement Supplier and/or Replacement Sub-Contractor reasonable access to the Supplier's personnel and/or their consultation representatives to present the case for transferring their employment to the Customer and/or the Replacement Supplier and/or to discuss or consult on any measures envisaged by the Customer, Replacement Supplier and/or Replacement Sub-Contractor in respect of persons expected to be Transferring Supplier Employees;
  - 10.3.2 co-operate with the Customer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring

Supplier Employees in line with good employee relations and the effective continuity of the Services.

- 10.4 The Supplier shall immediately notify the Customer or, at the direction of the Customer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 10.5 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Customer and/or the Replacement Supplier except that this paragraph 10.5 shall not apply where an offer is made pursuant to an express right to make such offer under Call Off Schedule 10.1 (Staff Transfer) in respect of a Transferring Supplier Employee not identified in the Supplier's Final Supplier Personnel List.

## **11. CHARGES**

- 11.1 Except as otherwise expressly specified in this Call Off Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Customer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Call Off Schedule 9 including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

## **12. APPORTIONMENTS**

- 12.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- 12.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
  - 12.1.2 the Customer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
  - 12.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 12.2 Each Party shall pay (and/or the Customer shall procure that the Replacement Supplier shall pay) any monies due under paragraph 12.1 of this Call Off Schedule 9 as soon as reasonably practicable.

## CALL OFF SCHEDULE 10: STAFF TRANSFER

### 1. DEFINITIONS

In this Call Off Schedule 10, the following definitions shall apply:

<b>“Admission Agreement”</b>	An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Supplier where it agrees to participate in the Schemes in respect of the Services;
<b>“Eligible Employee”</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
<b>“Fair Deal Employees”</b>	those Transferring Customer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Call Off Schedule 10 applies, any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);
<b>“Former Supplier”</b>	a supplier supplying services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
<b>“New Fair Deal”</b>	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
<b>“Notified Sub-Contractor”</b>	a Sub-Contractor identified in the Annex to this Call Off Schedule 10 to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>“Replacement Sub-Contractor”</b>	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>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;

<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>“Schemes”</b>	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
<b>“Service Transfer”</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
<b>“Service Transfer Date”</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>“Staffing Information”</b>	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <ul style="list-style-type: none"> <li>(a) their ages, dates of commencement of employment or engagement, gender and place of work;</li> <li>(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;</li> <li>(c) the identity of the employer or relevant contracting party;</li> <li>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li> <li>(e) their wages, salaries, bonuses and profit sharing arrangements as applicable;</li> <li>(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;</li> <li>(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in</li> </ul>

respect of personal injury claims);

(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

(j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**"Supplier's Final Supplier Personnel List"** a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

**"Supplier's Provisional Supplier Personnel List"** a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

**"Transferring Customer Employees"** those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;

**"Transferring Former Supplier Employees"** in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

**"Transferring Supplier Employees"** those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

## 2. INTERPRETATION

Where a provision in this Call Off Schedule 10 imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Customer, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

## **PART A**

### **TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **1. RELEVANT TRANSFERS**

- 1.1 The Customer and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Customer Employees; and
  - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-Contractor and each such Transferring Customer Employee.
- 1.2 The Customer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Customer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Customer; and (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

#### **2. CUSTOMER INDEMNITIES**

- 2.1 Subject to Paragraph 2.2, the Customer shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:
- 2.1.1 any act or omission by the Customer in respect of any Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee occurring before the Relevant Transfer Date;
  - 2.1.2 the breach or non-observance by the Customer before the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Customer Employees; and/or
    - (b) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;
  - 2.1.3 any claim by any trade union or other body or person representing the Transferring Customer Employees arising from or connected with any failure by the Customer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

- 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Customer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 2.1.5 a failure of the Customer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees arising before the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.7 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 2.2.2 arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer; and
- 2.3.2 the Customer may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such other reasonable steps as the Customer considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
  - 2.5.1 no such offer of employment has been made;
  - 2.5.2 such offer has been made but not accepted; or
  - 2.5.3 the situation has not otherwise been resolved,the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Customer shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
  - 2.7.1 shall not apply to:
    - (a) any claim for:
      - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
    - (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
  - 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer within 6 months of the Call Off Commencement Date.

- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Customer nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

### **3. SUPPLIER INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2 the Supplier shall indemnify the Customer against any Employee Liabilities arising from or as a result of:
- 3.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee whether occurring before, on or after the Relevant Transfer Date;
  - 3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Customer Employees; and/or
    - (b) any custom or practice in respect of any Transferring Customer Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
  - 3.1.3 any claim by any trade union or other body or person representing any Transferring Customer Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - 3.1.4 any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Customer Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Customer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
  - 3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring Customer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing;
  - 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory

- authority relates to financial obligations arising on or after the Relevant Transfer Date; and
- (b) in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Customer's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Customer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Customer and the Supplier.

#### **4. INFORMATION**

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer in writing such information as is necessary to enable the Customer to carry out its duties under regulation 13 of the Employment Regulations. The Customer shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

## **5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in:
  - 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 5.2.4 the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

## **6. PENSIONS**

The Supplier shall, and/or shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

## ANNEX TO PART A: PENSIONS

### 1. PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Customer:
  - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Customer if the Supplier breaches any obligations it has under the Admission Agreement;
  - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
  - 1.2.4 agree that the Customer may terminate this Call Off Contract in the event that the Supplier breaches the Admission Agreement:
    - (a) and that breach is not capable of being remedied; or
    - (b) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from the Customer giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

### 2. FUTURE SERVICE BENEFITS

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3. FUNDING**

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

### **4. PROVISION OF INFORMATION**

The Supplier and the Customer respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

### **5. INDEMNITY**

The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

### **6. EMPLOYER OBLIGATION**

The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

### **7. SUBSEQUENT TRANSFERS**

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 7.3 for the applicable period either:

- 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Call Off Contract, to terminate the Agreement or any part of the Services; or
- 7.3.2 after the date which is two (2) years prior to the date of expiry of this Call Off Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Customer (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **8. BULK TRANSFER**

- 8.1 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:
  - 8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
  - 8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Customer may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
  - 8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and
  - 8.1.4 indemnify the Customer on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

## **PART B**

### **TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **1. RELEVANT TRANSFERS**

- 1.1 The Customer and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
  - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.
- 1.2 Subject to Paragraph 6, the Customer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Customer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

#### **2. FORMER SUPPLIER INDEMNITIES**

- 2.1 Subject to Paragraphs 2.2 and 6, the Customer shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:
- 2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
  - 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
    - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

- 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Call Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 2.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Customer as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Former Supplier Employee, that his/her contract of

employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, to the Former Supplier; and
  - 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
  - 2.5.2 such offer has been made but not accepted; or
  - 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Customer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
    - (a) any claim for:
      - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

- (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer and, if applicable, the Former Supplier, within 6 months of the Call Off Commencement Date.
- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

### **3. SUPPLIER INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Customer and/or the Former Supplier against any Employee Liabilities arising from or as a result of:
  - 3.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
  - 3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
    - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
  - 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - 3.1.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Supplier in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE,

national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

#### **4. INFORMATION**

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and/or at the Customer's direction, the Former Supplier, in writing such information as is necessary to enable the Customer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 6, the Customer shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 5.1.4 the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

#### **6. PROCUREMENT OBLIGATIONS**

Notwithstanding any other provisions of this Part B, where in this Part B the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

#### **7. PENSIONS**

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex.

## ANNEX TO PART B: PENSIONS

### 1. PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Customer:
  - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Customer if the Supplier breaches any obligations it has under the Admission Agreement;
  - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
  - 1.2.4 agree that the Customer may terminate this Call Off Contract for material default in the event that the Supplier breaches the Admission Agreement:
    - (a) and that breach is not capable of being remedied; or
    - (b) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from the Customer giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

### 2. FUTURE SERVICE BENEFITS

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in

accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.

- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3. FUNDING**

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

### **4. PROVISION OF INFORMATION**

The Supplier and the Customer respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

### **5. INDEMNITY**

The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

### **6. EMPLOYER OBLIGATION**

The Supplier shall comply with the requirements of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

### **7. SUBSEQUENT TRANSFERS**

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement

Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and

7.3 for the applicable period either

7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Call Off Contract, to terminate the Agreement or any part of the Services; or

7.3.2 after the date which is two (2) years prior to the date of expiry of this Call Off Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Customer (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **8. BULK TRANSFER**

8.1 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:

8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;

8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Customer may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and

8.1.4 indemnify the Customer on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

## PART C

### NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

#### 1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Customer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.
- 1.2 If any employee of the Customer and/or a Former Supplier claims, or it is determined in relation to any employee of the Customer and/or a Former Supplier, that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 1.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Supplier; and
  - 1.2.2 the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Customer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
  - 1.4.1 no such offer of employment has been made;
  - 1.4.2 such offer has been made but not accepted; or
  - 1.4.3 the situation has not otherwise been resolved,the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

#### 2. INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Customer shall:
  - 2.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall

procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- 2.1.2 subject to paragraph 3, procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re-employed by the Customer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.
- 2.4 The indemnities in Paragraph 2.1:
- 2.4.1 shall not apply to:
- (a) any claim for:
    - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,  
in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
  - (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to the Customer and, if applicable, Former Supplier within 6 months of the Call Off Commencement Date.

### **3. PROCUREMENT OBLIGATIONS**

Where in this Part C the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that

regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## PART D

### EMPLOYMENT EXIT PROVISIONS

#### 1. PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
  - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Call Off Contract;
  - 1.1.3 the date which is twelve (12) months before the end of the Term; and
  - 1.1.4 receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six (6) month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Customer.
- 1.2 At least thirty (30) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-Contractor:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Customer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 1.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
  - 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Customer or, at the direction of the Customer, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which Services are organised, which shall include:
  - 1.6.1 the numbers of employees engaged in providing the Services;
  - 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
  - 1.6.3 the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Call Off Schedule 10 or paragraph 2.3 of the Annex (Pensions) to Part B of this Call Off Schedule 10 (as appropriate); and
  - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
  - 1.7.1 the most recent month's copy pay slip data;
  - 1.7.2 details of cumulative pay for tax and pension purposes;
  - 1.7.3 details of cumulative tax paid;

- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

## **2. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Call Off Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 2.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:
  - 2.3.1 any act or omission of the Supplier or any Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
  - 2.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
    - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
  - 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
    - (b) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
  - 2.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
  - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Call Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
  - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or

- any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
- 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- 2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
- 2.7.2 such offer has been made but not accepted; or
- 2.7.3 the situation has not otherwise been resolved
- the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership,

pregnancy and maternity or sexual orientation, religion or belief; or

- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or

- (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.11.1 the Supplier and/or any Sub-Contractor; and

2.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.

2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13 Subject to Paragraph 2.14, where a Relevant Transfer occurs the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee

- representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
- 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
  - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
- 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the

Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

- 2.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
  - 2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

**ANNEX TO SCHEDULE 10: LIST OF NOTIFIED SUB-CONTRACTORS**

## CALL OFF SCHEDULE 11: DISPUTE RESOLUTION PROCEDURE

### 1. DEFINITIONS

1.1 In this Call Off Schedule 11, the following definitions shall apply:

<b>"CEDR"</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>"Counter Notice"</b>	has the meaning given to it in paragraph 6.2 of this Call Off Schedule 11;
<b>"Exception"</b>	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Goods and/or Services;
<b>"Expert"</b>	the person appointed by the Parties in accordance with paragraph 5.2 of this Call Off Schedule 11;
<b>"Extraordinary Meeting"</b>	a meeting, attended in person or over a conference call, held by the Parties in an attempt to resolve the Dispute in good faith in accordance with paragraphs 2.5 and 2.6 of this Call Off Schedule 11;

<b>"Mediator"</b>	the independent third party appointed in accordance with paragraph 4.2 of this Call Off Schedule 11; and
<b>"Senior Officers"</b>	are senior officials of the Customer and Supplier that have been instructed by the Customer Representative and Supplier Representative respectively to resolve the Dispute by commercial negotiation.

## 2. INTRODUCTION

- 2.1 The Parties shall seek to resolve a Dispute:
- 2.1.1 first in good faith (as prescribed in paragraphs 2.4 to 2.8 of this Call Off Schedule 11);
  - 2.1.2 where the Dispute has not been resolved by good faith, the Parties shall attempt to resolve the Dispute by commercial negotiation (as prescribed in paragraph 3 of this Call Off Schedule 11);
  - 2.1.3 where the Dispute has not been resolved in good faith and commercial negotiation has been unsuccessful in resolving the Dispute, then either Party may serve a Dispute Notice and shall attempt to resolve the Dispute through mediation (as prescribed in paragraph 4 of this Call Off Schedule 11); and
  - 2.1.4 if mediation is not agreed by the Parties, the Parties may proceed to arbitration (as prescribed in paragraph 6 of this Call Off Schedule 11) or litigation (in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction)).
- 2.2 Specific issues may be referred to Expert Determination (as prescribed in paragraph 5 of this Call Off Schedule 11) where specified under the provisions of this Call Off Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Call Off Schedule 11.
- 2.3 Save in relation to paragraph 4.5, the Parties shall bear their own legal costs in resolving Disputes under this Call Off Schedule 11.

### Good faith discussions

- 2.4 Pursuant to paragraph 2.1.1 of this Call Off Schedule 11, if any Dispute arises the Customer Representative and the Supplier Representative shall attempt first to resolve the Dispute in good faith, which may include (without limitation) either Party holding an Extraordinary Meeting.
- 2.5 Either Party may hold an Extraordinary Meeting by serving written notice. The written notice must give the receiving party at least five (5) Working Days notice of when the Extraordinary Meeting is to take place.
- 2.6 The Customer Representative and Supplier Representative shall attend the Extraordinary Meeting. The key personnel of the Parties may also attend the Extraordinary Meeting.
- 2.7 The representatives of the Parties attending the Extraordinary Meeting shall use their best endeavours to resolve the Dispute.

- 2.8 If the Dispute is not resolved at the Extraordinary Meeting then the Parties may attempt to hold additional Extraordinary Meetings in an attempt to resolve the Dispute. If the Extraordinary Meetings are unsuccessful in resolving the Dispute or the Dispute has not been resolved through good faith discussions thirty (30) Working Days from when they first started, the Parties shall attempt to resolve the Dispute by commercial negotiation.

### **3. COMMERCIAL NEGOTIATIONS**

- 3.1 Where the Parties have been unable to resolve the Dispute in good faith under paragraphs 2.4 to 2.8 of this Call Off Schedule 11, pursuant to paragraph 2.1.2 the Customer and the Supplier shall use reasonable endeavours to resolve the Dispute by discussion between Senior Officers.
- 3.2 Senior Officers shall resolve the Dispute as soon as possible and in any event thirty (30) Working Days from the date Parties agree good faith discussions were deemed unsuccessful.
- 3.3 If Senior Officers:
- 3.3.1 are of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or
  - 3.3.2 fail to resolve the Dispute in the timelines under paragraph 3.2 of this Call Off Schedule 11,
- commercial negotiations shall be deemed unsuccessful and either Party may serve a Dispute Notice in accordance with paragraphs 3.4 and 3.5 of this Call Off Schedule 11.

#### Dispute Notice

- 3.4 The Dispute Notice shall set out:
- 3.4.1 the material particulars of the Dispute;
  - 3.4.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
  - 3.4.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 7 of this Call Off Schedule 11, the reason why.
- 3.5 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Call Off Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

### **4. MEDIATION**

- 4.1 Pursuant to paragraph 2.1.3 of this Call Off Schedule 11, if a Dispute Notice is served, the Parties shall attempt to resolve the Dispute by way of mediation. The Parties may follow the CEDR's Model Mediation Procedure which is current at the time the Dispute

Notice is served (or such other version as the Parties may agree) or a mediation procedure that is agreed between the Parties.

- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Dispute Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If neither Party applies to CEDR to nominate the Mediator or an application to CEDR is unsuccessful under paragraph 4.2 of this Call Off Schedule 11, either Party may proceed to:
  - 4.3.1 hold further discussions between Senior Officers; or
  - 4.3.2 an Expert determination, as prescribed in paragraph 5 of this Call Off Schedule 11; or
  - 4.3.3 arbitration, as prescribed in paragraph 6 of this Call Off Schedule 11; or
  - 4.3.4 litigation in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction).
- 4.4 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.5 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.
- 4.6 The costs of any mediation procedure used to resolve the Dispute under this paragraph 4 of this Call Off Schedule 11 shall be shared equally between the Parties.

## **5. EXPERT DETERMINATION**

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Goods and/or Services or otherwise relates to a technical matter of an accounting or financing nature (as the Parties may agree), either Party may request (such request shall not be unreasonably withheld or delayed by the Parties) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body.
- 5.3 The Expert shall act on the following basis:
  - 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
  - 5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;

- 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
- 5.3.5 the process shall be conducted in private and shall be confidential; and
- 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## 6. ARBITRATION

- 6.1 Either of the Parties may, at any time before court proceedings are commenced and after the Parties have attempted to resolve the Dispute in good faith, by commercial negotiation , mediation and Expert determination (if applicable), refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Call Off Schedule 11.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Call Off Schedule 11 or be subject to the jurisdiction of the courts in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
  - 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Call Off Schedule 11 shall apply;
  - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 61 of this Call Off Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
  - 6.3.3 the Customer does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Call Off Schedule 11, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Call Off Schedule 11 or commence court proceedings in the courts in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Call Off Schedule 11, the Parties hereby confirm that:
  - 6.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London

Court of International Arbitration (“**LCIA**”) (subject to paragraphs 6.4.5 and 6.4.6 of this Call Off Schedule 11);

- 6.4.2 the arbitration shall be administered by the LCIA;
- 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 6.4.5 the arbitration proceedings shall take place in London and in the English language; and
- 6.4.6 the seat of the arbitration shall be London.

