

Crown Commercial Service

Call Off Terms for RM3749 Public Sector Resourcing Model Services

PUBLIC SECTOR RESOURCING CALL OFF ORDER FORM AND PUBLIC SECTOR RESOURCING CALL OFF TERMS

PART 1 – PUBLIC SECTOR RESOURCING 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 **Public Sector Resourcing Model Services** dated 16/01/2018.

The Service Provider agrees to supply the 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.

From	The Department of Health and Social Care 39 Victoria Street Westminster London SW1H 0EU ("CUSTOMER") [REDACTED]
To	ALEXANDER MANN SOLUTIONS LIMITED "SERVICE PROVIDER" [REDACTED]

SECTION B


CALL OFF CONTRACT PERIOD

1.1.	Commencement Date: The term of this Call Off Agreement shall be from 18/06/2018 until expiry of the Framework Agreement on 17/1/2024 or for a further 18 months after the expiry of the Framework Agreement as per Clause 5.3 of the Call Off Terms
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SERVICES

2.1.	Services required: As specified in Call Off Schedule 2 (Services)
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IMPLEMENTATION PLAN

3.1.	<p>Implementation Plan: As specified in Schedule 4 (Implementation Plan) of the Call Off</p> <div data-bbox="470 481 853 616">  </div> <p>Implementation plan for go live of new services is in development. Customers will be invited to be part of the discovery and development stage to input into the design of the services.</p> <p>The Service provider will provide a detailed plan of implementation of services for the DHSC within 60 days of contract commencement which demonstrates how AMS intend to transition to the full service with milestones.</p>
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CONTRACT PERFORMANCE

4.1.	<p>Standards:</p> <p>As referenced in Clause 11 and Schedule 1 (Definitions) of the Call Off Agreement</p>
4.2	<p>KPI's:</p> <p>As per Schedule 18 (Key Performance Indicators).</p>
4.3	<p>Period for providing Rectification Plan:</p> <p>As per Clause 38.2.1(a) of the Call Off Terms</p>

PAYMENT

5.1	<p>Call Off Contract Charges (including any applicable discount(s), but excluding VAT):</p> <p>As per Annex 1 of Schedule 3 (Call Off Contract Charges, Payment and Invoicing) of the Call Off Agreement . Contract Charges may be amended to reflect increase/decrease in market rates as the result of benchmarking of the Services throughout the life of this Call Off Agreement.</p> <p>Call Off Contract Charges are for new workers placed after the Service Commencement Date above.</p>
5.2	<p>Payment terms/profile (including method of payment e.g. Government Procurement Card (GPC) or BACS):</p> <p>As per Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)</p> <p>On average payment to be made in line with the Procurement Policy Note 05/15 as per</p>

	<p>the following link;</p> <p>https://www.gov.uk/government/publications/procurement-policy-note-0515-prompt-payment-and-performance-reporting</p> <p>The Service Provider will invoice the Customer each week following the draw down of approved timesheets from the VMS or other appropriate collation of approved manual timesheets as the case may be.</p>	
5.3	Reimbursable Expenses Pre-approved expenses incurred by Workers only.	
5.4	Customer billing address (paragraph 7.6 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).	<i>mb-paymentqueries@dh.gsi.gov.uk</i> <i>The Department of Health and Social Care</i> <i>39 Victoria Street</i> <i>Westminster</i> <i>London</i> <i>SW1H 0EU</i>

LIABILITY AND INSURANCE

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	<div style="background-color: black; width: 15px; height: 15px; display: inline-block;"></div> Service Provider's limitation of Liability As per Clause 36.2.1 of the Call Off Terms.	

TERMINATION AND EXIT

7.1	Termination on material Default As per Clause 41.2.1(c) of the Call Off Terms
7.2	Termination without cause notice period As per Clause 41.7.1 of the Call Off Terms
7.3	Undisputed Sums Limit: As per Clause 42.1.1 of the Call Off Terms
7.4	Exit Management: As per Call Off Schedule 9 (Exit Management)

OTHER CALL OFF REQUIREMENTS

8.1	Security:	Short form security requirements
8.2	ICT Policy: [REDACTED]	
8.3	Business Continuity & Disaster Recovery: As per Call Off Schedule 8 (Business Continuity and Disaster Recovery) Disaster Period: For the purpose of the definition of “Disaster” in Call Off Schedule 1 (Definitions) the “Disaster Period” shall be one calendar month	
8.4	Protection of Customer Data: As per Clause 34.2 of the Call Off Terms	
8.5	Notices (Clause 55.6 of the Call Off Terms): Customer’s postal address and email address: 39 Victoria Street, Westminster, London, SW1H 0EU Service Provider’s postal address and email address: 7-11 Bishopsgate, London, EC2N 3AQ [REDACTED]	
8.6	Economic and Social Values	As per Call off Schedule 19 – Economic and Social Values.

FORMATION OF CALL OFF CONTRACT

BY SIGNING AND RETURNING THIS CALL OFF ORDER FORM (which may be done by electronic means) the Service Provider agrees to enter a Call Off Contract with the Customer to provide the Services in accordance with the 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 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 Service Provider within two (2) Working Days from such receipt.

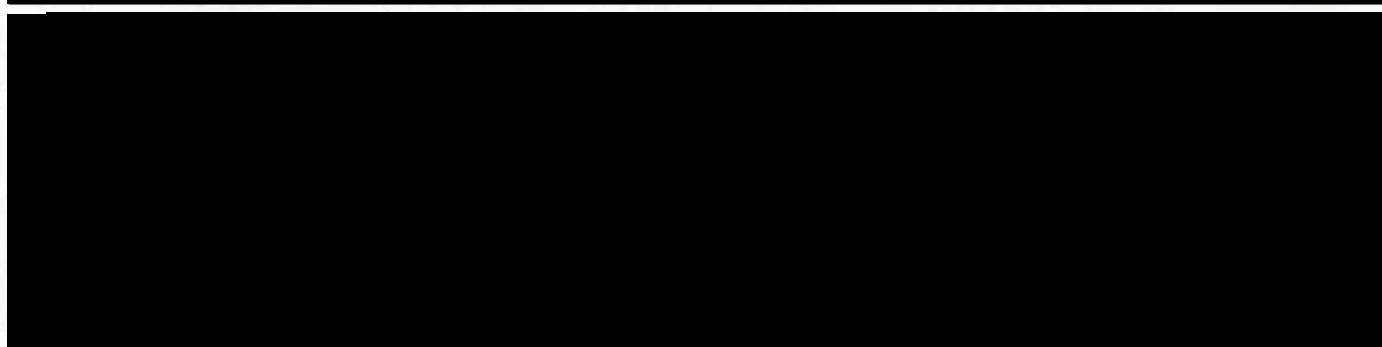
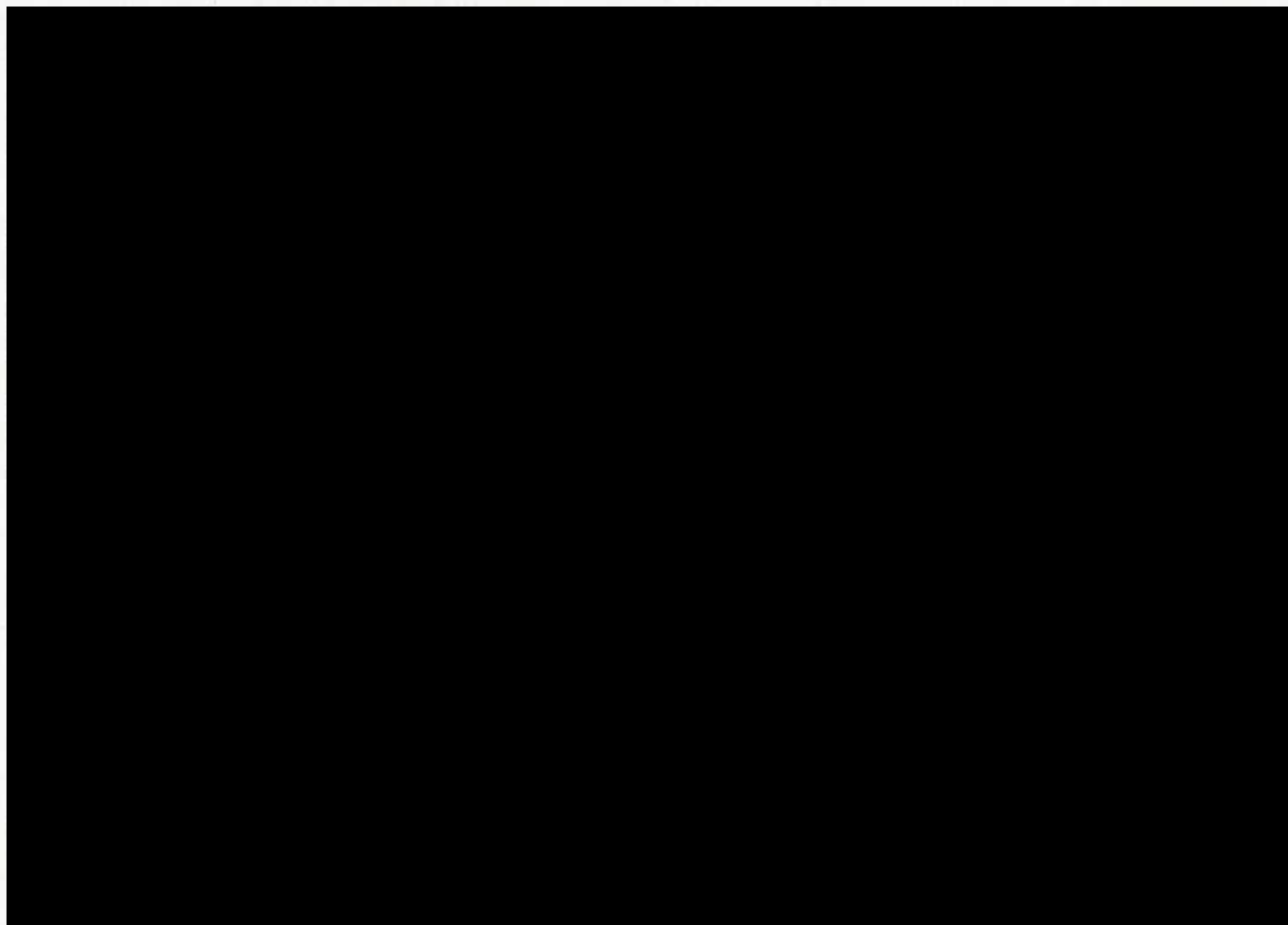


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PART 2 –CALL OFF TERMS

TERMS AND CONDITIONS

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Call Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions) or the relevant Call Off Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Call Off Schedule 1 (Definitions) or relevant Call Off Schedule, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Call Off Contract, unless the context otherwise requires:
 - 1.3.1 the singular includes the plural and vice versa;
 - 1.3.2 reference to a gender includes the other gender and the neuter;
 - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
 - 1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under this Call Off Contract;
 - 1.3.8 references to "**Clauses**" and "**Call Off Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Call Off Contract and references in any Call Off Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Call Off Schedule in which these references appear; and
 - 1.3.9 the headings in this Call Off Contract are for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract.
- 1.4 Subject to Clauses 1.5 and 1.6 (Definitions and Interpretation), in the event of and only to the extent of any conflict between the 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 (Final Tender);
 - 1.4.2 the Call Off Order Form;
 - 1.4.3 the Call Off Terms;
 - 1.4.4 NOT USED; and
 - 1.4.5 Framework Schedule 21 (Final 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 Framework Schedule 21 (Final Tender) contains provisions which are more favourable to the Customer in relation to (the rest of) this Call Off Contract, such provisions of the Final Tender shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Final Tender is more favourable to it in this context.