## **7. EXPEDITED DISPUTE TIMETABLE**

- 7.1 In exceptional circumstances where the use of the times in this Call Off Schedule 11 would be considered unreasonable by the Parties, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 7.2 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 7.1 of this Call Off Schedule 11 or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this Call Off Schedule 11:
  - 7.2.1 in paragraph 2.8, fourteen (14) Working Days;
  - 7.2.2 in paragraph 3.2, ten (10) Working Days;
  - 7.2.3 in paragraph 4.2, ten (10) Working Days;
  - 7.2.4 in paragraph 5.2, five (5) Working Days; and
  - 7.2.5 in paragraph 6.2, ten (10) Working Days.
- 7.3 If at any point it becomes clear that an applicable deadline under paragraph 7.2 of this Call Off Schedule 11 cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the relevant deadline.
- 7.4 If, pursuant to paragraph 7.2 of this Call Off Schedule 11, the Parties fail to agree within two (2) Working Days after the relevant deadline has passed, the Customer may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs under paragraph 7.2 (or no less than two (2) Working Days in the case of Paragraph 5.2 of this Call Off Schedule 11).
- 7.5 Any agreed extension under paragraph 7.2 of this Call Off Schedule 11 shall have the effect of delaying the start of the subsequent stages by the period agreed in the

extension. If the Customer fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

## **8. URGENT RELIEF**

- 8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
- 8.1.1 for interim or interlocutory remedies in relation to this Call Off Contract or infringement by the other Party of that Party's Intellectual Property Rights;  
or
  - 8.1.2 where compliance with paragraph [2.1] of this Call Off Schedule 11 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period; or
  - 8.1.3 if the Parties fail to resolve the Dispute following good faith discussions and commercial negotiations and mediation (where applicable) is unsuccessful within 60 working days or such period as may be agreed by the Parties then any Dispute between the Parties may be referred to the Courts.

**CALL OFF SCHEDULE 12: VARIATION FORM**

No of Call Off Order Form being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Customer] ("**the Customer**")

and

[insert name of Supplier] ("**the Supplier**")

1. This Call Off Contract is varied as follows:

***[Refer to Clause 22.1 and insert details of the Variation]***

- 2.

3. Words and expressions in this Variation shall have the meanings given to them in this Call Off Contract.

4. This Call Off Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Customer

Signature

Date

Name (in  
Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in  
Capitals)

Address

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### **CALL OFF SCHEDULE 13: TRANSPARENCY REPORTS**

- 1.1 Within three (3) months from the Call Off Commencement Date or the date so specified by the Customer in the Call Off Order Form the Supplier shall provide to the Customer for Approval (the Customer's decision to approve or not shall not be unreasonably withheld or delayed) draft Transparency Reports consistent with the content and format requirements in Annex 1 below.
- 1.2 If the Customer rejects any proposed Transparency Report, the Supplier shall submit a revised version of the relevant report for further Approval by the Customer within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Customer. If the Parties fail to agree on a draft Transparency Report the Customer shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Customer at the frequency referred to in Annex 1 of this Call Off Schedule 13 below.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements in this Call Off Schedule 13 are in addition to any other reporting requirements in this Call Off Contract.

## CALL OFF SCHEDULE 14: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. **Not Applied.**
2. **OBLIGATION TO ADVERTISE SUPPLY CHAIN OPPORTUNITIES**

0.1 The following new Clause 61 shall apply:

### **60. Obligation to Advertise Supply Chain Opportunities**

60.1. The Supplier shall ensure that all Sub-Contracts, which the Supplier intends to procure following date of this Call Off Contract, and which the Supplier has not, before the date of this Call Off Contract, already awarded to a particular Sub-Contractor, are:

60.1.1. advertised; and

60.1.2. awarded following a fair, transparent and competitive process proportionate to the nature and value of the Sub-Contract.

60.2. Any Sub-Contract awarded by the Supplier pursuant to Clause 61.1 must contain suitable provisions to impose, as between the parties of the Sub-Contract:

60.2.1. requirements to the same effect as those in Clause 61.1; and

60.2.2. a requirement for the Sub-Contractor to include in any Sub-Contract which it in turn awards, suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 61.2.



**CALL OFF SCHEDULE 15: CALL OFF TENDER**

<b>Number</b>	<b>Name</b>	<p><b>Flexiform Business Furniture Limited (#SID=ACM_1088686)</b></p> <p><b>Answer</b></p>
2.1.2	Please provide full name of organisation tendering (or of the organisation acting as the lead where a consortium bid is being submitted)	Flexiform Business Furniture Limited
2.1.3	Please provide contact details for enquiries about this response which should include: Organisation name, Organisation full correspondence address with post code. Primary Contact's Name, Primary Contact's Phone Numbers, Primary Contact's e-mail. Secondary Contact's Name, Secondary Contact's Phone Numbers, Secondary Contact's e-mail (as referred to above you must inform us of any changes to the contact at any stage in the procurement)	<p>Andy Price 07415 880708 andyp@flexiform.co.uk</p> <p>Nick Saunders 07798 687177 nicks@flexiform.co.uk</p>
2.1.4	Please provide the 'Registered Office Address' (i.e. the 'Registered Office Address' used for accountancy purposes)	1392 Leeds Road Thornbury Bradford, BD3 7AE

2.1.5	Using a selection from the provided list, please indicate your trading status.	ii) a limited company
2.1.6	Using a selection from the provided list, please indicate if any of the following classifications apply to you.	Small or Medium Enterprise (SME)
2.1.7	Please provide the following, or any further relevant, information to assist with our understanding of your organisation type: Your Registered Company or Charity number (if you do not have either of these please explain why) Your organisation type if you selected 'other' Your organisation structure where any employee ownership or employee participatory principles exist, the name of your immediate parent company (where applicable), and the name of your ultimate parent company (where applicable and your parent company is part of a bigger group)	02542123
2.1.9	Please indicate whether you are bidding as a Prime Contractor and will deliver 100% of the key contract deliverables yourself	We confirm we are bidding as a Prime Contractor and will deliver 100% of the key contract deliverables ourselves

2.1.10	<p>Please indicate whether you are bidding as a Prime Contractor and will use third parties to deliver some of the services.</p> <p>If yes, please provide details of your proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.</p>	not applicable
2.1.11	<p>Please indicate whether you are bidding as Prime Contractor but will operate as a Managing Agent and will use third parties to deliver all of the services.</p> <p>If yes, please provide details of your proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.</p>	not applicable

2.1.12	<p>Please indicate whether you are bidding as a consortium but not proposing to create a new legal entity.</p> <p>If yes, please include details of your consortium members, including details of any Parent/Ultimate Parent companies where applicable, in response to this question and use a separate Appendix to explain the alternative arrangements i.e. why a new legal entity is not being created.</p> <p>Please note that the Contracting Authority may require the consortium to assume a specific legal form if awarded the contract, to the extent that it is necessary for the satisfactory performance of the contract.</p>	not applicable
2.1.13	<p>Please indicate whether you are bidding as a consortium and intend to create a Special Purpose Vehicle (SPV).</p> <p>If yes, please include details of your consortium, current lead member and intended SPV in the next column and provide full details of the bidding model using a separate Appendix.</p>	not applicable

2.1.15	Please confirm that prior to providing a response to any of the award criteria questionnaires/questions, you have read and taken into account all of the information contained in the Tendering Instructions document attached to this event, and in the case of an incumbent provider that special attention has been paid to Section 3, Conditions of Tender.	Yes
2.1.16	As per the Tendering Instructions, Section 10, Publication of Contract Award, please acknowledge that you are aware that there is an obligation for the final contracts to be published. Please provide details of any aspect of your Tender Response which should not be made public and provide the reasons as why you believe such redactions should be applicable.	Yes
2.2	Reg 57 Mandatory and Discretionary Exclusions for Non-payment of Taxes	

2.2.2	<p>Applicants who are registered for tax in the UK should answer this question and questions 6 Regulations 57(3) and 57(4) of the Public Contracts Regulations 2015 respectively provide for the mandatory and discretionary exclusion of an economic operator from a procurement procedure if it is in breach of its obligations relating to the payment of taxes or social security contributions. Accordingly, please provide the information requested in response to the following questions and note that HMRC will undertake revenue compliance checks throughout the procurement process, using information from its own records, as appropriate, and, as applicable, so as to ensure compliance during the life of any contract awarded as a consequence of this procurement exercise.</p> <p>Please confirm that you understand and agree that the information you provide in response to this questionnaire will be used to allow appropriate tax revenue compliance checks to be performed.</p>	<p>We confirm that we understand and agree that the information we have provided in response to this questionnaire will be used to allow appropriate tax revenue compliance checks to be performed.</p>
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2.2.3	Please state the organisation name that is used for tax and accounting purposes (i.e. head office name where used) and list any organisation name changes that have taken place in the last three years, that may relate to the information requested in respect of the following questions	Flexiform Business Furniture Limited
2.2.4	VAT Registration Number: (If 'Not Applicable' please provide details why)	607217951
2.2.5	PAYE Collection Reference: (If Not Applicable please provide details why)	P072 PF 00007434
2.2.6	Corporation Tax or Self Assessment Reference as may be applicable to your organisation type. (Provision of the Corporation Tax details for your organisation should be the default answer to this question. Where the payment of Corporation Tax is not applicable to your organisation (i.e. it is a partnership) then the Self Assessment details for the person who will be accountable for the work in your organisation should be provided. If you are unable to provide Corporation Tax or Self Assessment reference details then please state 'Not Applicable' and provide the reasons why)	100 21000 24415

2.2.7	<p>If a consortium bid or sub-contractors are to be used directly to deliver any of the requirements stated in the specification, please provide the information requested inclusive for each member of the consortium and for each sub-contractor. Before providing their details, please ensure that you obtain consent from the consortium member or sub-contractor using the sub-contractor revenue compliance consent form provided in Appendix C of the Tendering Instructions. Please attach scanned copies of the completed consent form to this question or send by post as a hard copy using the process outlined in the Tendering Instructions paragraphs 5.16 - 5.19.</p>	Not applicable
2.2.8	<p>BUYER VIEW QUESTION ONLY - Following the relevant CD guidance, is the supplier sufficiently "revenue compliant"? Indicate Yes/No and if No, please provide details.</p>	

2.2.10	<p>UK and Overseas Organisations are required to provide their Dun &amp; Bradstreet number. The number will assist the Contracting Authority in verifying any Revenue Compliance and Financial Check Information obtained. The number will also be used to monitor the contract spend across other Government organisations.</p> <p>Please provide the Dun &amp; Bradstreet number for the organisation, including any changes in the last three years, that corresponds with the information you provided in sections above, as may be applicable. Should your organisation currently not be registered with Dun &amp; Bradstreet please confirm that you would be willing to register with them should your tender be successful</p>	762662468
3	Award Questionnaires	
3.1	Award Criteria - Social, Environmental and Innovative Characteristics	

3.1.2	<p>Please provide details of the commitment you would give to Client Account Management in support of Supplier Relationship Management activity. Please give the name of the person who will be responsible for Client Account Management and provide a brief overview of their relevant skills. Please be aware that as part of Client Account Management activity you may be required to complete a HMRC Supplier Performance Management (SPM) questionnaire using the e-sourcing portal.</p>	<p>Flexiform has invested heavily in resources, both in terms of people and capacity to support the HMRC Hubs, EU Exit and Transitional Buildings programme as well as HMRC day to day business, with much of this investment set up to ensure we provide excellent client account management. We have dedicated teams to support all HMRC sites which includes the appointment of a “buddy” or deputy for all key team members.</p> <p>HMRC is a strategically important customer to Flexiform and to fully support you with the requirements of this tender for Liverpool and Preston sites Flexiform has set up a dedicated client account management team to deliver all aspects of the requirement across both sites.</p> <p>The Flexiform team will be led by Andy Price – Client Account and Contract Manager for HMRC, who will be the overarching single point of contact for both HMRC Liverpool and HMRC Preston sites and will work closely with the two operational teams, one for Imperial House and one for the two buildings in Preston. Andy’s CV has been attached in support of this response.</p> <p>Andy has over 30 years’ experience in the office and contract furniture sector with vast experience of managing frameworks including the CCS framework, SUPC, NEUPC, YPO and NHS. He has held the position of Contracts Manager for several major Framework suppliers, demonstrating his skills and expertise in the industry. In addition to having a solid understating of frameworks, Andy is also an experienced client account manager and has managed many major accounts and projects during his time in the furniture industry. Previous clients include:</p> <ul style="list-style-type: none"> <li>• Jaguar Land Rover</li> <li>• University of Cambridge</li> <li>• Santander</li> <li>• Ministry of Defence</li> <li>• Transport for London</li> <li>• QinetiQ</li> <li>• Capita Group</li> <li>• North Bristol NHS Trust</li> <li>• HMRC</li> <li>• Santander</li> <li>• Environment Agency</li> </ul> <p>Andy was involved with the delivery of the first HMRC Regional Centre Hub in Croydon and the Government Hub based at Canary Wharf London as well as recent HMRC EU Exit sites in Manchester, Birmingham, Bristol and Leeds, which clearly demonstrates his calibre and the reason for his appointment as</p>
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		<p>head of the Flexiform team.</p> <p>In order to successfully deliver the end to end requirements at both the Liverpool and Preston sites, meeting your specification in full, Andy will be supported by a core Flexiform team for each site. This will provide HMRC with experienced and dedicated resource to manage each project. Because both projects will run in parallel we will have two separate teams running one project each. All members of the team are experienced industry professionals, fully aware of all elements of the HMRC contract, products, colourways and KPI's, and are ready to hit the ground running with each site.</p> <p>We feel having two teams, working both together, to share information and updates, but independent of each other, to ensure successful delivery of each requirement, will give HMRC peace of mind that each team will be solely dedicated to each site/project.</p> <p>The Flexiform client account management team for each site is detailed below. The team will be involved in planning, delivering and managing the contract for each site and will provide all services under the scope of works for Flexiform. The whole team has been involved in the preparation of this bid and many of the team are currently working on other HMRC Projects for Flexiform, which gives them valuable experience that will ensure they hit the ground running with your requirements for each site.</p> <p>HMRC Liverpool Team</p> <ul style="list-style-type: none"> <li>• Andy Price – SPOC and Contract Manager</li> <li>• Jade Cartwright - Project Manager</li> <li>• Louise Fisher – Buddy/Deputy Project Manager</li> <li>• Aaron Allen – Site Installation Manager</li> <li>• Nick Saunders - Senior Internal Sponsor and deputy SPOC</li> <li>• Nadia Al-Chalaby – Head Interior Designer and Space Planner</li> <li>• Sarah Sykes - Internal Customer Sales Manager</li> <li>• Ray Parker – Logistics Manager</li> <li>• Natalie Parkinson – Logistics Co-ordinator</li> <li>• Mark Parrish – Head of Supply Chain</li> </ul> <p>HMRC Preston Team</p> <ul style="list-style-type: none"> <li>• Andy Price – SPOC and Contract Manager</li> <li>• Lee Williamson – Project Manager</li> <li>• Raf Debski – Buddy/Deputy Project Manager</li> <li>• Danny Hasley – Site Installation Manager</li> <li>• Nick Saunders - Senior Internal Sponsor and deputy SPOC</li> <li>• Nadia Al-Chalaby – Head Interior Designer and Space Planner</li> </ul>
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		<p>2. POST INSTALLATION (Live Service) 2.1: Supplier to acknowledge customer complaints/feedback within 1 working day of receipt.</p> <p>Customer Support to be available to respond between 8am and 6pm, Monday – Friday.</p> <p>100% at all times</p> <p>Written acknowledgement to be provided to the Customer.</p> <p>2.2: Supplier to respond and resolve defects, including repairs;</p> <ul style="list-style-type: none"> <li>• Priority 1 = 24 hours</li> <li>• Priority 2 – Task Furniture = 3 working days Loose Furniture = 5 working days</li> <li>• Project specific =Timeline to be agreed on a case by case basis.</li> </ul> <p>At least 98% at all times</p> <p>Resolution of all issues to be resolved to the satisfaction of the Customer.</p> <p>2.3: Supplier to respond and resolve warranty issues;</p> <p>1. First Response – 24 hours</p>
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		<p>2. Site Visit – Within 2 working days  3. Resolution – Standard 5 working days  Resolution - Non Standard to be agreed on a case by case basis.</p> <p>At least 98% at all times</p> <p>Resolution of all issues to be resolved to the satisfaction of the Customer.</p> <p>3. CUSTOMER SERVICE 3.1: Resolution of complaints within agreed timeline as stipulated at 2.2 or 2.3 (whichever is appropriate)</p> <p>At least 98% at all times Resolution of complaints to the satisfaction of the Customer.</p> <p>Supplier to provide Customer with update if the complaint is not resolved within the estimated timescale as stipulated at 2.2 or 2.3 (whichever is appropriate).</p> <p>In addition to the above KPIs we will commit to the following Client Account Management KPIs:</p> <ul style="list-style-type: none"> <li>• Response time to emails: within 24 hours</li> <li>• Response time to phone calls: within 12 hours</li> <li>• Space Plans/designs drawn up and issued to HMRC: within 72 hours</li> <li>• Changes to plans and redrafts: issued within 48 hours</li> <li>• Changes to project timelines and new plans updated: issued within 24 hours</li> <li>• Contract review meeting to discuss Lessons Learnt attended by the SPOC and Project Manager: within 1 month of completion of the contract.</li> </ul> <p>We would also like to suggest and initiate a weekly conference call with all stakeholders including CDIO, the Building Managers, the HMRC Project Team, Fujitsu and ourselves to provide a regular update/communication flow to ensure</p>
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		<p>that all stakeholders are aware of what actions will take place in the following week, progress against the project timelines/deliverables and any action points or issues. We feel that this approach will hugely benefit the joint requirement and having an open communication forum across both sites will aid the flow of communication, facilitate the decision making process and save time overall.</p> <p>Senior Internal Sponsor - Effective and successful client account management is one of the most important aspects of our business and is embedded throughout the organisation. To support this we place senior internal sponsors on every key strategic contract/account to ensure that the client is well supported, and that our own team has senior level input. For this account Flexiform's Sales Director, Nick Saunders, will be the senior internal sponsor and will be available to meet with the HMRC Liverpool and HMRC Preston team when required. Nick will act as an escalation point if needed and will also be available to provide support to the Flexiform team. Nick will expect regular progress updates from Andy Price and will remain across all aspects of each project, including client account management.</p> <p>Nick will also act in the capacity of 'deputy SPOC' to Andy Price and will be kept up-to-date with progress across each requirement so that he is able to step in at any point, if any unforeseen circumstance results in Andy's absence from either Liverpool or Preston, or both requirements. Nick is an ideal candidate for this role as he has previous experience of supporting HMRC and is familiar with your working practices, codes of conduct and ethics and is familiar and experienced with HMRC site security requirements and protocols. As Nick will already be involved in the projects as Senior Internal Sponsor he will be receiving regular updates from Andy and will already be familiar with all aspects of each project and its deliverables. These de-risks the project delivery as we are providing HMRC with continuity of personnel familiar with your requirements across both sites.</p> <p>We commit fully to providing the experienced resources that HMRC requires for both projects, both in terms of personnel and manufacturing and delivery capacity and capability.</p> <p>We feel that there are many benefits to our approach to customer relationship management for this joint requirement, including:</p> <ul style="list-style-type: none"> <li>• Dedicated core team to manage the requirements at each site including project manager, installation manager, installation team, logistics support and lead client account manager/SPOC</li> <li>• Deputies assigned to the key client account team members ensuring that more</li> </ul>
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		<p>than one key person has full knowledge of your requirements, understands the deliverables and can step-in and hit the ground running if a core team member is absent</p> <ul style="list-style-type: none"> <li>• Creation of a partnership culture between all stakeholder groups which increases engagement and investment in each project</li> <li>• Greater understanding of HMRC needs for each site, and for the overall contract</li> <li>• Fluid communication management between all parties/stakeholder groups</li> <li>• Agreement to all HMRC KPIs with a firm commitment to additional client account management KPIs</li> <li>• Implementation of a continuous feedback culture to improve service, address issues and provide the highest levels of service</li> <li>• Swift rectification of any complaint or issue by the core team at each site</li> <li>• Comprehensive after sales care package provided for each site including product training, space planning and design, customer service helpdesk, manufacturer's warranty/guarantee, continued product maintenance/health checks, continued advice and support with products and services and recycling and remanufacturing services</li> </ul> <p>We believe the above will increase your client satisfaction and will ensure that each requirement is delivered successfully and to your requirements. We don't view this contract as a simple supplier/customer one – we genuinely see ourselves as more than a supplier to HMRC and we will invest our time, expertise and resources into a partnership with your teams that will successfully deliver your requirements.</p> <p>Note: Flexiform confirms its understanding of, and agreement to, completing a HMRC Supplier Performance Management (SPM) questionnaire in support of Client Account Management activity if required by HMRC.</p>
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3.1.3	<p>Please provide full details of your complaints handling system with regard to issues arising with Client Account Management and/or performance issues not being rectified as part of routine Contract Management activity.</p>	<p>Flexiform strives to build successful client relationships with effective communication embedded into our processes. We assign experienced and high-calibre members of staff to client accounts to provide a high-level of service from the outset, and we always communicate directly with our customers to minimise issues and deal with any issue efficiently, to the complete satisfaction of the client. Any complaint that may arise will be dealt with under the parameters of our ISO9001 Quality Management Accreditation.</p> <p>If a complain does arise we will deal with it swiftly, at the right level and will keep HMRC updated with progress. At all stages of the sales, order processing, manufacturing, logistics, installation and service provision we are in contact with our client teams and will ensure that any issue is formally logged on our system and is dealt with in the appropriate way, as detailed below:</p> <p>Issues with Client Account Management and Performance Issues Any complaints that arise regarding client account management will be dealt with by the Sales Director and the Senior Internal Sponsor for HMRC, Nick Saunders, who has the full authority of the Flexiform board to deal with any issue swiftly. The process is as follows:</p> <ul style="list-style-type: none"> <li>• Issues will be escalated to Nick Saunders by the client account management team</li> <li>• Nick will take a brief and summarise the issue, confirming with the client team that this his information is accurate</li> <li>• Nick will investigate the complaint and report back to the client team</li> <li>• Nick with carry out a root cause analysis and establish remedial action to prevent a re-occurrence</li> <li>• Nick will then report back to the client team to ensure that they are happy with the resolution</li> <li>• Nick will close the issue/complaint when the client team confirms their satisfaction with the resolution.</li> </ul> <p>If the issue is related to a member of Flexiform staff Nick will address the compliant directly with the person, with HR representation if required. Depending upon the nature of the complaint, a formal warning many be given. HMRC will be updated with progress/resolution as appropriate.</p> <p>In a situation where HMRC requests that a member of the Flexiform team should be removed from the client account management team due to poor performance Nick will also deal with this directly and will investigate the issue fully. If the</p>
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		<p>situation cannot be resolved Nick will replace the team member with a colleague who has very similar experience and skillset to ensure minimal disruption to the programme(s).</p> <p>If the client Account Manager was to be replaced, Nick would step-in in the interim to take over all contact with the HMRC team and manage the process until the new account manager is in place and has received a full handover and brief, which we envisage happening within 48 hours. The new client account manager would be formally introduced to the HMRC teams at each site immediately on appointment. Specifically for HMRC Liverpool and Preston requirements Nick would step in as he is 'deputy SPOC, therefore the process would actually be much quicker and there would be no need for a formal handover and brief as Nick will already be familiar with all requirements at each site, will understand the stage each project is at and will be fully aware of the next steps required to achieve successful delivery. Nick would immediately assume the role of client account manager/SPOC and there would be no delay. This process would also be mirrored in the case of the Project Manager being removed from the account – the deputy PM would step in immediately and hit the ground running.</p> <p>Although, thankfully, the situation above has never occurred before and we have never been asked to remove our staff from client accounts, we have the above processes in place to ensure that if it did happen, we could move forward quickly without disrupting the project. By assigning a 'deputy SPOC' to the projects we are also ensuring that someone else within our business is up to date and across all aspects of the account and can step-in on an interim basis if the client account manager is unavailable for any reason, including illness, annual leave or other.</p> <p>This is a simple, flat management process that ensures that we can react very quickly to issues and resolve them to the client's satisfaction before moving on with the project and the appointment of a Senior Internal Sponsor provides continuity for the client team if there is an issue.</p> <p>Product issues Flexiform treats any complaints seriously and depending on the nature of the complaint an appropriate person will be tasked with resolving the issue - this is likely to be the Client Account Manager (SPOC), or Project Manager during the installation stages:</p>
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		<p>Product Issue during installation  If a product issue happens during the installation the PM will order a new product or part directly from the factory, inform the Client Account Manager of the situation and liaise with our logistics team to have the item/part delivered on the next available vehicle, keeping the HMRC and the Client Account Manager updated throughout. Our installation teams carry a range of spare parts on their vehicles and we may be able to replace a part there and then rather than having to contact our factory or warehouse.</p> <p>Product issues and complaints post installation  The Client Account Manager will deal with any complaints post-installation in conjunction with our customer service team. Complaints can be made to your internal Customer Service Manager, Sarah Sykes, or can be made to our Customer Services Department as per the details below:</p> <p>Richard Hodson – Customer Service Manager  Address: 1392 Leeds Road, Bradford, West Yorkshire, BD3 7AE  Tel: 01274 706286 or 01274 706202  Email: richardh@flexiform.co.uk</p> <p>Once a complaint is made it will follow this process:</p> <ul style="list-style-type: none"> <li>• The complaint will be logged and given a number using our Tracker system.</li> <li>• A complaint form will be completed stating all relevant details in order to discover the reason for the complaint.</li> <li>• Customer Services will investigate and decide upon the best method of rectification - i.e. raise necessary paperwork if replacement parts needed etc.</li> <li>• A new order acknowledgement, quoting the complaint number, will then be sent to the client for their records, which will show a new delivery date for completion.</li> </ul> <p>Complaints will be logged immediately, and problems rectified as soon as possible, informing all necessary personnel of progress.  Target timeframe for resolution is 48 hours from notification. Times outside this to will be discussed and agreed with the client.</p> <p>Escalation Procedure for any complaint  In the event of a serious complaint it will be quickly escalated to a director of the business who will liaise directly with HMRC to discuss how the issue can be resolved to your complete satisfaction. As Flexiform has a very flat management</p>
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		<p>structure, the escalation procedure is both swift and secure as there is no additional middle management tier above the line managers before the board is reached. At all times HMRC will be kept informed of progress and of any internal actions taken to prevent re-occurrence. In this case the Director responsible is Nick Saunders. Nick has over 20 years' experience in the industry and has worked with Framework clients since 1997 and will be the senior internal sponsor for HMRC.</p> <p>Once the customer complaint (CC) is recorded as escalated Nick is responsible for ensuring that the issue is investigated and resolved. The activity against this CC is recorded as part of our quality procedures in line with our ISO9001 accreditation. This forms the basis of the report back to the client once the issue is resolved. The report is also recorded in head office as part of the overall contract documents. We also use this report to carry out a root cause analysis of the issue to ensure that it is not repeated. In order to close the complaint off, we will carry out the following activities:</p> <ol style="list-style-type: none"> <li>1- Raise CC documentation</li> <li>2 - Log and track the complaint</li> <li>3 - Advise the client of the actions being taken and agree timescales</li> <li>4 - Carry out remedial/resolution activity</li> <li>5 - Communicate with the customer during the process</li> <li>6 - Confirm that the complaint is resolved</li> <li>7 - Issue a satisfaction note to be signed by client.</li> </ol> <p>Once this process is complete then we close off the complaint. We will then contact the client within the next 28 days to ensure that they are happy that all issues surrounding the complaint have been resolved to their satisfaction.</p> <p>Complaint handling and rectification is closely linked to our continuous improvement plan and all activity is tracked and reviewed by our senior management team.</p> <p>We would expect all issues to be actioned and rectified within a maximum of 10 days of being reported, as per the HMRC Hubs Programme Supplier Initiative team meetings, but in many cases the rectification time will be much quicker.</p> <p>Flexiform would also like to meet the HMRC site teams weekly from point of award throughout the installation as well as having a weekly conference call, and</p>
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		<p>then a meeting within one month to discuss the completion of the project to discuss Lessons Learnt as well as a six month and one-year post-award meeting to discuss how things are with the product on site as well as on-going snagging or product issues.</p> <p>We will keep a full KPI log of any issues or complaints and we will also record metrics of how quickly the items were actioned and completed, and we will report this to HMRC as required.</p> <p><b>Project Management Portal</b>  In order to support the entire account management process, including complaints handling and issue resolution, Flexiform will provide the HMRC teams with access to an online project management portal where your teams can view all project related information, including the overall project plan, get real-time progress updates and find all project related paperwork in one secure place. There will also be a section for 'active' issues with details of the issue and the progress made to rectify it. An example of the project management portal can be found by following the link below. This site is already being used by an HMRC team and although some functionality has been deactivated it demonstrates how the portal works and brings value to the entire client account management process including complaints handling:  <a href="https://projects.invisionapp.com/share/9KDOPZ1ED#/screens/255486254_Home">https://projects.invisionapp.com/share/9KDOPZ1ED#/screens/255486254_Home</a>  This tool will be important during at all stages of the projects and will promote clear &amp; efficient communication, which ultimately results in the successful delivery of your requirements.</p> <p>This tool will give a one-shop stop access point for members of the project team from all sides including HMRC team, project and CDIO, Fujitsu, on-site fit-out suppliers and Flexiform all who will have access to the most up to date information at any time of the day.</p>
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3.1.7	<p>Please provide details of the level of commitment you will give to supporting our Sustainable Procurement Strategy, including providing details of the person(s) within your organisation who will be responsible for the elements of the Sustainable Procurement Strategy listed in this Section 3.1.5</p>	<p>As an SME, we appreciate the benefits of a sound sustainable procurement strategy that values and supports SME businesses, therefore we're fully committed to supporting HMRCs Sustainable Procurement Strategy. We're a fully accredited member of the Furniture Industry Sustainability Programme (run by FIRA) and we're committed to building a sustainable business.</p> <p>There is a misconception across the furniture industry that sustainable procurement simply relates to the sustainability of products. Many companies do not include sustainability in their supply chain processes, rather they see sustainable procurement as simply providing environmentally-friendly products, product-recycling or ethical disposal/end-of-life routes, which we can also offer but this is just a sticking plaster to a wider, all-encompassing subject. We believe sustainable procurement goes much further than this, requiring a high-degree of collaboration/engagement with the entire end-to-end supply chain with a clear focus on the environmental, economic and social impacts of procurement. It's fundamental for purchasing professionals to ensure practices are above criticism - this includes fraud, corruption, modern-day slavery, human-trafficking and wider issues of child labour, in addition to economic, social and environmental impacts of business operations.</p> <p>To manage this Flexiform's Head of Supply Chain, Mark Parrish, is responsible for the day-to-day management of our support for HMRCs Sustainable Procurement Strategy. Mark will be assisted by Flexiform's Sustainability Manager, James Downs (FD/co-owner).</p> <p>Mark will be available to support the HMRC team at each site to discuss the issues/challenges of sustainable procurement, providing insight &amp; advice. Mark holds Master status membership with the Chartered Institute of Procurement and Supply with full MCIPS qualification, including Level 7 Strategic Management. He has sound knowledge of sustainability principles in supply chain management which have been woven into Flexiform's own supply chain policies/procedures. Mark is currently centralising all procurement activity, ensuring that not only are our suppliers fully approved/vetted but that their own vetting processes are checked by us, confirming they also have a sustainable supply chain – proving our commitment to full traceability across our supply-chain activity.</p> <p>We are committed to the ongoing support and development of our supply chain colleagues in relation to sustainable procurement and some of the team will be undertaking professional development training in 2019, obtaining a CIPS Qualification Level 4 which offers a varied mix of knowledge and skills which will</p>