2. DUE DILIGENCE

- 2.1 The Service Provider acknowledges that:
- 2.1.1 the Customer has delivered or made available to the Service Provider all of the information and documents that the Service Provider 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 Service Provider 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 Service Provider to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
 - (c) failure by the Service Provider 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 Service Provider, 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 Service Provider 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 Service Provider as part of the procurement process, its Final 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 Service Provider Background IPRs and any other materials made available by the Service Provider (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Service Provider's obligations under this Call Off Contract including the receipt of the 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 Service Provider 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 Service Provider's assets or revenue;
 - 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 Service Provider shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Services without Approval or the prior written consent of the Customer which shall not be unreasonably withheld;
 - 3.2.11 all information it provides and it shall procure that all information that the Agency Providers and Workers provide under or in connection with this Call Off Contract will be true, accurate, complete and not misleading;
 - 3.2.12 it shall not and shall procure that the Agency Providers and Workers do not manipulate any information supplied to the Vendor Management System and Other Technology Platforms in a manner that would lead to inaccurate, misleading or discriminating presentation of information being displayed;
 - 3.2.13 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Call Off Contract and shall maintain the same in full force and effect;
 - 3.2.14 the Services shall be provided and carried out by appropriately experienced, qualified and trained personnel with all due skill, care and diligence; and
 - 3.2.15 it shall discharge its obligations under this Call Off Contract (including the provision of the Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures.
- 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 Service Provider which constitutes a material Default.

4. CALL OFF GUARANTEE

- 4.1 NOT USED.

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. During the Call Off Contract Period, the Customer may place Orders at any time in accordance with Framework Schedule 5 (Call Off Procedure).
- 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, in accordance with the position set out under the Framework Agreement and Clause 5.3, for the Call Off Extension Period by providing written notice to the Service Provider 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.
- 5.3 The Call Off Contract shall be entered into by the Parties prior to the expiry of the Framework Agreement and shall expire:
 - 5.3.1 no later than the date specified in the Call Off Contract; or
 - 5.3.2 18 months after the expiry of the Framework Agreement; or
 - 5.3.3 where the Framework Agreement has been terminated earlier in accordance with the Framework Agreement, 18 months after the Framework Agreement has been deemed to terminate,whichever is the earlier.

C. CALL OFF CONTRACT PERFORMANCE

6. IMPLEMENTATION PLAN

6.1 Formation of Implementation Plan

- 6.1.1 Where an Implementation Plan has been agreed and included in Call Off Schedule 4 (Implementation Plan) prior to or on the Call Off Commencement Date, the Service Provider shall comply with the requirements and obligations set out in the Implementation Plan.
- 6.1.2 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 Service Provider shall provide a draft Implementation Plan prior to the commencement of the provision of the Services, the Service Provider'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 Service Provider.
- 6.1.3 The Service Provider 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.
- 6.1.4 The Service Provider 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.

- 6.1.5 The Service Provider 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 Service Provider 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 Services. The Customer shall have the right to require the Service Provider 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 Service Provider 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 Service Provider'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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider's failure to Achieve the corresponding Milestone;
- (b) Delay Payments shall be the Customer's exclusive financial remedy for the Service Provider'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 Service Provider 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 Service Provider 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. SERVICES - GENERAL

7.1 Provision of the Services

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

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Call Off Contract;
- (b) subject to Clause 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 Services;
- (c) ensure that any Services recommended or otherwise specified by the Service Provider for use by the Customer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or the Services to meet the requirements of the Customer;
- (d) ensure that the Service Provider Assets will be free of all encumbrances (except as agreed in writing with the Customer);
- (e) ensure that the 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 Service Provider in connection with this Call Off Contract;
- (f) minimise any disruption to the Sites and/or the Customer's operations when providing the Services;
- (g) ensure that any Documentation and training provided by the Service Provider to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (h) co-operate with the Other Service Providers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Service Provider and, on the Call Off Expiry Date for any reason, to enable the timely transition of the supply of the Services (or any of them) to the Customer and/or to any Replacement Service Provider;
- (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 Services. Where any such warranties are held on trust, the Service Provider shall enforce such

warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Service Provider;

- (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 Services;
- (k) deliver the Services in a proportionate and efficient manner;
- (l) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Service Provider's compliance with its obligations under this Call Off Contract;
- (m) have policies and procedures in place which set out Non-Agency Supply and the relevant recruitment processes, as the pre-employment checks apply to all Workers in the health sector;
- (n) be responsible for validating the accuracy of the information supplied by all Workers sourced via Non-Agency Supply;
- (o) comply with the KPIs;
- (p) not raise charges where checks, as set out in paragraph 9.2 of the of the Framework Agreement Schedule 2 Part A Services, have already been made and evidenced to the satisfaction of the Authority and/or Contracting Authorities in the circumstances where additional checks are required to be undertaken on Workers before they commence an Assignment. These additional checks will be identified by the Authority and/or Contracting Authorities at start of the recruitment process, and if required a charging structure agreed for the provision of this service in accordance with the Framework Agreement; and
- (q) be responsible for ensuring that all documentation in relation to checks, referred to in Clause 7.1.4(p), is made available to the Authority and/or Contracting Authorities, immediately upon request.

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

7.1.6 The Customer shall access the Services via the Vendor Management System and Other Technology Platforms as set out in Call Off Schedule 17, unless the Vendor Management System and Other Technology Platforms is unavailable, or providing a significantly degraded level of service for an extended period in which case the Service Provider and the Customer, subject to agreement with the Authority, may agree to use an alternative method of performing the functions normally fulfilled by the Vendor Management System and Other Technology Platforms until such time as the Vendor Management System and Other Technology Platforms is available or functioning acceptably once more.