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		<p>greatly benefit our supply chain management processes, which in turn supports HMRCs sustainable procurement strategy.</p> <p>We regularly review our sustainability policies ensuring they're up-to-date and promote best-practice in supply-chain management. This involves researching new standards/guidelines and we're currently investigating the benefits of ISO20400 – the international standard for sustainable procurement.</p> <p>We have a Sustainable Development Strategy which is aligned to our Environmental policy – demonstrating that HMRC will be dealing with an organisation committed to sustainable business activity, which therefore means procurement will be in-line with a sustainable policy.</p> <p>Our practices align with the HMRC Sustainable Procurement Policy in that:</p> <ul style="list-style-type: none"> <li>• We'll engage with HMRC on sustainable procurement and have previously been assessed by HMRC in this area</li> <li>• We offer a value-for-money solution with low whole-life costs</li> <li>• We're a responsible, equitable, living-wage accredited SME employer</li> <li>• We have a CO2 reduction plan which is on-going, resulting in significant emission reductions over the past 5 years</li> <li>• Continued accreditation to ISO14001:2015</li> <li>• Design principles that reduce all resources within product manufacture</li> <li>• Focus on the use of recycled and recyclable materials</li> <li>• Focus on products/services that can be re-used and re-manufactured, reducing long-term resources use. We're developing a Balanced Scorecard approach to assessment in this area.</li> </ul> <p>We're working closely with FIRA on the wider scope of the FISP Programme (Furniture Industry Sustainability Programme). The programme has 3 Pillars, each with six elements that companies must work towards, with targets to hit annually for continued accreditation. We're supporting FIRA to increase the programme, ensuring that every company within the office furniture industry must hit more than 3 elements within each Pillar, annually.</p> <p>The FISP standard mandates continual improvement and Flexiform is looking to embed within FISP the 'Global Goals Initiative' first discussed in 2015 when world leaders agreed to 17 goals for a better-world by 2030. These goals seek to end poverty, fight inequality and stop climate change. Guided by the goals, and with FIRA, we're working to embed this within the FISP standard so that the</p>
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		<p>Furniture Industry is a leading example of how they can be achieved and maintained. Already, as part of these global goals, Flexiform is meeting the following:</p> <p>Goal-1: No Poverty – We’ve written into all relevant company policies that we’ll continue to be a fully accredited Living Wage Employer, ensuring all Flexiform staff are paid a fair wage, above the national wage. Many companies state they’re a Living Wage employer, but they have not formally/officially pledged support. Details of the scheme are found here:  <a href="https://www.livingwage.org.uk/accredited-living-wage-employers">https://www.livingwage.org.uk/accredited-living-wage-employers</a></p> <p>Goal-3: Good health and well-being – Flexiform offers all staff flexible working, flexible location working and agile-working, as well as annual health-checks paid for by the company.</p> <p>Goal-4: Education - Our staff are offered both ‘on-the-job’ and off-site education/training to improve skills and career-development opportunities.</p> <p>Goal-5: Gender Equality – Flexiform is striving to a be a gender-equal employer - women already make up 40% of our workforce. We’re a member of the Equality Register (ref:0003482).</p> <p>Goal-8: Economic Growth. We continue to grow and invest in staff and premises, as well as working closely with our supply chain as they invest in their businesses - setting the foundations for true end-to-end sustainability.</p> <p>Goal-17: Partnerships for the Goals - Working with organisations like HMRC, FIRA and our suppliers to share ideas and best-practice to support the achievement of these global goals.</p> <p>We’re also working with FIRA to implement the FEMB Level - the European Sustainability Standard that will act as an umbrella standard for the many industry standards currently in operation across the UK/EU. Many existing standards are achieved by ticking boxes and are not wholly relevant to office furniture, causing confusing for clients. The FEMB is taking steps to bring about a greater understanding of furniture industry sustainability and environmental standards, to alleviate this confusion.</p> <p>As members of FIRAs ‘Club Green’ we also have access to advice and training by Stuart Cochrane - Sustainability Consultant, FIRA. Unlike other schemes,</p>
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		<p>Club Green is specifically designed to support the furniture supply chain. In summary we can support your sustainable procurement strategy fully and we would welcome the opportunity to offer advice and guidance to HMRC related furniture procurement, specifically in relation to sustainability. We are at the forefront of action and innovation in the furniture industry and our continued learning in this area in conjunction with our association with FISP and FIRA, as noted above, will be hugely beneficial to HMRC.</p>
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<p>3.1.8</p>	<p>HMRC strategy is to provide support to Small and Medium sized Enterprises (SME's), which are defined as having up to 249 employees, a turnover of less than £50M; and balance sheet total assets of less than £5.6M. HMRC expect SME and non-SME suppliers to drive use of SME's within their supply chain wherever possible to deliver Value for Money (VfM). Please provide a statement as to whether you are an SME or not and the extent to which SME's are used in your existing supply chain and specially how they will be used in relation to the delivery of goods and or services subject to this tender.</p>	<p>Flexiform is an SME as defined in the tender documents.</p> <p>Much of our supply chain (over 95%) is also from SME suppliers and we are therefore a big supporter of the SME sector in the UK. The use of SME businesses in our supply chain assists us in driving value in our supply chain as we can negotiate better supply deals with these suppliers, resulting in better value for our customers.</p> <p>The supply partners used in this proposal are also mainly SME's from the provision of locks for the lockers through to the MFC and edging for the desk tops all of our suppliers are SME's. We feel this is critical to meet the HMRC strategy to support SME's nationally otherwise it is just words without any substantiation behind it. We can give you the most rigid and strongly supported SME deliverance model on the framework which will show HMRC's true support to the SME agenda as well as the sustainability of the wider supply chain.</p> <p>Only Orangebox, our seating provider, is classed as being outside of the SME threshold. Even in this case, Orangebox has a policy where they use a wide range of local SME suppliers in their own supply chain, and we therefore consider that we are supporting SME's by working with Orangebox as well.</p> <p>We also have a policy that our supply chain should be primarily UK based as well as being SME based. This enhances our sustainability, and our ability to keep our supply chain close to us, which enhances our ability to control and manage it. This then de-risks our supply chain and improves our ability to supply our clients in a reliable way that offers value for money and provides a range of social benefits by providing work for local businesses and environmental benefits as many component parts are sourced locally which reduces travel times and the number of journeys required and therefore decreases carbon footprint.</p>
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3.1.9	<p>Please describe your approach/policy towards Economic Regeneration and Workforce skills including extending your approach/policy to subcontractors where appropriate, making specific reference to how you will; a) Participate in community projects; b) Commit to taking into your workforce young unemployed people; c) Consider employing apprentices within your organisation including apprenticeships in administrative roles; and d) Ensure that all employees working on Government contracts are given access to training for basic skills and sources of employment advice.</p>	<p>Flexiform is committed to sustainable growth whilst acting in a socially responsible way. We adopt a policy of continual review, monitoring, reporting and improvement across all areas of the business including social responsibility, which encompasses support for economic regeneration schemes. Best practice in this area makes great business sense, provides a competitive advantage and ensures we generate social benefits in our local community.</p> <p>a) Flexiform takes its responsibilities in the area of economic regeneration and workforce skills seriously. We participate in a many community projects at a director level such as:</p> <ul style="list-style-type: none"> <li>• Voluntary Director Participation in the Nell Bank Trust</li> <li>• Voluntary Director Support for local schools/academies (Carmel, Darlington – Ghyll Royd, Burley-in-Wharfedale)</li> <li>• Support of Daisy Chain autistic charity</li> <li>• Support for Wheels for Wellbeing disabled cycling charity</li> </ul> <p>These projects deliver real benefits to these organisations and involve the senior management of the business to demonstrate the level of importance they have. We offer a lot of support to the local community in Bradford by employing staff from the area, working with other SMEs to procure materials and services and offering support to local schools, colleges and charities.</p> <p>b) We have taken 3 young unemployed people into our business in the past 12 months, two at our head office and one in our London showroom. We see benefits in this as we can develop these colleagues in terms of skills and experience across the business and provide them with training development opportunities in a variety of areas. We will continue to support unemployed people in 2019 and will be looking to work with a local charity that supports the unemployed to see if there are other ways that we can offer help, including offering paid work experience opportunities.</p> <p>c) As an SME Flexiform is aware of the value that apprenticeships bring to our business. We run a successful welding and fabrication apprenticeship to support our manufacturing plant, and to promote wider manufacturing skills. We took on 10 apprentices in January 2018 who will gain skills/experience in both manufacturing and sales/administration to support their future careers. One apprentice role has been designed to progress into a supervisory position which demonstrates that apprenticeships do not just need to be in manual tasks and</p>
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		<p>that supervision, administration and management areas are also suitable for mentored training.</p> <p>We are keen to expand our apprenticeship programme with a focus on training apprentices to become multi-skilled across our manufacturing areas, which up-skills them and benefits us as we gain a more agile workforce.</p> <p>Flexiform's company Directors are keen to build a sustainable business and nurturing talent is a huge part of this. Our directors have a strong ethos that all staff are good enough to do more complex roles, no matter what age or experience they have, therefore training and growth opportunities are promoted to everyone.</p> <p>As an SME based in Bradford, Flexiform is based in one of the most diverse communities in the UK, employing many local people which promotes and maintains equality and diversity. Over 40% of our workforce are female but we strive to achieve a 50/50 balance across the business.</p> <p>To further support sustainable employment Flexiform is an official Living Wage Foundation accredited employer. Our commitment to the Living Wage ensures everyone at Flexiform receives a minimum hourly wage significantly higher than the national minimum. To our knowledge we are the only Framework manufacturer that has formally signed up to this pledge.</p> <p>d) All employees (whether employed on Government accounts or not, have access to training and have a formal training matrix. This matrix covers all existing skills, any skill deficiencies and skill development opportunities. Our policy is to "up-skill" our entire workforce (from shop-floor to boardroom) to ensure that we develop our people and create a multi-functional, flexible team that can adapt to change and deliver real benefits to our internal and external customers. This is very similar to the way in which HMRC is developing their working practices and indeed part of the rational for the agile flexible workplace developments that HMRC strives to implement.</p> <p>We are constantly meeting, working with and engaging with specialist local suppliers, voluntary sector and social enterprises. This is extremely important to us in keeping employment in our locality and, not excluding the environmental benefits, show's our commitment to be a true British Manufacturer. Within the last 6 months we have increased our factory personnel significantly, sourced</p>
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		<p>through local suppliers/social enterprises. We are currently looking into the new Government Apprenticeship scheme. We have links with local schools and provide tours of the factory and talks about business to local children.</p> <p>The Managing Director is a trustee of Nell Bank Silver Jubilee Trust which provides outdoor education to approx. 20,000 local children per year including special emphasis on disadvantaged and children with disabilities.</p> <p>Our supply partners also have robust CSR policies and procedures in place and have committed to taking on apprentices to support workforce skills in the areas where they operate. Orangebox, a long-time partner of Flexiform, takes on a minimum of 30 apprentices each year at its factory in Wales, many in manufacturing who go on to secure permanent roles with Orangebox. A sewing and textile apprentice recently moved from the Orangebox seating factory to take on a new role within the upholstery team of a leading car manufacturer, using the skills and training they'd received at Orangebox to take the next step in their career.</p>
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<p>3.1.10</p>	<p>Please describe your approach to opportunities which allows you to stimulate innovation to help deliver sustainable Value for Money (VfM) outcomes. Specifically, please make reference to how you will;</p> <ul style="list-style-type: none"> <li>a) Notify and challenge us to use a better VfM solution if it becomes available;</li> <li>b) Commit to working with us to achieve continuous improvement, to foster innovation and meet future government targets as they arise;</li> <li>c) promote innovation which will improve the efficiency or effectiveness of the service in the long term;</li> <li>d) promote honesty to inform us of any barriers or problems there might be to implementing innovation;</li> <li>e) Consider joining schemes to bring together buyers and sellers of innovative ideas and products; and</li> <li>f) Link innovation explicitly to Value for Money (VfM)</li> </ul>	<p>As a responsible supplier in an extremely competitive marketplace, Flexiform concentrates on value for money (VfM) activity to maintain our strong market position and to promote innovation which helps deliver sustainable value for money across the board.</p> <ul style="list-style-type: none"> <li>a) We notify clients regarding better VfM in order to improve our cost position and assist our clients in cost management without compromising quality and functional outcome. For example, we recently developed a new range of flexible tables (Additions 2) which offered greatly improved value for money over the previous range (Additions) whilst delivering more flexibility and a wider product range. We have now switched all clients to this new product by advising them that it is available and replacing the old product with the new. As a result, the original Additions range was be phased out in 2018 except where we need to add to an existing installation to suite with existing product.</li> </ul> <p>There are also many alternatives on offer to the products we have included in our response and working with the HMRC Transformation team we can provide further VfM by working through your needs and rating them as: 'Essential', 'Necessary' and 'Functional', and then providing VfM on the items that are used more as a functional pieces as opposed to an Essential piece that needs to be an exact match to meet the specification I terms of need and usage.</p> <ul style="list-style-type: none"> <li>b) We are fully committed to working with HMRC to achieve continuous improvement (CI). As part of this process we would propose that we have a CI meeting in the 1st week of contract award to identify the CI agenda and create some target opportunities. We would then propose to review these on a monthly basis and invite new ideas for consideration at these reviews. This would enable us to drive innovation and prepare the ground to meet new targets rather than waiting for these to be delivered to us. We use this methodology internally to drive CI projects and it is very successful resulting in over £150,000.00 of CI savings per year whilst driving process improvements at the same time.</li> </ul> <p>We have led the innovation part of the overarching Hub programme from the supplier side. We have provided HMRC with new and more efficient ways of ordering desk electrics for example. We provided the HMRC Transformation Team with a schematic that allows them to inform all parties from the Main Contractor, through Fujitsu (who we will work very closely with) and on to the furniture manufacturer to ensure the right power unit/formation is ordered relevant to the power access for that site, and for every single site. Using our</p>
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		<p>expertise of working within many of your buildings we have been able to produce a clear process that allows each part of the connectivity chain, from floor through the desk to IT, to understand what they are providing to complete the project first time, on time, with no snagging - saving costs for revisiting items, or holding up the installation to add more parts or missing elements. See attached document - 'Flexiform Power Overview Schematic'.</p> <p>c) Innovation is promoted in all areas and has helped us to develop products and processes to better meet the needs of our clients. This has also assisted us to reduce lead times and speed up site installation times to deliver major benefits to our clients. We have used some of these processes at HMRC projects in Birmingham and Telford to achieve some very tight delivery and installation programmes. Without any innovation in these projects we would not have been able to achieve what we did in the timescales. Innovations included: bespoke products that were designed specifically for HMRC in Telford and regarding delivery in Birmingham as the building is next door to a theatre and taxi rank, therefore we had to work with the council and the theatre owners to manage issues with the general public as well as with the taxi owners to ensure no one was inconvenienced during the process.</p> <p>A major area of innovation recently has been the investment in our paint shop to give our clients a much larger selection of colours as standard, hence reducing prices to you as the client and showing further VfM. The new paint shop has the ability to change colours within 15 minutes, so we are able to quickly change from one order to another without delays and regardless of colour choice. The expanded range of colours is particularly pertinent to HMRC and with the colours requested on Lockers for example, we can produce small quantities of doors in 30 plus colours to give HMRC and its design principles a wider scope. HMRC C1 colours are now our standard colours.</p> <p>Innovation is promoted throughout the business and in the last few months we have started to investigate new ways of producing leg frames by working more closely with both our suppliers and our install teams to increase the speed they can be assembled.</p> <p>We have designed a new range of soft seating with one of our leading seating suppliers specifically to meet the needs of a large client within their brand guidelines and roll-out programme. We have shown this innovative new product to the HMRC Design team and we hope to have their go ahead within days to add this into our HMRC portfolio. As well as Innovation this will also provide</p>
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		<p>further VFM because of the price point we can offer, and the products is much more flexible than current products procured, giving you're a much wider scope in choice as well as price-point.</p> <p>We have also worked in partnership with our monitor arm provider to integrate power modules into their unit to save on desk-top space by not having to have a separate arm and power unit.</p> <p>Innovation is also demonstrated by the creation of our online project management portal that has been designed to support the entire account management process, including complaints handling and reporting. We will provide the HMRC teams with access to this portal to view all project related information including the overall project plan, get real-time progress updates and find all project related paperwork in one secure place, including up-to-date plans, costings, design ideas, colour schemes and communications. This portal fosters innovation in communication management and reduces the need for emails and telephone calls, and as all information is available via the portal to be viewed in real-time it reduced the need to print documents.</p> <p>An example project management portal can be found by following the link below. Although some functionality has been deactivated it demonstrates how the portal works and brings value to the entire client account management process:  <a href="https://projects.invisionapp.com/share/9KDOPZ1ED#/screens/255486254_Home">https://projects.invisionapp.com/share/9KDOPZ1ED#/screens/255486254_Home</a></p> <p>This tool will give a one-shop stop access point for members of the project team from all sides including HMRC team, project and CDIO, Fujitsu, on-site fit-out suppliers and Flexiform all who will have access to the most up to date information at any time of the day.</p> <p>d) We are open and honest in our communication with our clients. This extends to us advising clients when their actions are preventing us from being innovative and creative in how we can meet their needs. We will always advise HMRC of when we need decisions made by and what the repercussions are to project timelines if dates slip. We are also honest in advising clients when something cannot be done, and we'll seek alternative solutions - we do not promise then under deliver. For example on all of the EU Exit projects we've managed the HMRC end date has never moved. To achieve the dates we needed to ensure that HMRC provided final colours by a certain date, final PO's by the dates required and allowed us access to the buildings by the dates needed. We worked collaboratively with each HMRC team to advise them of the critical dates and supported their decision making processes to ensure deadline dates were</p>
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		<p>achieved. Because of this process every EU Exit project was completed exactly on the date HMRC required and specified, unlike other projects from other suppliers on Lot 1 which we believe were not delivered within the required timescales.</p> <p>With the projects running alongside each other and the proximity of the sites we can offer innovation in transport by shipping to both sites at the same time, for example delivering frames to one site after another, monitor arms, electrics and all other common parts. This will also help meet your sustainability targets by reducing the number of vehicles making deliveries and the number of deliveries required which reduces the overall environmental impact of the projects and decreases the carbon footprint.</p> <p>e) We would be very happy to join any scheme that could bring us into contact with companies that have innovative VFM or CI ideas and initiatives as we are always happy to learn from others. It would also give us the opportunity to share our ideas to a wider audience which could benefit us as well as HMRC in the future. We would be happy to facilitate this forum if appropriate.</p> <p>We would also like to encourage HMRC to meet with some of our other clients to share experiences of the furniture procurement process – both the highs and the lows. Although we take part in contract review meetings with the HMRC Transformation Team we believe that HMRC and our other clients would benefit greatly from meeting clients such as the Department of Health, Scottish Government and HS2 in the Public Sector, as well as our private sector clients like Admiral Insurance, Fox Media, Greggs and Marks and Spencer. We'd also like to invite our key suppliers to these meetings to promote collaboration and 'open innovation' by building links between clients and suppliers.</p> <p>We can also offer HMRC the opportunity to view other installations we've completed, especially anything we think would be directly relevant to HMRC in terms of new products, designs, layouts etc., and with our on-going collaborative relationship with FIRA we could discuss the possibility of running a workshop for HMRC regarding sustainability, product standards and product materials development which we feel would be very informative and educational for HMRC and will undoubtedly support your sustainability agenda.</p> <p>Within the furniture industry innovation is often viewed as doing what you always do but trying to do it better. As much as this steady approach does bring small</p>
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		<p>incremental gains it also fosters an insular environment for innovation and we feel that by branching out and working with industry experts including FIRA and BCFA we can continue to make small, steady gains whilst addressing bigger challenges that will change the way we work and manufacture, which will deliver cost savings, add value and offer greater value to clients.</p> <p>As part of our membership of FIRA we are heavily involved with them regarding innovation within design and manufacturing. We've held discussion with FIRA about why the British Manufacturing Industry was 16.7% lower than the rest of the EU and we discussed ways in which our industry can innovate to increase this. One element discussed in length was our flexibility to react quickly to clients. For example, working with HMRC if you ever had a specific need for these transitional buildings we will design and produce "Special Bespoke" items within a two-week period for sign off before manufacture, giving you the Continuous Improvement from site to site as you roll through your programme.</p> <p>f) The link between innovation and VfM is already explicit within the business. We do not use valuable resources to innovate for the sake of it. Innovation must deliver VfM whether in terms of a cost saving or an enhanced feature/functionality at a similar cost. All organisations that innovate successfully do so with a major focus on VFM and that is how we work.</p> <p>This is demonstrated by our dedication and commitment to produce our own seating range. This will bring cost savings and VfM for HMRC going forward over the life of your programme. This is a massive investment for the business but will bring long term savings for our clients.</p> <p>Innovation in our supply chain and procurement activity also brings better VfM outcomes for our clients as we're working with SMEs and sourcing sustainable materials. The research project we have undertaken on Life Cycle/Cradle to Grave/Whole life costing with the University of Bradford, in accordance with ISO14040:2006 and ISO14044:2006, to produce Life Cycle Assessments of our product ranges also demonstrates innovation and provides VfM to HMRC as it ensures you can meet the GGC needs under "buying greener products".</p> <p>As a business we are setting out on our own Transformation programme in conjunction with the MTC (Manufacturing Technology Centre) to increase our capacity by 50% over the next 24 months. We're creating a roadmap of where we are now, to where we want to be by the end of 2021. This will be the basis of</p>
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		<p>a strategy that sets out what we need to do to achieve our goals and what part innovation will play in this. It addresses the need for new technologies and machinery, and new processes to drive innovation across the business to ensure that we are fit for the future. We have milestones within the programme which highlight the gains made and how the progress of the programme is keeping pace with our original timeframe.</p> <p>The link between innovation and VfM isn't just about producing commercial value and we believe that social value initiatives hold equal importance. As our business grows we are more determined than ever to build a sustainable business that allows us to continue to support local communities by providing employment opportunities and apprenticeships, supporting local charities and continuing with our pledge as a Living Wage Foundation employer and any Innovation that creates commercial VfM gains for us and for our clients will ensure that we can continue to provide support for these social value initiatives.</p>
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3.1.11	<p>Please describe your environmental policy making specific reference to how environmental considerations are integrated into your organisations activities and how you engage with various fair and ethical trade organisations such as Fairtrade and Rainforest Alliance to identify fair and ethical trade opportunities.</p>	<p>Flexiform acknowledges its responsibility to, and the commercial advantages of, maintaining a sound environmental policy and approach which meets the requirements of BS EN ISO 14001:2004. In order to promote sustainability throughout the business we operate and EMS to track, manage and monitor environmental impacts and we set targets to reduce them. Our practices to promote sustainable development include:</p> <ul style="list-style-type: none"> <li>• All furniture is designed for disassembly to facilitate reuse, refurbishment, repair and recycling, either in part or as a whole</li> <li>• All wood-based products are fully FSC approved via our FSC accreditation and FSC chain of custody (Category A)</li> <li>• Full membership of the Furniture Industry Sustainability Programme (FISP) through FIRA as discussed previously</li> <li>• All 3rd party procured products are industry leading in terms of sustainability.</li> <li>• All fabrics offered are either from fully recycled sources or fully sustainable sources</li> <li>• Use of second nature fabrics and even upcycled fabrics from waste materials</li> <li>• All fabrics are fully recyclable even where bonded to foams</li> </ul> <p>As part of this sustainability programme, we have achieved ISO14001 accreditation but have taken this further in the way that we manage our business including:</p> <ul style="list-style-type: none"> <li>• All elements of our business that are utility intensive have been upgraded in the last 2 years to minimise the use of all resources. The stoving ovens where all finished products are painted have recently had new gas burners fitted reducing gas consumption by over 22%. In addition, the pre-treatment and drying areas have had revised electrical systems reducing consumption by 18%.</li> <li>• We have reduced our use of packaging and other transit materials by over 30% in the past 2 years and are currently on a programme of integrating our entire distribution system into utilising furniture blankets. These are 100% recycled and 100% recyclable ensuring that we are operating at the best in class levels in our industry.</li> </ul> <p>All areas within the business are aware of their environmental impact and this is monitored in line with our ISO14001:2015 accreditation. Individual managers are responsible for reporting back on this routinely and prior to audit.</p> <p>All trade is fair and ethical, and we have an Ethical Development Policy, available upon request. We engage with organisations such as Fairtrade and Rainforest Alliance where we can, but this tends to be at a low level such as</p>
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		<p>catering supplies and fabric supplies which are the main areas where this is relevant to us.</p> <p>We have increased our UK and local sourcing and will continue to do so. All steel, wood and fabric raw material purchases are from UK suppliers. We source no finished goods from Eastern Europe, Africa or the Far East which helps us to reduce the CO2 impact of what we manufacture and also improves our client responsiveness. This also means all trading comes under EU law so although we would welcome working with Fairtrade and Rainforest Alliance the EU standards cover sustainability, environmental credentials and work practices. All of this activity, whilst improving our sustainability credentials, also has an impact on the bottom line cost of the company. This both improves our overall business sustainability and enables us to remain competitive in the marketplace. True sustainable development benefits all.</p> <p>We can confirm on this requirement that no products or components used will be procured or sourced from outside of the UK, so as well as the sustainability aspect it will also give you peace of mind with regard to any issues or risks that could apply post EU Exit.</p> <p>With the uncertainty of EU Exit we would also like to assure HMRC that we have a large stock-holding of both component parts and finished product, including items for your requirement therefore we feel that should a no-deal EU Exit happen, or should any deal agreed adversely affect trade, we will be able to operate normally for the next 12 months. We have written agreements with all of our key suppliers detailing that items are held in stock for us to call off over the next 12 months and because this agreement has been agreed pre EU Exit will not be directly affected by end change in trading with the EU.</p> <p>From our own supply chain management our key suppliers have also confirm they have plans in place for EU Exit and they confirm that they have agreements and ample stock in place to give at least 12 months of uninterrupted supply to us and in turn you.</p> <p>We have 17 years of experience in managing our supply chain partners and the partners selected for this bid have been working with Flexiform for at least 10 years and we therefore have excellent working and financial relationships with them. We insist on the appropriate levels of accreditations in terms of Environment and Sustainability from suppliers, for example if they supply wood-based products we ensure they are FSC accredited or accredited with another</p>
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		<p>reputable body such as PEFC. All test certificates are gathered and checked prior to orders being placed. We audit our supply chain continually through the use of our KPI process. Our supply chain manager has regular meetings with key supply partners in order to monitor performance against the KPI's agreed and all information is used to create a report on the supply partners' performance against these KPI's and is reviewed with them.</p> <p>We will continue to review our supply chain to ensure that their Ethical and CSR Policies are in line with ours. As we visit supply partner sites frequently to discuss projects, new products and new innovations we insist that their sustainability agenda isn't just "a story" - we insist that everything is supported with evidence and facts that we can see, and in-turn can then provide to our clients. We expect factual evidence as opposed to headline figures. We audit our supplier's information and sustainability processes ourselves to ensure that all facts are creditable and proven.</p> <p>We have recently commissioned an external comprehensive carbon footprint report for a detailed environmental breakdown of 6 key products. The report was conducted by Eco3 and reviewed by Green Gain Ltd with data supplied by our engineering team. The report includes all carbon output from materials to manufacture of a completed unit which gives an accurate breakdown of the environmental impact including in-house processing, material and sub-assemblies and supply chain transport. This data supports our clients meet their Greening Government Commitments needs under "buying greener products".</p> <p>We also offer a fully sustainable disposal service for office equipment that has reached the end of its life. This covers all items including those requiring WEEE disposal services. This process is fully audited and guarantees zero waste to landfill. We currently supply this service to a number of government bodies such as ACAS, HSE and the Scottish Government.</p>
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<p>3.1.12</p>	<p>Please provide details of how you will contribute towards the targets as set out by Government in the 'Greening Government Commitment' document <a href="https://www.gov.uk/government/publications/greening-government-commitments-targets/greening-government-commitment-targets#reduce-greenhouse-gas-emissions-by-25-from-a-2009-to-2010-baseline-from-the-whole-estate-and-business-related-transport">https://www.gov.uk/government/publications/greening-government-commitments-targets/greening-government-commitment-targets#reduce-greenhouse-gas-emissions-by-25-from-a-2009-to-2010-baseline-from-the-whole-estate-and-business-related-transport</a> making specific reference to whether you currently, or you will in the future;</p> <p>a) Monitor, document and report on year on year greenhouse gas emissions and where applicable, what reduction you have achieved, from a 2009 to 2010 baseline, from your business premises and business related transport;</p> <p>b) Monitor, document and report the amount of waste you generate and where applicable, what reduction you have achieved, from a 2009 to 2010 baseline;</p> <p>c) Monitor, document and report your water consumption and where applicable, what reduction you have achieved from a 2009 to 2010 baseline; and</p> <p>d) Deploy policies to ensure your organisation buys more sustainable and efficient products and/or services, and engages with its suppliers to understand and reduce the impacts of its supply chain.</p>	<p>Flexiform is committed to supporting clients understand and reduce the impacts of furniture procurement and we'll support HMRC throughout to address the impacts, monitor them and provide data that can be used in your own reports. We fully acknowledge The Greening Government Commitments (GGCs) targets for reducing the negative effect of the government's estates/operations on the environment. We understand the targets set and the standards for transparent reporting on sustainable-procurement and to support the GGCs Flexiform can offer HMRC a firm sustainable procurement commitment ss follows:</p> <p>As part of our ISO14001 accredited Environmental Management System (EMS) we closely monitor our consumption of energy, waste &amp; water. We have KPI's in relation to all of these to ensure that actual performance is recorded and communicated to the company's directors, and action is taken to achieve reductions. A key element of our EMS is the work we do with suppliers with the aim of ensuring that we only buy from sustainable sources, particularly in relation to wood, and progress is made in reducing the impacts of our supply chain. In the period since our baseline figures were set (2009-2010) our company turnover has doubled. During this time of increasing sales we've acted to reduce our environmental impact and the headline figures below show that, consumption as a proportion of sales has reduced significantly:</p> <p>a) Greenhouse Gas Emissions - We monitor emissions and have reported these in line with our environmental policy. We've achieved significant reductions in absolute levels and levels "per sales output". Overall reductions of 58% have been achieved since 2009/10 and we continue to monitor these closely.</p> <p>b) Waste - Waste is monitored within the business whether process waste from manufacturing or waste from supply chain and delivery activity. Reductions in absolute levels and levels "per sales output" have been achieved. Overall reductions of 52% have been achieved since 2009/10 and we continue to monitor these closely.</p> <p>c) Water consumption is primarily related to the manufacturing plant but is also monitored in our Scottish and London offices. We've installed a water-metering system in the factory to more accurately record and manage consumption. Water consumption. We have made significant steps over the years to reduce our water consumption with an overall reduction of 76% from 2010 to 2018. We've made improvements in the factory such as eliminating one paint track pre-treatment tank, to changes in welfare facilities such as more efficient toilet cisterns, urinal sensors to reduce flush frequency and push down taps. We continue to make significant improvements to reduce water usage.</p>
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		<p>d) Sustainable and Efficient products - Our supply chain is fully aware of our sustainable procurement policy and is monitored against this. Our largest procurement partners (Orangebox and Rowham Steel) also have robust sustainability policies which we review, and we're informed of progress/improvements. When new suppliers are sought and evaluated, we use their sustainability credentials as a key element of the evaluation. Supply of wood from sustainable sources is ensured through continuing FSC Chain of Custody accreditation. As well as our wood suppliers, we aim to visit our top 10 suppliers once per/year. As part of this visit the environmental credentials (including ISO14001 accreditation) of suppliers are discussed and examined to assure us that continuous improvement activity in relation to environmental performance is happening within our supply-chain.</p> <p>Electricity consumption has been reduced by 47% - we've achieved this by making a large number of investments and changes including new machinery, gas heater controls and compressors in the factory including investing £16,000 on more efficient lighting.</p> <p>Product and fabric support - We offer FOC access to product and fabric specialists prior to final selection/order placement to help clients understand the various product options and materials used to construct and cover products. This service is designed to provide you with a solid understanding of products and fabrics, their make-up and environmental credentials. Taking the time to talk to experts often results in the procurement of more sustainable materials and offers cost savings.</p> <p>Logistics/Installation - We manage the distribution of our products and we ship products in a format which minimises packaging and maximises vehicle capacity. More than 65% of product by value is flat-packed. We've reduced our packaging by 15% in the last few years.</p> <p>We're currently rolling-out a programme of integrating our entire distribution system into utilising furniture blankets which are 100% recycled, and 100% recyclable, ensuring we're operating at the 'best in class' levels in our industry.</p> <p>All cardboard is from recycled and FSC sources and is re-used up to 6 times. We have tried the use of bio-diesel in the vehicles but found that it's not as fuel-efficient as we would like. Financially there is a significant benefit, but in terms of emissions and overall efficiency we are still in the evaluation stages.</p>
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		<p>Orders are entered according to designated milk-runs to ensure full van loads are generated to help maximize loads. There is fluidity in the system allowing us to pull orders and reorganise ensuring that near-full van loads go out every time, maximising efficiency/minimising carbon footprint.</p> <p>Flexiform has a dedicated transport team to ensure abortive trips through poor communication are minimized and installation crews are optimized to meet deliveries, minimising downtime. Where possible we also arrange return loads, so vans are not travelling empty.</p> <p>Products are designed to be assembled quickly with minimum tools, reducing site time. We have fitters located nationally, reducing travel/carbon emissions.</p> <p>Re-Manufacturing Service:</p> <ul style="list-style-type: none"><li>- All steel components can be re-painted and re-used.</li><li>- Screens can be re-upholstered so that the desking and storage solutions can be re-used.</li><li>- Tops can be replaced, in most cases with no tools. The life of the product can be extended, theoretically indefinitely.</li><li>- Slides, locks, hinges etc. can all be changed easily.</li></ul> <p>As we manufacture spare parts we service products indefinitely. We manufacture parts for cabinets and desking that are 35+ years old and we never force a client to dispose of a product due to lack of availability of a part.</p>
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<p>3.1.13</p>	<p>Can you explain your planned approach to achieve benefits in line with the Greening Government Policy and report to the project on results, specifically in terms of:</p> <p>a. The environmental content of furniture you are supplying.</p> <p>b. Your manufacturing techniques in terms of sustainability.</p> <p>c. Reuse, recyclability, end of life of the furniture you would be supplying to this project.</p> <p>d. What added value/innovation will you bring to this project that would be reportable as 'good news' for the Locations Programme.</p>	<p>Flexiform is committed to the continual improvement of its Environmental Management System (EMS), maintained under ISO14001:2015. Environmental improvement objectives are recorded in our Environmental Action Plan (EAP) which is broken down into sections with identified environmental aspects including: raw materials (buying greener products and services under the Greening Government Commitment (GGC)) &amp; energy reduction and waste (improving waste management under GGC).</p> <p>We recognise the importance of, no matter how small, the impact of our activities on the environment and that there is a need to constantly consider ways in which we can conserve energy and minimise waste in all activities that we undertake. In addition to compliance with all relevant legislation and regulations, we endeavour to take positive action in reducing impact on the environment by a measured programme of focused activities</p> <p>We can support HMRC with the Greening Government Commitments by providing reports and data on the items you buy over the lifetime of the contract covering the environmental content of the furniture and its distribution. We can provide advice and guidance to your teams on products selections and specifications, fabrics and finishes prior to order placement and we can provide the services of our Head of Supply Chain, Mark Parrish MCIPS and Andy Price, Account and Contract Manager (SPOC), to support your teams on all aspects of sustainable procurement in line with the requirements of the Greening Government Policy.</p> <p>Mark and Andy will be available to meet with the HMRC teams to discuss the issues and challenges of sustainable procurement and will provide insight and advice to HMRC. Both Mark and Andy have sound knowledge of sustainability principles including the GGCs and Mark and his team are currently centralising all Flexiform procurement activity, ensuring that not only are our suppliers fully approved and vetted but that their own vetting processes are checked by us to ensure that they also have a sustainable and robust supply chain – proving our commitment to full traceability in our supply chain activity.</p> <p>We also work closely with FIRA International's Club Green who set out current and forthcoming environmental legislation, including how to dispose of waste, minimise energy and handle hazardous substances. Unlike other schemes, Club Green is specifically designed to support the furniture supply chain. In addition to this we are committed to the ongoing support and development of</p>
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		<p>our supply chain colleagues, particularly in relation to sustainable procurement and some of the team will be undertaking professional development training with the CIPS in 2019 to obtain a CIPS Qualification Level 4 which offers a varied mix of knowledge, skills and behaviours. This will greatly benefit our supply chain management processes, which in turn will support HMRCs sustainable procurement strategy, in line with the GGCs targets.</p> <p>All of this will enhance our offering and will enhance the service that you receive, which in turn benefits all aspects of the contract but particularly the environmental and sustainability elements required by the Greening Government Policy.</p> <p>a) The environmental content of furniture you are supplying.  Product Design - All products are designed with their environmental impact in mind. This is partly a commitment to minimising the impact of our activities but also to reducing the material and energy content of our products and processes therefore improving our competitiveness. Reducing our environmental impact also improves our profitability.</p> <p>Component Design - New products are designed in component forms that are mechanically fixed together using re-usable fixings. This not only means that they are easy to reconfigure in use but that they are easy reuse in another area and that they easy to dismantle for recycling. As the fixings are mechanical, very little energy is required for their dismantling. This relates to steel sections, wood sections and aluminium sections.</p> <p>Raw Materials - The impact of our raw material is assessed. 80% of raw materials are UK sourced. This reduces transport and helps UK based businesses. All timber materials used in our manufactured products are from FSC or PEFC accredited sources. Paint is recycled up to 6 times in its raw material form. Waste is now less than 2% by value. Steel, aluminium and some fabrics all have minimum re-cycled content of 33% with some over 70%.</p> <p>Materials</p> <ul style="list-style-type: none"> <li>• All painted steel is coated in a medium temperature cured powder paint which can be removed by pyrolysis prior to re-painting to enable their reuse or prior to recycling if required.</li> <li>• Aluminium sections are unpainted to make the recycling much easier.</li> <li>• Edge banding is now ABS material ensuring that the top panels can be</li> </ul>