7.1.7 If the Customer informs the Service Provider in writing that the Customer reasonably believes that any part of the Services does not meet or differs in any way from the requirements of this Call Off Contract, the Service Provider shall at its own expense re-schedule and re-perform such Services in

accordance with the requirements of this Call Off Contract within such reasonable time as may be specified by the Customer.

8. SERVICES

8.1 Application

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

8.2 Time of Delivery of the Services

- 8.2.1 The Service Provider 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 Service Provider shall provide the Services to the Customer through the Service Provider Personnel at the Sites.
- 8.3.2 The Customer may inspect and examine the manner in which the Service Provider 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 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 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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.

8.7 Conflicts of Interest

- 8.7.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Service Provider Personnel or Agency Provider (including its personnel) are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider, Service Provider Personnel, or Agency Provider, (as applicable), and the duties owed to the Customer under the provisions of the Call Off Contract.
- 8.7.2 The Service Provider shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 8.7.1 above arises or is reasonably foreseeable.
- 8.7.3 The Customer reserves the right to terminate the Call Off Contract immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Customer under the provisions of the Call Off Contract. The actions of the Customer pursuant to this Clause 8.7.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 8.7.4 This Clause 8.7 shall apply during the Contract Period and for a period of two (2) years following the end of the Contract Period or such other period as is agreed in the Call Off Order Form.

9. NOT USED

10. NOT USED

11. STANDARDS AND QUALITY

- 11.1 The Service Provider 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 Service Provider's provision, or the receipt by the Customer, of the 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 Service Provider shall be responsible for ensuring that the potential impact on the Service Provider's provision, or the Customer's receipt of the 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 Service Provider. 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 (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 Service Provider shall notify the Customer and the Parties shall agree the impact of such change.
- 11.6 The Service Provider shall use its best endeavours to use the best applicable techniques and standards and execute the Call Off Contracts with all reasonable care, skill and diligence, and in accordance with Good Industry Practice.

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. NOT USED

14. NOT USED

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

16.3 In the event of industrial action by the Service Provider Personnel, the Service Provider shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Call Off Contract.

16.4 If the Service Provider'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 Service Provider 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 (Service Provider 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 Service Provider as a direct result of such disruption.

17. SERVICE PROVIDER NOTIFICATION OF CUSTOMER CAUSE

17.1 Without prejudice to any other obligations of the Service Provider 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 Service Provider shall:

17.1.1 notify the Customer as soon as reasonably practicable ((and in any event within two (2) Working Days of the Service Provider 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 Service Provider'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 Service Provider may incur and the duration and consequences of any Delay or anticipated Delay.

18. CONTINUOUS IMPROVEMENT

18.1 The Service Provider shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the 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 Services and their supply to the Customer. As part of this obligation the Service Provider 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 Services, and those technological advances potentially available to the Service Provider and the Customer which the Parties may wish to adopt;

18.1.2 new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support Services in relation to the Services;

- 18.1.3 changes in business processes and ways of working that would enable the 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 Services.
- 18.2 The Service Provider 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 Service Provider shall provide any further information that the Customer requests.
- 18.3 If the Customer wishes to incorporate any improvement identified by the Service Provider, the Customer shall request a Variation in accordance with the Variation Procedure and the Service Provider shall implement such Variation at no additional cost to the Customer.

D. CALL OFF CONTRACT GOVERNANCE

19. PERFORMANCE MONITORING

- 19.1 Not used.

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 Service Provider Representative shall be the person named as such in the Call Off Order Form. Any change to the Service Provider Representative shall be agreed in accordance with Clause 27 (Service Provider Personnel).
- 20.3 If the initial Customer Representative is not specified in the Call Off Order Form, the Customer shall notify the Service Provider 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 Service Provider, 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 Service Provider shall keep and maintain for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Services provided under it, any Key Sub-Contracts and the amounts paid by the Customer.
- 21.2 The Service Provider 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 Service Provider's premises and/or provide records and accounts (including copies of the Service Provider'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 Service Provider and/or its Sub-Contractors of any of the Service Provider'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 Service Provider (including the costs of all Sub-Contractors and any third party Service Providers) in connection with the provision of the Services;
- (c) verify the Open Book Data;
- (d) verify the Service Provider'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 Service Provider of the purpose or objective of its investigations;
- (f) identify or investigate any circumstances which may impact upon the financial stability of the Service Provider, the Framework Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to perform the 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 Service Provider 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) not used;
- (l) verify the accuracy and completeness of any information delivered or required by this Call Off Contract;
- (m) review the Service Provider's quality management systems (including any quality manuals and procedures);
- (n) review the Service Provider'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 Service Provider or delay the provision of the Services save insofar as the Service Provider 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 Service Provider's rights in respect of Confidential Information, the Service Provider 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 Service Provider and to any Service Provider Equipment used in the provision of the Services; and
 - 21.4.3 access to the Service Provider 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 Service Provider in which case the Service Provider 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 Service Provider, the Service Provider shall carry out an impact assessment of the Variation on the 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 Services and the Service Provider'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 Services and the proposed Variation.
- 22.1.6 In the event that:
 - (a) the Service Provider 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 Service Provider has already fulfilled part or all of the provision of the Services in accordance with this Call Off Contract or where the Service Provider can show evidence of substantial work being carried out to provide the 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 Service Provider 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 Service Provider 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 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 Service Provider 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 Services, the Call Off Contract Charges or this Call Off Contract; and
 - (ii) whether any relief from compliance with the Service Provider's obligations is required, including any obligation to Achieve a Milestone; and
- (b) provide to the Customer with evidence:
 - (i) that the Service Provider 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 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 Service Provider'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 Service Provider carrying out its obligations under this Call Off Contract, including the provision of the 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 Service Provider 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 Service Provider reduces its Framework Prices for any Services which are provided under the Framework Agreement (whether or not such Services are offered in a catalogue, if any, which is provided under the Framework Agreement) in

accordance with the terms of the Framework Agreement, the Service Provider shall immediately reduce the Call Off Contract Charges for such Services under this Call Off Contract by the same amount.

- 23.1.5 The benefit of any work being done pursuant to the provisions of Framework Schedule 12 (Continuous Improvement, Benchmarking and Gains Share) which is specifically commissioned from the Service Provider by another Contracting Authority at any time prior to or during the Contract Period to reduce costs or to improve the quality or efficiency of the Services or to facilitate their delivery shall be offered by the Service Provider to the Customer at no charge.

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 Service Provider 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 Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under this Call Off Contract. Any amounts due under Clause 23.2 (VAT) shall be paid in cleared funds by the Service Provider 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 Service Provider against any amount due to the Service Provider under this Call Off Contract or under any other agreement between the Service Provider 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 Service Provider 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 Service Provider shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Service Provider.

23.4 Foreign Currency

- 23.4.1 Any requirement of Law to account for the Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Service Provider 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 Service Provider.

23.5 Income Tax and National Insurance Contributions

- 23.5.1 Where the Service Provider or any Service Provider 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 Service Provider shall:
- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Service Provider or any Service Provider Personnel.
- 23.5.2 In the event that any one of the Service Provider Personnel is a Worker as defined in Call Off Schedule 1 (Definitions) who receives consideration relating to the Services, then, in addition to its obligations under Clause 23.5.1, the Service Provider 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.

23.6 Payment

[Drafting Note: Option 1 – where the Customer has adopted the E-Payment Solutions]

- 23.6.1 The Service Provider and the Customer agree that the payment of the Contract Charges shall be managed via the EPayment Mechanism detailed at Call Off Schedule 2 as amended in accordance with paragraph 6.2 of the Order Form. For avoidance of doubt, the Customer shall be solely liable for any merchant fee levied by the E-Payment Provider.

[Drafting Note: Option 2 – where the Customer does not adopt the E-Payment Solution]

- 23.6.2 The Customer shall pay all sums properly due and payable to the Service Provider in cleared funds within the time period specified in paragraph 6.2 of the Order Form and the Service Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- 23.6.3 Where the Service Provider enters into a Sub-Contract it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Service Provider to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.

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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider'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 Service Provider of the supply of the Services, against other Service Providers providing Services substantially the same as the 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 Services to the Authority and any Contracting Authority (subject to the Contracting Authority entering into reasonable confidentiality undertakings).

- 25.4 The Service Provider 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 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 Service Provider at any time during the Call Off Contract Period to update, improve or provide the Services, facilitate their delivery to any other Contracting Authority and/or any alterations or variations to the Charges or the provision of the Services, which are identified in the Continuous Improvement Plan produced by the Service Provider and/or as a consequence of any benchmarking carried out by the Authority pursuant to Framework Schedule 12 (Continuous Improvement, Benchmarking and Gains Share), shall be implemented by the Service Provider in accordance with the Variation Procedure and at no additional cost to the Customer.

F. SERVICE PROVIDER 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 Service Provider shall appoint to fill those Key Roles at the Call Off Commencement Date.
- 26.3 The Service Provider 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 Service Provider, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 26.5 The Service Provider 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 Service Provider or a Sub-Contractor is terminated for material breach of contract by the employee; or
 - 26.5.4 the Service Provider obtains the Customer’s prior written consent (such consent not to be unreasonably withheld or delayed).
- 26.6 The Service Provider 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 Service Provider 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 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 Service Provider 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. SERVICE PROVIDER PERSONNEL

27.1 Service Provider Personnel

- 27.1.1 The Service Provider shall:
 - (a) provide a list of the names of all Service Provider 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 Service Provider Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice, Staff Vetting Procedures and, where applicable, the Security Policy and the Standards prior to placement;
 - (iii) obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Services to the reasonable satisfaction of the Customer;
 - (iv) comply with identity, right to work, employment history and DBS checks in accordance with the Cabinet Office Baseline Personnel Security Standard (BPSS);
 - (v) supplied to the education sector are compliant with the Safer Recruitment in Education Guidance and are part of either the REC Audited Education Scheme or the APSCO Compliance+ Scheme;
 - (vi) supplied to the health sector are compliant with the requirements specified, including the UK Core Skills Training Framework and

safeguarding requirements, prior to placement. There are six (6) NHS Employment Check Standards that outline the type and level of checks employers must carry out before recruiting staff into NHS positions;

- (vii) have the required level of English language competence (and Welsh, if required) to enable them to undertake their role effectively, to enable clear communication about medical topics with patients and colleagues and to assure the delivery of safe care to patients in accordance with: <http://www.nhsemployers.org/case-studies-and-resources/2017/01/language-competency-good-practice-guidance-for-employers>; and
- (viii) 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) be responsible for creating and providing a positive worker care experience for all Service Provider Personnel;
- (d) ensure processes are in place to monitor security clearance/visas for Service Provider Personnel on an ongoing basis including monitoring expiry dates, hours worked and any other restrictions that may be in place;
- (e) ensure that copies of all verified documentation are held on file in a format that is unable to be altered/amended. All documentation shall be held for six (6) years after expiry of the Framework Agreement;
- (f) ensure secure retention of all records in relation to safeguarding, in line with the Data Protection Legislation as maybe updated from time to time. Records must be kept for two (2) years after the Worker leaves job role;
- (g) subject to Call Off Schedule 10 (Staff Transfer), retain overall control of the Service Provider Personnel at all times so that the Service Provider Personnel shall not be deemed to be employees, agents or contractors of the Customer;
- (h) be liable at all times for all acts or omissions of Service Provider Personnel, so that any act or omission of a member of any Service Provider Personnel which results in a Default under this Call Off Contract shall be a Default by the Service Provider;
- (i) use all reasonable endeavours to minimise the number of changes in Service Provider Personnel;
- (j) replace (temporarily or permanently, as appropriate) any Service Provider Personnel as soon as practicable if any Service Provider Personnel have been removed or are unavailable for any reason whatsoever;
- (k) bear the programme familiarisation and other costs associated with any replacement of any Service Provider Personnel;
- (l) procure that the Service Provider Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date; and
- (m) comply with all Law and government guidance as may be issued from time to time, applicable to providing the Services, including but not limited to

the Employment Agencies Act 1973; the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (SI 2003/3319); the Agency Worker Regulations 2010; and the Pensions Act 2008.