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		<p>recycled if they cannot be reused at end of life.</p> <ul style="list-style-type: none"> <li>• Fabrics are almost entirely from a Terratex range of raw material which can be 100% recycled at the end of its life. Fabric on screens is easy to remove as they are in component parts fixed to the board with “easy strip” water-based adhesives. Fabrics on chairs are easy to remove as over 95% of them are “loose fit” covers with no adhesives.</li> </ul> <p>Inserts and non-removable parts - We do not use parts that cannot be removed. For example, our desk inserts are primarily fitted by screws, ensuring their easy removal prior to recycling. Aluminium trims are all unpainted and hand fitted making removal simple. Fabrics are not glued into our screen profiles, they are held in by the profile so that the aluminium is immediately available for recycling with no additional process required.</p> <p>Weight - Wherever possible, we utilise lightweight materials which also eases disassembly. Our screen panels are ultra-light as we use primarily aluminium frames with very light honeycomb boards. Desk frames break down to the smallest possible size (e.g. legs and cross rails not full leg frames etc.) to make their movement simpler.</p> <p>Disassembly - All Flexiform products can be disassembled without the use of any electrical tools.</p> <ul style="list-style-type: none"> <li>• 90% of products that we purchase for onward sale are the same. Notable exceptions might be electrical/data items that are sealed for safety. Once disassembled, they will pack into a much smaller space making transport to the recycling area less expensive, use less resources and is far easier. All products are issued with disassembly instructions and details on which parts can be recycled.</li> <li>• Inserts and non-removable parts - We do not use parts that cannot be removed. For example, our desk inserts are primarily fitted by screws, ensuring their easy removal prior to recycling. Aluminium trims are all unpainted and hand fitted making removal simple. Fabrics are not glued into our screen profiles, they are held in by the profile so that the aluminium is immediately available for recycling with no additional process required.</li> </ul> <p>Lifecycle considerations - We believe in ensuring each product is built with ‘cradle to grave’ in mind, but above this we aim to adopt more a ‘cradle to cradle’ philosophy to ensure that the option to refurbish or up-cycle products are explored before anything is recycled. All products designed in the last 4 years</p>
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		<p>have had life cycle considerations built in. This has led to many changes being made to the design of all products in order that extending their life becomes far easier.</p> <p>Carbon Footprint of Products - We have recently commissioned an external comprehensive carbon footprint report for a detailed environmental breakdown of 6 key products. The report was conducted by Eco3 and reviewed by Green Gain Ltd with data supplied by our engineering team. The report includes all carbon output from materials to manufacture of a completed unit, which gives an accurate breakdown of the environmental impact of the product including in-house processing, material and sub- assemblies and supply chain transport &amp; logistics. This data can be provided to the HMRC team to demonstrate the environmental credentials of the products.</p> <p>The model created for the report follows the principles of ISO14040:2006 and ISO14044:2006 standards. The phases that can be included in a life cycle assessment for a product are:  - Raw material extraction - Manufacturing and processing - Distribution - Use - Disposal (end-of-life).  This supports the GGC as reduction in CO2 use, energy use and water are key drivers in the overall commitment.</p> <p>b) Your manufacturing techniques in terms of sustainability.  The impact of our raw material is assessed, 80% of raw materials are UK sourced. This reduces transport and helps UK based businesses.</p> <p>We have increased our UK and local sourcing and all steel, wood and fabric raw material purchases are from UK suppliers. Finished product supply will be 90% by volume (80% by value) UK sourced. We source no finished goods from Eastern Europe or the Far East. This both reduces the CO2 impact of what we produce and sell, but also improves our client responsiveness and supports the UK economy.</p> <p>We use FSC accredited MFC board with sheet steel from 22swg (thinnest) to 10swg (thickest) and 14swg tube. All paint is powder coated and is reclaimed during the painting process to help reduce waste.</p> <p>All of this activity, whilst improving our sustainability credentials, also has an</p>
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		<p>impact on the bottom line cost of the company. This both improves our overall business sustainability and enables us to remain competitive in the marketplace, offering true sustainable development benefits.</p> <p>To lower our energy usage and overall environmental output our main focus has been on our Yorkshire factory. We've been changing the way we work for years including using solvent free paints since 1999, monitoring our energy consumption since 2006 and making major investments in equipment and the facilities, which has reduced the level of process waste by over 5%. In addition, we have reduced the noise from the factory significantly to reduce noise pollution for our neighbours.</p> <p>Energy consumption has been significantly reduced over the years as we have continued to grow. Our electricity has been reduced by 47% and natural gas by 58% since 2010. We've achieved this by making a large number of investments and changes including new machinery, gas heater controls and compressors in the factory including investing £16,000 on more efficient lighting.</p> <p>As part of our ISO 14001 accredited Environmental Management System (EMS) we currently closely monitor our consumption of energy, waste &amp; water. The business has KPI's in relation to all of these to ensure that actual performance is recorded and communicated to the company's directors, and actions are taken to achieve reductions.</p> <p>In addition, a key element of our EMS is the work we do with our suppliers with the aim of ensuring that we buy from sustainable sources, particularly in relation to wood, and progress is made in reducing the impacts of our supply chain. All wood is from FSC accredited sources (Category A chain of custody). Flexiform's Head of Supply Chain holds MCIPS status and his entire team is tasked with ensuring sustainability through our supply chain for every material we use.</p> <p>In the period since our baseline figures were set (2009-2010) our company turnover has approximately doubled from £10m to £20m. During this time of rapidly increasing sales we have been taking action to reduce our environmental impact and the details below show that, as a % of sales, consumption as a proportion of sales has reduced significantly:</p> <ul style="list-style-type: none"> <li>• Greenhouse gas emissions - 58% reduction in natural gas CO2 tonnage emissions</li> </ul>
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		<ul style="list-style-type: none"> <li>• Waste - 52% reduction in Kgs of general waste</li> <li>• Electricity – 47% reduction</li> <li>• Water - 76% reduction in water usage per £'000 of sales. Water waste has been reduced with new recycling systems and consumption has reduced as a result.</li> <li>• Supply chain - Supply of wood from sustainable sources is ensured through continuing FSC Chain of Custody accreditation. As well as our wood suppliers, we aim to visit our top 10 suppliers once per/year. As part of this visit the environmental credentials (including ISO14001 accreditation) of suppliers are discussed and examined to assure us that continuous improvement activity in relation to environmental performance is happening within our supply-chain.</li> <li>• Electricity consumption has been reduced by 47% - we've achieved this by making a large number of investments and changes including new machinery, gas heater controls and compressors in the factory including investing £16,000 on more efficient lighting. Energy consumption has been reduced with re-working of the paint track and process lines.</li> <li>• New manufacturing software and hardware have improved our raw material yields by up to 11%.</li> </ul> <p>Future Investment and Energy Savings  We continue to invest in new machinery with a huge upgrade to our machinery and paint track over the next 5 years which include more efficient paint track stoving ovens and reduction in the paint track length whilst increasing its capacity. We also have planned power factor correction and plastic waste recycling targets which include training courses for our team leaders.</p> <p>c) Reuse, recyclability, end of life of the furniture you would be supplying to this project.</p> <p>Lifecycle considerations are a major part of our product design and manufacturing strategy and we believe in ensuring each product is built with the industry standard principle of 'cradle to grave' in mind, but we actually go much further than this and adopt a 'cradle to cradle' philosophy to ensure that the option to refurbish or up-cycle products is explored before anything is recycled. Recycling should be the last option – at a recent FIRA meeting that Flexiform attended with representatives from across the industry we discussed that recycling isn't really a viable option and that sustainability should be more about reuse, remanufacturing and the sustainability of the manufacturing surroundings and staff. There are major concerns within government about recycling old</p>
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		<p>furniture items. As an industry we have made massive strides forward on sustainability over recent years but the same could not be said 15-20 years ago. It was discussed at this meeting that the government is considering a ban on the recycling of old furniture items (items over a certain age) as toxins were used in foam and fabric which may now be classed as pollutants. All products containing Fire Retardants may in the future need to be burned rather than recycled as is becoming standard in the USA. There are a number of States within the US that have already banned this.</p> <p>Our number one aim is to always design and manufacture a product that lasts, and all our products are low-to-no maintenance and we ensure no product goes to landfill by refurbishing and repairing items or donating them before we consider recycling to keep waste to a minimum.</p> <p>We've minimised waste and carbon footprint throughout our product lifecycle process by sourcing local materials, designing products efficiently and making the most out of sheet metal, to manufacturing processes and distributing products with the environment at the forefront of all of our decisions and processes. With technological developments of materials and by working closely with our supply chain we are increasing the amount of recycled and recyclable materials used in the design of our products.</p> <p>All products designed in the last 4 years have had life cycle considerations built in and this has led to many changes being made to the way we design products to ensure that extending a products life is far easier, which reduces waste, promotes sustainable design and reduces the need to recycle and makes recycling easier when the item really is at the end of its useful life and cannot be up-cycled. Some of the design features are as follows:</p> <ul style="list-style-type: none"> <li>• Desk Frames - The desking system products are all built from component frames which means that a single leg/rail/beam can be changed if its damaged rather than having to replace the whole frame. Similarly, it means that frames can be reconfigured into a different desk type (linear, wave, workstation, 120 degree etc.) utilising the majority of parts on site. This ensures that the product can be changed as the business needs change. Also, the frame sizes can be reduced in order to cope with increased densities rather than procuring new desks.</li> <li>• Cabinets/Pedestals/Lockers - All Flexiform storage systems are designed to be reconfigured. Doors, drawers, tambours, internal components etc. can all be changed and reconfigured on site whilst retaining the same carcass. In most</li> </ul>
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		<p>cases, the carcass itself can be changed in height and width by the use of correct additional parts. This flexibility extends the usable life of the cabinet hugely. We have cabinets in use today that were purchased 35 years ago.</p> <ul style="list-style-type: none"> <li>• All steel components can be re-painted in our factory and re-used, tops can be replaced, in most cases with no tools. In this way, the life of the product can be extended, theoretically indefinitely. Slides, locks, hinges etc. can all be changed easily.</li> <li>• Screens - We have changed the design on 90% of our screens to an aluminium framed version which is from 50% recycled material and is modular. This allows for the screen to be dismantled so that the fabric panel/acrylic can be replaced, thus extending its life. As it is easily dismantled, we can re-use components if a client wishes to change the length of the screen. This again reduces the need to replace product even if the use changes.</li> <li>• Chairs - All chairs offered can be re-upholstered (normally on site) and are of a component construction so that arms, seat slides etc. can be added or taken away once purchased. Seat and back configurations can be changed on site in most cases. Any individual part can be replaced on site if damaged.</li> </ul> <p>Product Usage - Once the products are installed, the impact to the environment of their usage is negligible. All materials used are inert and emit nothing in normal use. Products are practically maintenance free and only require occasional cleaning with a mild detergent. No energy is consumed in their use. As all products are component based and designed to be dismantled and re-located, there is very little obsolescence in the product reducing the need to throw it away and replace it. Products are guaranteed for a minimum of 10 years.</p> <p>We understand that HMRC already has their own procedures in place for the removal of old furniture, but we can also donate any unwanted but functional furniture and materials to charities and schools including a school local to us, Dixons Trinity. We've previously donated furniture items to the school as well as old pallets and materials for students to use to make furniture in their design and technology lessons.</p> <p>d) What added value/innovation will you bring to this project that would be reportable as 'good news' for the Locations Programme.</p> <p>A big part of the added value and innovation that we will bring to the programme will be seen by the stakeholders and staff. As part of your "Experience" initiative</p>
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		<p>within your programme the use, training, comfort and aesthetic of the new product will lead to a major added value for your staff and stakeholders. We have produced a Video of how to operate/use the products and we feel the products are leading to less staff absence from work for DSE related issues for example and we believe that HMRC has produced reports to substantiate this. The added value we offer includes increased productivity within the buildings and reduced absenteeism due to the much better furniture and enhanced working environments and we believe this will provide a “good news” story for the Locations Programme.</p> <p>On top of this the added value Flexiform, working with HMRC, will give to HMRCs sustainable procurement strategy and to your GGC targets includes supporting UK SME businesses, supporting initiatives in the local community, promoting apprenticeships and skills programmes and supporting charities. We can provide HMRC with figures to report as ‘good news’ which highlights how HMRC is achieving targets through its partnership with Flexiform and this will include details on how many jobs have been created and how many staff are employed to service the HMRC account, how many apprentices Flexiform employs over the lifetime of the contract, what social value initiatives Flexiform is able to provide to the local community over the lifetime of the contract and what overall social value has been gained by HMRC working with Flexiform. As well as providing quality products and services that offer value for money we believe that social value cannot be underestimated.</p> <p>In terms of innovation in our processes we have introduced innovative new design systems (Revit modelling) to improve specifications as well as introducing a new quotation system, Workbooks, which brings together our own manufactured products and supplier products in one place to make specification simpler and more accurate; leading to high-quality project delivery as every aspect of the process is subject to continuous quality assessment.</p> <p>We can also offer HMRC access to our virtual reality suite which brings an entire scheme to life. Being able to walk-through a building weeks before completion will help everyone understand the positioning, colours and flow of the areas and will facilitate the decision-making process. We can offer the VR suite at each major milestone to enable your teams, team to see progress. This is particularly important in looking at bespoke requests as we can model these and show items a ‘real’ environment before you need to commit to them. It also allows us to review a variety of branded furniture/fabric finishes and precise fit of the furniture</p>
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		<p>in real time, again before committing to the design. This speeds up the decision making process and reduces the number of design changes, which saves both time and money.</p> <p>In addition we regularly review our sustainability policies to ensure that they are up to date and promote best practice in our supply chain management process. We are determined to be an industry leader in this area and we believe that a robust approach to sustainability brings value to every one of our client relationships. As part of our review we research new standards and guidelines in this area to ensure we are at the forefront of changes and innovations. We are currently looking at the benefits of obtaining ISO 20400 – the international standard for sustainable procurement and we’re also working closely with FIRA on the wider scope of the FISP Programme (Furniture Industry Sustainability Programme). The programme has 3 Pillars, each with six elements that companies will need to work towards and provide targets to hit annually for continued accreditation. We are leading with FIRA to increase this programme to ensure that every company within the office furniture industry must hit more than 3 elements within each Pillar, each year.</p> <p>The FISP standard mandates continual improvement and Flexiform is looking to embed within the FISP standard the ‘Global Goals Initiative’ that was first discussed in 2015 when world leaders agreed to 17 goals for a better world by 2030. These goals have the power to end poverty, fight inequality and stop climate change. Guided by the goals, it is now up to everyone - governments, businesses, civil society and the general public to work together to build a better future for everyone. We, with FIRA are aiming to ensure that these 17 goals are embedded with the FISP standard so that the Furniture Industry is a leading example of how it can be achieved and maintained.</p> <p>We are also working with FIRA to implement the FEMB Level, the European Sustainability Standard that will act as an umbrella standard for the many industry standards that are currently in operation across the UK and the EU. Many existing standards are achieved by simply ticking boxes and are not wholly relevant to office furniture, which can be confusing for clients. The FEMB is taking steps to bring about a greater understanding of the office furniture industry sustainability and environmental standards which will alleviate the confusing in standards.</p> <p>All of the above should demonstrate that Flexiform is continually improving and</p>
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		<p>continually seeking to be an industry leader in this crucial area. We firmly believe that our push to innovate will be of huge benefit to HMRC and will provide many opportunities for 'good news' stories over the lifetime of the contract and beyond.</p>
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3.1.15	As per Cabinet Office Procurement Policy Note 05/15, please confirm that you will ensure you pay all undisputed invoices, submitted by any subcontractors you utilise during the term of this contract, within 30 days.	Yes. Confirmed.
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3.1.17	<p>Please confirm you understand that HMRC has a Purchase Order mandatory policy. Please provide details of how you would process the purchase order internally so as to ensure</p> <ul style="list-style-type: none"> <li>- the efficient delivery of the goods and/or services to the Client, and</li> <li>- that the Purchase Order number is included on any subsequent invoice.</li> </ul> <p>(Organisations who are an SME will be able to achieve a maximum score by providing a basic purchase order flow process)</p>	<p>We understand that HMRC has a purchase order mandatory policy. We will not put ourselves or HMRC “at risk” by processing anything prior to receipt. However, we will provide HMRC with key milestones to ensure that dates are met to meet the overall programme.</p> <p>As an SME we have provided our order processing work-flow below:</p> <ul style="list-style-type: none"> <li>• Order received from client</li> <li>• Purchase order (PO) number checked and specification checked against quotation on CRM system</li> <li>• Any queries are qualified with client/account manager and amended</li> <li>• Order entered onto our SB Client order processing system</li> <li>• Order entry checked by another internal sales person for accuracy</li> <li>• Order entry checked by design team to ensure all elements work with each other and all dependencies are correct.</li> <li>• Order acknowledgement issued electronically to client and account manager</li> <li>• Account manager checks acknowledgement and amends if necessary</li> <li>• In this case a new order acknowledgement is issued</li> <li>• Prior to delivery, a dispatch note (with the original PO and acknowledgement number on) is issued to enable to order to be picked and loaded.</li> <li>• Once loaded a delivery note (with the original PO and acknowledgement number on) is raised and sent with the delivery.</li> <li>• Upon delivery the delivery note is checked off against the load and signed as correct by the installation manager and the client.</li> <li>• Upon completion of the installation, a completion note (with the original PO and acknowledgement number on) is signed by the client and returned to Flexiform head office by the installation manager</li> <li>• Once this is received, an invoice (with the original PO and acknowledgement number on) is issued to the client for payment. This will be a consolidated invoice or batch invoice to work within HMRC’s current and upcoming systems.</li> </ul> <p>All these processes happen on the same internal computer sale order processing system so that all key information (including the client PO) is held on all documents.</p>
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3.1.18	<p>To assist HMRC in achieving its commitment to pay invoices as per the agreed payment terms, please confirm that you would make use of the invoice 'batch load' facility described in the document attached to this question. Please provide comment as to whether you believe the use of the facility will provide joint benefit given the likely number and value of invoices to be raised.</p>	<p>We confirm that we would like to make use of the invoice 'batch load' facility as we feel that this will deliver benefits to both Flexiform and HMRC.</p> <p>Whilst we would normally provide consolidated invoices upon completion of agreed phases on a project of this nature, we feel that the 'batch load' option will be equally beneficial. We have worked with batch invoices previously with HMRC because as their largest current supplier for furniture we process hundreds of invoices each month and Batch invoicing is the easiest and quickest method for all.</p> <p>We would expect this project could have around 20 different delivery notes, but we would raise either one batch or one consolidated invoice per phase for payment.</p>
3.2	Award Criteria - Technical Merit - Service Requirements	