- 27.1.2 If the Customer reasonably believes that any of the Service Provider 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 Service Provider to end the involvement in the provision of the 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 Service Provider 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 Services without Approval.
- 27.2.3 Notwithstanding Clause 27.2.2, for each member of Service Provider Personnel who, in providing the 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 Service Provider 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 Service Provider shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.

28. STAFF TRANSFER

28.1 NOT USED.

28.2 The Parties agree that :

- 28.2.1 where the commencement of the provision of the Services or any part of the Services, or any Assignment, 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 Service Provider 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 Service Provider 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 including the provision of any Assignment, 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 including, where applicable, the provision of any Assignment;
- 28.3 The Service Provider 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 Service Provider or any Service Provider Personnel.

29. SUPPLY CHAIN RIGHTS AND PROTECTION

29.1 Appointment of Sub-Contractors

- 29.1.1 The Service Provider shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Service Provider 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 Services; and
 - (c) assign, novate or otherwise transfer to the Customer or any Replacement Service Provider 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 Service Provider 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 Services to be provided by the proposed Sub-Contractor; and
 - (c) where the proposed Sub-Contractor is an Affiliate of the Service Provider, 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 Service Provider's notice issued pursuant to Clause 29.1.2, the Service Provider 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 Service Provider'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 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 or engages unfit persons,

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

29.1.5 If:

- (a) the Customer has not notified the Service Provider that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Service Provider'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 Service Provider 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 Service Provider 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 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 or engages unfit persons.

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

- (a) provisions which will enable the Service Provider 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 Service Provider;
- (d) a provision enabling the Service Provider to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Service Provider;
- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Service Provider 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 set out in Clause 35 (Publicity and Branding);
 - (iv) the keeping of records in respect of the 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 Service Provider to terminate the Key Sub-Contract on notice on terms no more onerous on the Service Provider 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 Services provided to the Service Provider 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 Service Provider to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Service Provider or the Replacement Service Provider as the case may be.

29.3 Supply Chain Protection

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

- (a) requiring the Service Provider 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 Service Provider 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 Service Provider's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
 - (d) giving the Service Provider 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 Service Provider shall pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice.
- 29.3.3 Any invoices submitted by a Sub-Contractor to the Service Provider shall be considered and verified by the Service Provider in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Service Provider 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 Service Provider notifies the Customer that the Service Provider 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).
- 29.3.5 The Supplier shall ensure that all Sub-Contracts with Sub-Contractors require the Sub-Contractor to comply with Clause 35.3 (Publicity and Branding).

29.4 Termination of Sub-Contracts

- 29.4.1 The Customer may require the Service Provider 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 embarrass the Customer or other Crown Bodies; cause, permit, contribute or is in any way connected to material adverse publicity relating to or affecting the Customer or other Crown Bodies or the Framework; or bring the Customer or other Crown Bodies into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer or other Crown Bodies, regardless of whether or not such act or omission is related to the Service Provider's obligations under this Framework Agreement; 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 Service Provider or the Service Provider Personnel in the supply of the Services, then the Customer may:
 - (a) require the Service Provider 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 Service Provider where this is necessary for the Service Provider to provide the Services; and
 - (b) any reduction in the Call Off Contract Charges taking into account any unavoidable costs payable by the Service Provider 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 Service Provider's right to Sub-Contract pursuant to Clause 29 (Supply Chain Rights and Protection), the Service Provider 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.

29.7 Worker Terms and Conditions

- 29.7.1 The Customer and Service Provider agree that any Service Provider Personnel engaged by either the Service Provider or any Sub-Contractor to fulfil any Assignment, shall be engaged on the Worker Terms and Conditions.

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 Service Provider on a non-exclusive licence basis free of charge and shall be used by the Service Provider solely for the purpose of performing its obligations under this Call Off Contract. The Service Provider 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 Service Provider shall limit access to the Customer Premises to such Service Provider Personnel as is necessary to enable it to perform its obligations under this Call Off Contract and the Service Provider shall co-operate (and ensure that the Service Provider 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 Service Provider 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 Service Provider require modifications to the Customer Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Service Provider'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 Service Provider 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 Service Provider shall pay for the full cost of making good any damage caused by the Service Provider 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 Service Provider or the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider such Customer Property shall be and remain the property of the Customer and the Service Provider irrevocably licences the Customer and its agents to enter upon any premises of the Service Provider during normal business hours on reasonable notice to recover any such Customer Property.
- 31.2 The Service Provider shall not in any circumstances have a lien or any other interest on the Customer Property and at all times the Service Provider shall possess the Customer Property as fiduciary agent and bailee of the Customer.
- 31.3 The Service Provider 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 Service Provider unless the Service Provider notifies the Customer otherwise within five (5) Working Days of receipt.
- 31.5 The Service Provider 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 Service Provider shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.
- 31.7 The Service Provider 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 Service Provider shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Customer Property.