3.2.1	Work Package 1 - Imperial Court, Liverpool	
3.2.1.2	All products provided as part of this requirement must comply with the FFE Design Specification for Government Hubs, this includes meeting all the required standards as outlined at 3.5 of the FFE Design Specification. Please be aware that failure to meet the required standards may result in your bid being exclude from further evaluation.	Yes

3.2.1.3	Confirm that you will comply with all site requirements as stated in the Business Specification.	Yes
3.2.1.4	Confirm that you will provide all MI to report against the KPIs as set out in the document for call-off as required by the programme.	Yes

3.2.1.5	<p>Confirm that you will provide an asset register in the attached asset inventory document and asset tag all furniture as per the framework requirements.</p>	Yes
3.2.1.6	<p>Confirm your capacity to deliver this project within the required timescale;</p> <p>a. Provide a resourced project plan, including all dependencies to meet the programme (attachment permissible).</p> <p>b. How will you guarantee supply of products against your existing pipelines to assure volume metrics through manufacturing and logistics to meet programme.</p> <p>(Maximum of 4 A4 pages)</p>	Please see our response attached separately

<p>3.2.1.7</p>	<p>Give details of the location and arrangements to provide secure warehouse storage to enable early manufacture of phase 2 furniture to enable invoicing and payment before the end of 2018/19 Financial Year</p> <p>(Maximum of 500 words)</p>	<p>The bonded warehouse will be located within the real estate of our distribution partners, Expect Distribution at the following address:  Expect Distribution  Unit 2, Premier Point  Premier Gate, Staithgate Lane  Bradford,  West Yorkshire,  BD6 1DW</p> <p>Their warehousing solutions will provide HMRC with complete peace of mind so that you can process invoice and payments before the end of the 2018/19 financial year end.</p> <p>The products will be stored on pallets in both component and a fully assembled form depending on what makes most sense. The products will be easily identifiable and will be available for inspection when your timescales permit. They will also be available to view at any time during the project programme. We will provide fully managed 3PL onsite solution, so the product will not be mixed with those of other clients.</p> <p>We operate warehousing sites across the North of England totalling 250,000 sq. ft housing up to 25,000 pallets in a range of configured facilities to fulfil any requirement.</p> <p>The use of Expects facilities means the stock is held both close to our own facilities and close to your building, less than 40 miles, so that we can keep a firm control of the stock as well as a very quick re-delivery when we need the product for the phases per floor through phase 2 of the programme.</p> <p>With the product already manufactured and ready for immediate distribution it will speed up the delivery programme. All we require from HMRC is 48 hours' notice to ensure security is aware of your visit to inspect the product.</p> <p>All product will be clearly identified detailing what it is with your order number and a non-visible reference to HMRC will be made for security purposes, in the form of your account number / reference.</p> <p>Our investment in technology means that we operate the latest RF Scanning providing real-time stock level updates through an online portal, enabling you to</p>
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		<p>benefit from a direct link into the stock holding and an order/stock report status. We provide monthly KPI reports relating to your stock management and movement</p> <p>What you can expect from Expect Distribution:</p> <ul style="list-style-type: none"><li>• Quality multi-million pound warehousing facilities</li><li>• Warehouse Management System (WMS)</li><li>• Full RF scanning for real time stock visibility</li><li>• ROSPA Gold Award standard for Health and Safety</li><li>• Seamless feed into our distribution chain</li><li>• Advanced stock integrity management.</li></ul>
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<p>3.2.1.8</p>	<p>Please confirm the following details regarding the storage requirement –</p> <ul style="list-style-type: none"> <li>• Please confirm the location and type of storage facility being used</li> <li>• What security measures are in place to ensure the items are safe from theft or damage, specifically what steps are there to limit access to the storage facility to authorised personnel only</li> </ul> <p>(Maximum of 2 A4 pages)</p>	<p>The bonded warehouse will be located within the real estate of our distribution partners – Expect Distribution  We work very closely with the Expect team and we use their secure store as a collation and distribution point for client installations.. The team there is familiar with our requirements and working practices and has already confirmed that the space is available and reserved for this programme.  The full address is as follows:  Expect Distribution  Unit 2, Premier Point  Premier Gate, Staithgate Lane  Bradford,  West Yorkshire,  BD6 1DW  Their warehousing solutions will provide HMRC with complete peace of mind so that you can process invoice and payments before the end of the 2018/19 financial year end.  The products will be stored on pallets in both component and a fully assembled form depending on what makes most sense. The products will be easily identifiable and will be available for inspection when your timescales permit. They will also be available to view at any time during the project programme. We will provide fully managed 3PL onsite solution, so the product will not be mixed with those of other clients.  Expect operate warehousing sites across the north of England totalling 250,000 sq. ft housing up to 25,000 pallets in a range of configured facilities to fulfil any requirement.  The use of Expect’s facilities means the stock is held both close to our own facilities, less than 10 miles, so that we can keep a firm control of the stock as well as a very quick re-delivery when we need the product for the phases through the programme.  With the product already manufactured and ready for immediate distribution it will speed up the delivery programme. All we require from HMRC is 48 hours’ notice to ensure security is aware of your visit to inspect the product.  All product will be clearly identified detailing what it is with your order number and a non-visible reference to HMRC will be made for security purposes, in the form of your account number / reference.  Their investment in technology means that they operate the latest RF Scanning providing real-time stock level updates through an online portal, enabling you to benefit from a direct link into the stock holding and an order/stock report status. We provide monthly KPI reports relating to your stock management and</p>
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		<p>movement</p> <p>The site is within a compound which is security checked hourly and has a security guardhouse checking on all inward and outward visitors and contractors.</p> <p>What you can expect from Expect:</p> <ul style="list-style-type: none"><li>• Quality multi-million pound warehousing facilities</li><li>• Warehouse Management System (WMS)</li><li>• Full RF scanning for real time stock visibility</li><li>• ROSPA Gold Award standard for Health and Safety</li><li>• Seamless feed into and out from our distribution chain</li><li>• Advanced stock integrity management.</li></ul>
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<p>3.2.1.9</p>	<p>Give details of the logistics you will apply to ensure quality products from factory to site incorporating your understanding of the delivery conditions for the site; approach to delayed deliveries/missed slots whilst understanding the security procedures/clearance required and the added value you will bring.</p> <p>(Maximum of 1,000 words)</p>	<p>We have well-established logistics and installation processes, and back-up processes to reduce risk, allowing us to provide a guarantee to HMRC that we can ensure quality products from factory to site. The management of the delivery phases is crucial as it means we retain full control of the projects, which is why we have an excellent service record for this contract type. We've produced KPI's on deliveries to HMRC Commercial and Transformation Teams for the 6 buildings we've completed to-date and this shows a 99.5% on-time delivery to the agreed programme.</p> <p>We confirm:</p> <ul style="list-style-type: none"> <li>• Planning and management of delivery phases will be handled by our in-house logistics team and PMs.</li> <li>• A bespoke delivery/logistics plan will be created for each site linked to our manufacturing system, creating a timeline from order to installation.</li> <li>• Each PM will manage the delivery programme and provide daily and weekly updates to stakeholders. We've attached a draft programme separately.</li> <li>• Delivery of items for each site will come directly from our HQ in Bradford – this will limit travel miles, double or triple-handling and ensure that within 90 minutes of loading the products will be on-site in Liverpool or Preston.</li> <li>• A site inspection will be completed at each site prior to delivery/installation</li> <li>• Full risk assessment and method statement (RAMS) documentation will be created for each site, detailing the exact delivery/installation process.</li> <li>• We'll issue a load-number to the dispatch team, so they're fully prepared for loading vehicles at our factory. Delivery details will be issued/confirmed to HMRC stakeholders.</li> <li>• We'll provide pre-booking information at least 48 hours in advance including: Diver name; vehicle make/model/size; reg. number.</li> <li>• Site protection for the route will be provided. In order to make this as clear as possible, we'll identify: other contractors working on-site/where they're operating/ times of operation;</li> <li>• We'll deliver the furniture using the approved route, agreed with each team.</li> <li>• Each wagon will have a driver and banksman to ensure the delivery is carried out safely and efficiently.</li> <li>• The team will off-load the vehicles and transfer products to the building/relevant floor</li> <li>• Deliveries will be checked for discrepancies or damage and any issues will be rectified at the earliest opportunity and a logged on a snagging sheet</li> <li>• All waste will be removed from site during the installation and returned to us for re-used or recycling.</li> </ul>
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		<ul style="list-style-type: none"> <li>• We'll our service team for uploading, installing and removal of rubbish from site (based in Liverpool) keeping travel miles to a minimum. During peak-periods we expect 12 team members on-site, at both sites at the same time.</li> <li>• Our installation team are already security cleared, including our project managers.</li> <li>• We will discuss/agree the exact programme on award, integrating our programme into HMRC's programme, taking into consideration all dependencies from other contractors: Fit-Out, CDIO, Fujitsu and PPD.</li> <li>• We'll arrange weekly contact with all contractors advising them of our progress (ahead of delivery) and on a daily-basis once delivery commences. This particularly applies to the on-site Fit-Out team and Fujitsu team for IT. The programme will ensure there is no wasted time from their side which can be frustrating if they aren't kept informed.</li> <li>• Risk assessments and method statements will be published to the main contractor for approval, as well as the HMRC team to ensure we comply fully with site requirements. This also supports a safe and cooperative working relationship with other contractors.</li> <li>• All services/activities/products are guaranteed under ISO9001 accreditation</li> </ul> <p>Locations – We're aware of the location of each site and have photographed the routes, investigated via Google maps and our transportation tracking system. Understanding the access/on-site challenges, we've created a programme of deliveries and see no issue in meeting your requirements. We will use 17 tonne vehicles and we estimate that Liverpool will be 40 deliveries over the whole programme and each Preston building will be 20 deliveries per site.</p> <p>Liverpool – We've met with the team at Liverpool previously - we're providing furniture throughout the building (Lockers and Test and Learn suite) and we understand the issues that apply to this site. We have had discussions with the BM to address parking outside of the building in the shared parking bays, either before 6am or after 1pm when the use of these are at their lightest. We plan to ship product off the vehicles immediately and into the basement area where the BM has said we can store product as we tranship around the building.</p> <p>Preston – we have previously met with the team in Preston as we've been providing day-to-day orders for DSE furniture throughout the building (desks and task-chairs) therefore we understand the issues that apply to this site. We've had discussions with the BM to address parking outside the building to ensure we deliver when traffic is at it's quietest, this could well be at 7am when the building opens. We plan to ship product off the vehicles immediately on the floorplate rather than tranship around the building.</p> <p>We're aware of the delivery hours for the sites are normal office hours but as</p>
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		<p>mentioned above we understand some time-slots will be more beneficial to all parties and we'll look to use these time slots extensively.</p> <p>Delays - Having daily discussions/weekly calls will ensure that delays are flagged at the earliest opportunity, and we can discuss contingencies that can be put into place if a delay is longer than a few hours. If there are any missed delivery-slots we'll immediately confirm this to HMRC, explain the cause and advise what the next steps/actions are, confirming the steps we've taken to ensure this doesn't negatively affect the overall programme. If there is a missed delivery we'll make up this slot as soon as possible, ideally the same day if site access permits.</p> <p>Added value – We're already working on-site at all addresses and we have therefore built a relationship with all Building Managers and Building owners and we feel this prior knowledge/experience will bring added value in terms of significantly reducing the time needed to familiarise ourselves with the site, BM, access points, restrictions and security requirements.</p>
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<p>3.2.1.10</p>	<p>Give details on the installation service you will apply to ensure you work with others on site successfully to maintain programme and achieve KPI to complete installation and include removal of packaging from site, when and how you snag FF&amp;E to ensure quality is maintained, complete prior to occupation; and the added value you will bring.</p> <p>(Maximum of 1,500 words)</p>	<p>We have provided an example delivery and installation schedule Gantt chart/project programme that each project will likely run to. This will be refined once final orders are placed with HMRC further to the item within your clarification document that highlights probable changes to programme, we will then confirm delivery dates and then all logistics activity is confirmed. This plan, once finalised and approved by HMRC and, will become the master timetable for the project, ensuring that we successfully supply, deliver and install all furniture within the agreed time frames from receipt of order and 10 working days prior to occupation. This a process we use on all major projects and we've successfully used the same process for many recent HMRC installations.</p> <p>Service Level Performance Criterion Key Indicator Service Level Performance Measure Service Level Performance Measure</p> <p>1. PRODUCT 1.1: Supply, delivery and installation of all furniture within agreed timeframes* from receipt of order.</p> <p>100% at all times 100% of all orders are delivered and installed on time and in full as agreed between the parties and specified on the Purchase order</p> <p>1.2: Supplier to resolve issues identified on snagging report within 72 hours from acknowledgement.</p> <p>At least 98% at all times</p> <p>Resolution of all snags to be resolved to the satisfaction of the Customer.</p> <p>The schedule will be reviewed regularly, to ensure we stay within the Service Level Performance in the KPI table above and we'll arrange a weekly checkpoint call with the main contractor and all other contractors on site to advise them of our progress to programme (ahead of delivery) and on a daily basis once delivery commences. This particularly applies to the on-site Fit-Out team and the Fujitsu team for IT and their dependencies on our schedule of works. The programme will ensure there is no wasted time from their side which can often be frustrating from their point of view if they aren't kept informed.</p> <p>We will publish our delivery and installation programme to these contractors so that they are aware of when we are to be on site. We will also publish our risk assessments and method statements to the main contractor for approval as well as the HMRC client team.</p> <p>All this activity is designed to ensure that we can meet our obligations under this contract but also ensure that we can work with other contractors safely and cooperatively.</p>
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		<p>initially as we will need to take account of the local traffic issues etc. We would propose to make all deliveries within the specified timeframes initially in February / March and then throughout 2019 as per the plan to be agreed on award.</p> <p>Delivery - All deliveries will be checked for discrepancies or damage so that any issues can be rectified at the earliest opportunity and a logged on a snagging sheet which can be monitored.</p> <p>A formal Risk Assessment and Method Statement will be created for the works at both sites and will detail the exact installation process. It is our intention to release a complete floors when completed rather than releasing part floors. This will allow HMRC to carry out their works by floor and occupy in a phased manner if required.</p> <p>During the pre-implementation phase a full site survey will be completed to ensure access routes are identified and details of any restrictions are noted so that Flexiform can manage any necessary mitigations required in line with the delivery timeline.</p> <p>The installation team are all fully trained in the use of all tools and equipment required to undertake the work. They work under the supervision of the PM and a Site Supervisor and carry CSCS cards. Our installers are experienced and professional, and many have worked on other HMRC sites including Albert Bridge House EU Exit building, 3 Wellington Place Leeds EU Exit building, Accounts Office Shipley, Carne House Belfast and Imperial House Liverpool, meaning they are familiar with the site rules and codes of conduct, procedures and other contractors on site.</p> <p>The installation team will be briefed prior to works commencing by the Flexiform PM and daily tool-box talks will also take place. The installation team will lay protection to the building including walkways, lifts and stairwells prior to works commencing to ensure there is no damage during the movement and installation of product. This protection includes cardboard, blankets and chair bags and it will be removed when the installation is complete. All installation works will be carried out to the highest quality standards under the parameters of our ISO9001 Quality standard, OHAS18001 Health &amp; Safety standard and our SafeContractor, Achilles, SSIP and ConstructionLine accreditations.</p> <p>Waste Packaging - All waste packaging used to wrap/protect the products will be removed from site by our installation team daily. Our packaging is designed to be re-used up to 6 times before it is recycled into new packaging. We're acutely aware of the environmental impacts associated with packaging materials, especially plastics and we are currently in the process of trialling a new way to</p>
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		<p>wrap products using furniture blankets which are made from recycled fabrics and can be 100% recycled. The blankets provide excellent protection for furniture and can be used hundreds of times, making them a far more environmentally sound and cost-effective solution.</p> <p>After each floor completion Flexiform will complete a snagging exercise and ensure any items are completed within the next phase. We will inform the relevant HMRC representative what date we will complete this snagging exercise and will expect cooperation to complete this in a timely manner</p> <p>Added Value - Additional value will be added to the projects by our thorough planning and deliverables scoping process that includes a communication plan, lessons learnt log, decision log and action point log – all will be maintained and completed by the Flexiform Project Manager. The purpose of these documents and processes is to agree a clear communication method between all parties, provide an audit trail and to enable continuous improvement throughout the project and the contract/programme lifecycle, which also feeds into subsequent projects in a constant cycle of evaluation, action and improvement. We learn something from each project that we manage, and we use these learnings to improve every aspect of our service.</p> <p>On completion of each project/installation a post-evaluation meeting will be held where the lessons learnt log will be reviewed. Following this meeting, Flexiform will complete a lesson report to evidence the action taken to improve processes and to assist and feed into future project planning and delivery.</p>
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3.2.1.11	<p>Describe the Customer Service package you will apply to this contract, how the service will function for all matters including notification of order, confirmation of deliveries and installation, faults and complaints handling, to include the quality of the service and timelines you apply to comply with programme dates; and the lessons you have learned and implemented to apply continuous improvement.</p> <p>(Maximum of 3 A4 pages)</p>	Please see our attachment ins response to this question
3.2.1.12	<p>Following installation, please confirm what necessary guidance and training information regarding the use and maintenance of the furniture you intend to provide and how this will be provided to the customer, taking into account; what added value can you bring.</p> <p>(Maximum of 2 A4 pages)</p>	Please see our response attached

<p>3.2.1.13</p>	<p>Please confirm lead time for third party supplied products / components / sundry items to meet the 28 days lead time requirement as per the framework requirements.</p> <p>(Maximum of 500 words)</p>	<p>We work seamlessly with our trusted and approved third-party suppliers and they have been made fully aware of the terms and requirements of the framework since its inception in September 2017. As part of their supplier agreement with us, your lead-times are pre-agreed with them.</p> <p>We will work with 3 main providers for the finished products and they are all global industry leaders in their field. They are fully aware of the needs for this requirement for the Liverpool and Preston sites, as well as the overarching upcoming requirements that would run in parallel with this project for HMRC. All information is pre-programmed into their capacity planning for 2019, as well as being pre-programmed into our systems.</p> <p>In terms of capacity our partners have over £200m of capacity for 2019 and this requirement accounts for less than 2% of that capacity and is therefore firmly achievable. We have provided, as an attachment, a statement from Orangebox in terms of the main seating items within your requirements to evidence the ample capacity they have to offer. Please see 'Orangebox Capacity Statement'.</p> <p>Orangebox lead-time for the task chairs is 3 weeks and they can make 10,000 task chairs p/week which is more than any task chair seating supplier in the UK.</p> <p>Humanscale, the monitor arm supplier, have the monitor arms in stock and these could be delivered to site within 7/10 days.</p> <p>The power modules are made in Yorkshire and CMD's lead-time is 3 weeks for the quantity required for these projects.</p> <p>We have reserved manufacturing capacity for this programme with both Orangebox and CMD and have asked Humanscale to keep the stock available for us and not sell to any other supplier in the meantime.</p> <p>We have also held discussions with Camira Fabrics regarding the dedicated HMRC fabric colour for the task-chairs and they are holding over 5,000 metres of that fabric in stock for the Hub programme in 2019. To this end we can get the fabric within 48 hours. For the fabrics yet to be chosen we've been assured that the ranges used previously by HMRC will all be available within 5 working days of receipt of a PO.</p> <p>We already have on order of over 5,000 of the DCL digi locks to ensure that</p>
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		<p>they're available for all upcoming requirements. We also have another 5,000 being held in stock ready for call-off if we are successful with further projects throughout 2019/20.</p> <p>For the sundries we work with wholesalers who hold the products needed in stock and we have provisionally ordered all of the items needed. They can be delivered within 5 days of a PO receipt.</p> <p>When it comes to our own components these are planned months, if not years in advance with our supply chain. Our suppliers hold over 6 months of stock for use which is available within 48 hours delivery. Our suppliers automatically then replenish stock levels as we call off our requirements, this allows us to firmly promise the lead-times agreed on the framework.</p>
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3.2.1.14	<p>In the event of being awarded both work packages, please provide detail on how you will ensure that you have the capacity to deliver both work packages as per the attached Specification requirements.</p>	<p>As we have stated previously we will run this requirement as two separate projects with separate teams for all elements from sales, through to delivery and installation. To this end each team would become solely dedicated to one project only. We have set out the team format in response to question 3.1.2 – Commitment to Client Account Management. We have also provided CVs for the core team members at each site, demonstrating our capacity in terms of resource and highlighting the relevant skill-sets and experience of each core team member.</p> <p>Each requirement will be fully planned and managed by the dedicated project team for each site and this includes the critical delivery and installation stages. We have already communicated the requirements of each project to the core team members and made them aware of their potential commitments to HMRC for each site, and we have reserved capacity within our manufacturing pipeline, our logistics operation and with our installation teams to ensure that every person and department who will be involved in the delivery of each requirement is aware of their role, the dates and of their expected level of commitment. We have ample resource and capacity to deliver both requirements successfully and we have the ability to add additional resource to any project team if the programme requires it.</p> <p>Once we have agreed the full specification we will process the order for each site as far in advance of the installation as possible and store the product on site at our facilities. This will allow both capacity coverage and flexibility to swap between sites if issues arise on either site. This will mean the production time of 28 days is spread over the complete load of our facilities.</p> <p>We will programme in slippage from your side and we will programme in for worst case scenario that we will need to deliver to both sites at the same time through March to July so we will increase delivery resource and installation resource across the business to cope with this possible outcome. We have the capacity to deliver and manage both projects sensibly and efficiently because of full and honest collaboration with both parties from time of award to time of delivery in addition to our commitment to assign a dedicated team to each site with risk management strategies in place should a slippage arise on either site. From our own factory, where we will make the desks and lockers, we manufacture over 2,500 desks per week and over 300 locker units, so your requirement is well within a normal weeks capacity for us. As stated previously we have already allocated production space within our capacity planning for this</p>
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		<p>requirement, and we have provided our seating, monitor arm, power module and fabric suppliers with the details and have confirmed that they can successfully meet your requirements and timelines, we feel that we can provide a genuine assurance that we have the capacity to deliver both Lots.</p> <p>We have included a snap shot of our current capacity programming for the next 8 months which illustrates the capacity “saved” for your work packages. Please see “Flexiform – Full Forecast 23.01.19”. Within this we have also interrogated all of our other commitments to our entire client base to ensure that both them and you are not put at risk by us over committing. We have taken into account recent awards from HMRC, where we have been successful, to ensure these are fully taken into account also. We understand HMRC’s own risk management and their own desire not to put too much work onto one supplier which they could do if they were to award to one of the other suppliers on the framework who have recently been awarded major projects by HMRC, we are not in that position so would be an extremely low risk option.</p> <p>The Orangebox lead-time for the task chairs is 3 weeks and they can manufacture 10,000 task chairs per week, which means we will have the task chairs available for both projects easily within the required dates.</p> <p>Humanscale, the monitor arm supplier, have the monitor arms in stock so could be delivered to site within 7/10 days which means we will have the monitor arms available for both projects easily within the dates needed.</p> <p>The power modules are made in Yorkshire by CMD and their lead-time is 3 weeks for the quantity required for both requirements/Lots which means we will have the power modules available for both projects easily within the dates needed.</p> <p>We have also reserved manufacturing capacity for this programme with both Orangebox and CMD and have asked Humanscale to keep the stock available for us and not sell to any other supplier in the meantime.</p>
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3.3	Award Criteria - Technical Merit- Security	
3.3.2	Please confirm that you understand that your responses to this questionnaire will form the initial Security Plan and will be included in the final signed version of any resulting agreement.	We confirm that we understand that our responses to this questionnaire will form the initial Security Plan and will be included in the final signed version of any resulting agreement.

3.3.3	If you believe that the Public Sector Network (PSN) Code of Connection, available from <a href="http://www.gov.uk">www.gov.uk</a> , will apply to your organisation and any sub-contractors, please provide details of how you will conform to this.	We believe that the Public Sector Network (PSN) Code of Connection, available from <a href="http://www.gov.uk">www.gov.uk</a> , doesn't apply to our organisation and any sub-contractors.
3.3.4	Please provide your ICO reference number	Z 7134313

3.3.5	<p>Please also confirm your Data Protection registration number. More information can be found at <a href="http://www.ico.org.uk">www.ico.org.uk</a>.</p> <p>Please confirm that your organisation and any sub-contractors will handle HMRC assets in accordance with legislation including the Data Protection Act, available from <a href="http://www.gov.uk">www.gov.uk</a></p>	Z 7134313
3.3.6	<p>Please provide details of any security accreditation that your organisation currently possesses, such as but not exclusive to, ISO27001 and PCI DSS and describe the process used for achieving the accreditation.</p>	We hold Cyber Essentials accreditation as requested by HMRC and the overarching CCS framework as a whole.

3.3.7	<p>If you intend to involve sub-contractors at any stage during the Contract please list them and provide details of how you will ensure their compliance with all aspects of this Security Plan. Please confirm your organisation and any subcontractors' will conform to the requirements set out in the Government Security Policy Framework (SPF), available from <a href="http://www.gov.uk">www.gov.uk</a> and any Security Requirements recorded in the schedules and/or Order Form.</p>	<p>We will not be using sub-contractors for the deliverance of this contract but we will be using sub-component suppliers as we do on every contract we delivery. They are fully aware of their security requirements and as part of their supplier agreement with us we have tested and audited their security plans</p>
3.3.9	<p>For the locations where HMRC assets are held please provide details of any procedures and security in place designed to control access to the site perimeter. Detail measures such as fencing, CCTV, guarding, and procedures and controls in place to handle staff and visitors requesting access to the site. Please also provide details of the maintenance schedule of your security controls.</p>	<p>If any HMRC assets are to be held by Flexiform, they will be held in our factory in Bradford. The security surrounding all aspects of our site is second to none. This has a full-perimeter fence with a minimum height of 6 feet which is only accessible through, with either an official swipe card or by our own security team allowing access once the person trying to enter the building has been checked and authorised. This access is via electronic gate access, with CCTV for identification purposes and security patrols as well as an alarm linked to the local police. Once inside the main compound the main entrance is accessible via either a key code (for staff) which is changed weekly or via a buzzer entry system for clients and contractors. All clients and contractors have to be booked in and are escorted at all times.</p> <p>Our main IT server is then located in a separate secure area.</p>

3.3.10	<p>Please provide details of the building (where different from the above location, if it is the same as the above location then state N/A) where the service will operate from and describe the procedures and security in place to control access to premises and any areas holding HMRC assets. Detail measures such as building construction type, availability of lockable storage, procedures covering end of day/silent hours, key management, visitor controls. Please also include details of any automated access controls, alarms and CCTV coverage. Please also provide details of the maintenance schedule of these security controls.</p>	<p>The building is a traditional stone built factory and office with full CCTV and alarm coverage. Access is electronically controlled by access cards and visitors are required to “buzz” in at the gate so we can check their identity. As the factory is a 24-hour site, security is always in place.</p> <p>All systems are maintained by our in-house team and audited annually.</p> <p>Our IT server is kept within the secure building but within and additionally protected area with further access codes that are only given to 4 people within the business for access. These 4 people are the three company directors and the head of IT. We also have an off-site Cloud back-up to the hard systems located at our HQ. Both systems fully meet and are accredited to the Cyber Essentials requirements of this framework and contract.</p>
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3.3.12	Please state what, if any, form of assessment in relation to the Government backed Cyber Essentials Scheme has been performed. If no assessment has been performed please state when you expect it to be completed.	<p>We have a full data protection suite. Content checking and blocking is provided via Proofpoint Essentials and anti-virus/network security is provided via Eset Endpoint.</p> <p>At each time of login each team member has to login and update their security connection via Eset Endpoint so at no time is the system exposed to and external attacks. Each individual users system locks down with 5 minutes of inactivity. All websites that are accessed each has to have a security certificate prior to access being allowed.</p> <p>All elements of controls and processes are fully covered in our Cyber Essentials certification and conformance as required by this framework and contract</p> <p>These systems are updated on a weekly basis in line with the provider's recommendations.</p>
3.3.13	Please provide details of the controls and processes you have in place covering patching, malware (anti-virus), boundary/network security (intruder detection), content checking/blocking (filters), lockdown (prevention), and how regularly you update them.	<p>We have a full data protection suite. Content checking and blocking is provided via Proofpoint Essentials and anti-virus/network security is provided via Eset Endpoint.</p> <p>These systems are updated on a weekly basis in line with the provider's recommendations.</p>

3.3.14	<p>Please provide details of how your security and access control policy complies with Security Policy Framework requirements including where necessary, use and control of back up systems, network storage and segregation of HMRC data (including 'cloud' solutions), and additional security for more sensitive information assets.</p>	<p>All our systems are secured in a machine room in the factory in Bradford. Access is via keypad and key control and can only be accessed with the approval of the key holder, James Downs, Finance Director.</p> <p>We have one in-house and one external system administrator so that access to the systems controls is limited and securely controlled.</p> <p>All information is segregated into silos for each client and none of these silos are cross referenced or cross contaminated. So if someone is allowed access to one silo it doesn't mean they have access to your data also. The only sensitive data we believe we hold for you are plans for your buildings and these are keep in a separate secure location within our system and are destroyed on completion of all projects.</p>
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3.3.15	Please provide details of how all equipment (e.g. hardware, portable media) that holds or has held data will be destroyed or decommissioned, and how all data will be rendered unreadable and irretrievable in line with the Security Policy Framework.	<p>Flexiform ensures that all documents are destroyed in a timely manner. As soon as electronic files reach their end of retention they will be deleted in such a way that they cannot be retrieved. Any magnetic media such as CD/DVD's are completely destroyed via disintegration or incineration. When no longer required, all references to the data will be removed from the system.</p> <p>All Confidential Waste will be destroyed using either a shredder or kept in a secure place until final disposal via shredding or incineration.</p> <p>Once a Laptop or Personal Electronic Device is finished with, arrangements are made with our Data Security Company JUZ Electronic, a fully licensed organisation, to wipe data securely in line with the Data Destruction Act 1998 and any other Government Standards.</p> <p>All devices are encrypted and will have all data effectively wiped with removable memory and media destroyed. All devices are then recycled in accordance with the WEEE Directive.</p> <p>All of this is completed by our IT provider who provides this service for hundreds of clients and are fully approved to do so and provide a full chain of custody for the process. Back up on all data is actioned every 4 hours continually day and night.</p>
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3.3.17	<p>Have all staff who will have access to, or come in to contact with, HMRC data or assets undergone Baseline Personnel Security Standard checks (See <a href="http://www.gov.uk">www.gov.uk</a>).</p>	<p>Yes and all staff have all undergone BPSS checks. All new staff are required to carry out a DBS check and are also cleared to a baseline security level. This includes identification checks via a passport or other photo ID document and also a check around their address with utility bills and credit card/bank account details.</p> <p>All staff have at least 2 references followed up to ensure that we can confirm the employees past work activity.</p> <p>Where staff are exposed to client data (which is the vast majority of our sales and administration staff) we carry out data security training and the staff are also required to sign our Data Protection policy.</p> <p>Any staff that attend client sites where confidential data may be in place are required to carry out the relevant additional security checks as needed buy the client. For example, we carry out these additional checks for MOD, Houses of Parliament, PHE and Admiral Insurance.</p>
3.3.18	<p>All contractor's personnel who have access to HMRC data, and/or are directly involved in the service provision must sign a copy of HMRC's Confidentiality Agreement (CA). Please confirm that, in the event that your bid is successful, you will provide signed hard copies of the NDA for all personnel involved in this Contract if requested.</p>	<p>We confirm that if we are successful, we will provide signed hard copies of the NDA for all personnel involved in this Contract as requested.</p>

3.3.20	<p>Please confirm your understanding and agreement that the transfer of any HMRC asset to third parties (any individual or group other than the main Contractor including any associates/sub-contractors) is prohibited without prior written consent from the HMRC. If you anticipate transferring data, especially using portable media during the delivery of this project, please set out your proposed transfer procedures for consideration.</p>	<p>We understand that the transfer of data is prohibited and we do not intend to carry out any such transfer</p>
3.3.21	<p>Please confirm that you understand that HMRC Data must not be processed or stored outside the United Kingdom without the express permission of HMRC. If you are considering storing or processing data outside of the UK, please provide details on how and where the data will be stored and also provide details of how you comply with Cabinet Office policy for offshoring see <a href="http://www.gov.uk">www.gov.uk</a></p>	<p>We understand that Client Data should not be processed or stored outside the United Kingdom without the express permission of the Client and we have no intention of so doing.</p>

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3.3.22 How and when will you advise HMRC of security incidents that impact HMRC assets.

Security incident means any incident (accidental, intentional or deliberate) relating to your communications or information processing systems. The attacker could be a malicious stranger, a competitor, or a disgruntled employee, and their intention might be to steal information or money, or just to damage your company.

Copies of this incident response plan is to be made available to all relevant staff members, and take steps to ensure that they understand it and what is expected of them.

Employees of Flexiform will be expected to report to the Finance Director (FD) for any security related issues.

Flexiform security incident response plan is as follows:

1. Each department must report an incident to the FD
  2. The FD will investigate the incident and assist the potentially compromised department in limiting the exposure of cardholder data and in mitigating the risks associated with the incident.
  3. The FD will resolve the problem to the satisfaction of all parties involved, including reporting the incident and findings to the appropriate parties (credit card associations, credit card processors, etc.) as necessary.
  4. The FD will determine if policies and processes need to be updated to avoid a similar incident in the future, and whether additional safeguards are required in the environment where the incident occurred, or for the institution.
  5. If an unauthorised wireless access point or devices is identified or detected, this is should be immediately escalated to the FD or someone with similar privileges who has the authority to stop, cease, shut down, and remove the offending device immediately.
  6. A department that reasonably believes it may have an account breach, or a breach of cardholder information or of systems related to the PCI environment in general, must inform FD. After being notified of a compromise, the FD, along with other designated staff, will implement the PCI Incident Response Plan to assist and augment departments' response plans.
- Our Finance Director James Downs will immediately advise the HMRC of any security incidents that impact HMRC assets and take control of the whole process.

3.3.24 Please provide an overview of your organisation's business continuity and disaster recovery plans in terms of HMRC data under the Contract, or attach a copy of your Business Continuity Plan.

We have attached a copy of our Business Continuity Plan. None of this provision is offshore.

We test these processes via a desk top stress test annually. The last test being at the beginning of this year which was successful and is available to view. Recovery times are listed in the Business Continuity plan attached and these will be achieved by adherence to this plan