32. SERVICE PROVIDER EQUIPMENT

- 32.1 Unless otherwise stated in the Call Off Order Form (or elsewhere in this Call Off Contract), the Service Provider shall provide all the Service Provider Equipment necessary for the provision of the Services.
- 32.2 The Service Provider shall not deliver any Service Provider Equipment nor begin any work on the Customer Premises without obtaining Approval.
- 32.3 The Service Provider shall be solely responsible for the cost of carriage of the Service Provider 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 Service Provider shall be responsible for the removal of all relevant Service Provider 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 Service Provider's property, including Service Provider Equipment, shall remain at the sole risk and responsibility of the Service Provider, except that the Customer shall be liable for loss of or damage to any of the Service Provider'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 Service Provider Equipment shall not relieve the Service Provider of its obligation to supply the Services in accordance with this Call Off Contract.
- 32.6 The Service Provider shall maintain all Service Provider Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.
- 32.7 The Service Provider 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 Service Provider Equipment or any component part of Service Provider 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 Service Provider Equipment or component part of Service Provider Equipment with a suitable substitute item of Service Provider 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 Service Provider Equipment or any component part of Service Provider Equipment causes X or more Service Failures in any Y Month period, the Service Provider shall notify the Customer in writing and shall, at the Customer's request (acting reasonably), replace such Service Provider Equipment or component part thereof at its own cost with a new item of Service Provider Equipment or component part thereof (of the same specification or having the same capability as the Service Provider 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 Service Provider or its licensors, namely:
 - (i) the Service Provider Background IPR; and
 - (ii) the Third Party IPR.
 - (b) the Service Provider 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 Service Provider shall also provide the converted format to the Customer.

33.2 Assignments granted by the Service Provider: Project Specific IPR

33.2.1 The Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider: Service Provider Background IPR

33.3.1 The Service Provider hereby grants to the Customer a perpetual, royalty-free and non-exclusive licence to use the Service Provider Background IPR for any purpose relating to the Services (or substantially equivalent Services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function.

33.3.2 At any time during the Call Off Contract Period or following the Call Off Expiry Date, the Service Provider may terminate a licence granted in respect of the Service Provider 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 Service Provider gives the Customer written notice specifying the breach and requiring its remedy.

33.3.3 In the event the licence of the Service Provider Background IPR is terminated pursuant to Clause 33.3.2, the Customer shall:

- (a) immediately cease all use of the Service Provider Background IPR;
- (b) at the discretion of the Service Provider, return or destroy documents and other tangible materials that contain any of the Service Provider Background IPR, provided that if the Service Provider 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 Service Provider Background IPR; and
- (c) ensure, so far as reasonably practicable, that any Service Provider 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 Service Provider 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 Service Provider: Service Provider Background IPR) to a third party (including for the avoidance of doubt, any Replacement Service Provider) 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 Service Provider: Service Provider Background IPR) for purposes relating to the Services (or substantially equivalent Services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and
- (b) the rights granted under Clause 33.3.1 (Licence granted by the Service Provider: Service Provider 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 Service Provider: Service Provider 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 Service Provider: Service Provider 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 Service Provider: Service Provider Background IPR).
- 33.5.3 If a licence granted in Clause 33.3 (Licence granted by the Service Provider: Service Provider Background IPR) is novated under Clauses 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 Service Provider 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 Service Provider: Service Provider Background IPR) and Clause 33.5.1 (Customer's right to assign/novate licences). If the Service Provider cannot obtain for the Customer a licence in accordance with the licence terms set out in Clause 33.3 (Licences granted by the Service Provider: Service Provider Background IPR) and Clause 33.5.1 (Customer's right to assign/novate licences) in respect of any such Third Party IPR, the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 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 Service Provider on the same terms as set out in Clause 34.3 (Confidentiality); and
- (b) the Service Provider 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 Service Provider: Service Provider 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 Service Provider shall, if requested by the Customer in accordance with Call Off Schedule 9 (Exit Management), grant (or procure the grant) to the Replacement Service Provider of a licence to use any Service Provider Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 33.3 (Licence granted by the Service Provider: Service Provider Background IPR) subject to the Replacement Service Provider entering into reasonable confidentiality undertakings with the Service Provider.
- 33.8.3 The licence granted pursuant to Clause 33.7 (Licence granted by the Customer) and any sub-licence granted by the Service Provider in accordance with Clause 33.7.1 (Licence granted by the Customer) shall terminate automatically on the Call Off Expiry Date and the Service Provider 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 Service Provider 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 Service Provider containing such Customer Background IPR and/or Customer Data.

33.9 IPR Indemnity

- 33.9.1 The Service Provider 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 Service Provider anticipates that an IPR Claim might be made, the Service Provider may, at its own expense and sole option, either:
- (a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other Services;
 - (iii) there is no additional cost to the Customer; and
 - (iv) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Services.
- 33.9.3 If the Service Provider 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 Service Provider shall be liable for all reasonable and unavoidable costs of the substitute Services including the additional costs of procuring, implementing and maintaining the substitute items.

33.10 Open Source Publication

- 33.10.1 Subject to Clause 33.10.3, the Service Provider 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 Service Provider).
- 33.10.2 Subject to Clause 33.10.3, the Service Provider hereby warrants that the Project Specific IPR Items:
- (a) are suitable for release as Open Source and that the Service Provider 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 Service Provider 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 Service Provider under Clause 33.10.1; and
- (f) do not contain any Malicious Software.

33.10.3 The Service Provider hereby acknowledges and agrees that any Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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.

33.11 Use of the Vendor Management System and Other Technology Platforms

33.11.1 The Service Provider will enter into a Vendor Management System and Other Technology Licence with the Customer to grant the Customer access to and permission to use the Vendor Management System and Other Technology Platforms.

33.11.2 Nothing in this Clause 33 will operate to transfer any interest or confer any rights in the Vendor Management System and Other Technology Platforms for the benefit of the Customer.

34. SECURITY AND PROTECTION OF INFORMATION

34.1 Security Requirements

34.1.1 The Service Provider 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 Service Provider fully complies with the Security Policy.

- 34.1.2 The Customer shall notify the Service Provider of any changes or proposed changes to the Security Policy.
- 34.1.3 If the Service Provider believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may propose a Variation to the Customer. In doing so, the Service Provider 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 Service Provider shall continue to provide the Services in accordance with its existing obligations.

34.2 Protection of Customer Data

- 34.2.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 34.2.2 The Service Provider shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Service Provider 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 Service Provider, the Service Provider 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 Service Provider shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 34.2.5 The Service Provider 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 Service Provider 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 Service Provider shall ensure that any system on which the Service Provider 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 Service Provider suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Customer immediately and inform the Customer of the remedial action the Service Provider 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 Service Provider may:

- (a) require the Service Provider (at the Service Provider'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 Service Provider 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 Service Provider 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 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 Service Provider may only disclose the Confidential Information of the Customer on a confidential basis to:
- (a) Service Provider Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Service Provider'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 Service Provider 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 Service Provider:
- (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, Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider.

- 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 Service Provider.
- 34.4.6 The Service Provider 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 Service Provider 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 Service Provider acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Service Provider 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 Service Provider 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 Service Provider. The Customer shall take reasonable steps to notify the Service Provider 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 (GDPR)

- 34.5.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the factual activity carried out by each of them in relation to their respective obligations under this Call Off Contract dictates the classification of each party. In certain circumstances, a Party may act as “Joint Controller” or a “Controller” or a “Processor”. Each Party, where it is a Controller, shall be responsible for its own compliance with all its obligations under the Data Protection Legislation. Where a Party acts as a Processor in relation to Personal Data where the other Party is Controller, the first Party shall comply and shall procure that any subprocessor complies with the Processor’s obligations in this Call Off Contract to the extent applicable. The only processing that the Processor is authorised to do is listed in Schedule 20 (Authorised Processing Template) by the Controller and may not be determined by the Processor.
- 34.5.2 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
- 34.5.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 34.5.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Call Off Contract:
- (a) process that Personal Data only in accordance with Schedule 20 (Authorised Processing Template), unless the Processor is required to do otherwise by the requirements of the Call Off Contract or Law. If it is so required the Processor shall promptly notify the Buyer before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and

- (iv) cost of implementing any measures;
 - (c) ensure that :
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Call Off Contract (and in particular Schedule 20 (Authorised Processing Template));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) 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 Controller or as otherwise permitted by this Call Off Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Call Off Contract unless the Processor is required by Law to retain the Personal Data.
- 34.5.5 Subject to Clause 34.5.7, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;

- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Call Off Contract;
 - (e) receives 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; or
 - (f) becomes aware of a Data Loss Event.
- 34.5.6 The Processor's obligation to notify under Clause 34.5.5 shall include the provision of further information to the Controller in phases, as details become available.
- 34.5.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 34.5.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Buyer with the Information Commissioner's Office.
- 34.5.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 34.5.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 34.5.10 The Processor shall designate a Data Protection Officer if required by the Data Protection Legislation.

- 34.5.11 Before allowing any Sub-processor to process any Personal Data related to this Call Off Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 34.5.11 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 34.5.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 34.5.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office and amend this Call Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

34.6 Malicious Software

- 34.6.1 The Service Provider shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed between the Parties).
- 34.6.2 Notwithstanding Clause 34.6.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 34.6.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 34.6.2 shall be borne by the Parties as follows:
- (a) by the Service Provider, where the Malicious Software originates from the Service Provider's System or the Customer Data (whilst the Customer Data was under the control of the Service Provider) unless the Service Provider can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Service Provider; and
 - (b) by the Customer if the Malicious Software originates from the Customer's System or the Customer Data (whilst the Customer Data was under the control of the Customer).

35. PUBLICITY AND BRANDING

- 35.1 The Service Provider shall not use the Customer's name or brand without Approval.
- 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 Services and Service Provider Equipment) and each Party

agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

35.3 The Service Provider shall:

- 35.3.1 ensure that neither it nor any of its Affiliates, Sub-Contractors, sub-contractors, employees, agents, servants or representatives
- (a) embarrass the Customer or other Crown Bodies;
 - (b) cause, permit, contribute or is in any way connected to material adverse publicity relating to or affecting the Customer, other Crown Bodies and/or the Contract; or
 - (c) brings the Customer or other Crown Bodies into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer or other Crown Bodies,
- regardless of whether or not such acts or omissions are related to the Service Provider's obligations under the Call Off Contract.
- 35.3.2 comply with any steps set out in paragraph 10.13 of the Call Off Order Form.

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 Service Provider does not exclude or limit its liability in respect of the indemnity in Clause 33.9 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.
- 36.1.3 The Service Provider shall not be liable for the supply, or late or purported late supply or non supply by the Worker of the Worker Services except to the extent that it arises out of, or in consequence of, any defects in or the late or purported late supply or non supply, of the Services or the performance or non performance by the Service Provider of its obligations under the Contract.

36.2 Financial Limits

- 36.2.1 Subject to Clause 36.1 (Unlimited Liability), the Service Provider's total aggregate liability:
- (a) Not used:

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

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 Service Provider'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 Service Provider 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 Service Provider 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 Service Provider shall ensure that it maintains the policy or policies of insurance as stipulated in the Call Off Order Form.
- 37.4 The Service Provider 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 Service Provider 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 Service Provider 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 Service Provider.
- 37.7 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liability under this Call Off Contract. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 37.8 The Service Provider 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 Service Provider shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of an
- 37.9 y 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 and subject to 6.4.1(b) (Delay Payments), if the Service Provider commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:
- (a) at the Customer's option, give the Service Provider the opportunity (at the Service Provider'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 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 Service Provider's expense, any work necessary to make the provision of the Services comply with this Call Off Contract;
 - (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) instruct the Service Provider to comply with the Rectification Plan Process;

- (ii) suspend this Call Off Contract (whereupon the relevant provisions of Clause 44 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
- (iii) without terminating or suspending the whole of this Call Off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 44 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the 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 Service Provider for and the Service Provider 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 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 Services.

38.2 Rectification Plan Process

38.2.1 Where the Customer has instructed the Service Provider to comply with the Rectification Plan Process pursuant to Clause 38.1.1(c)(i):

- (a) the Service Provider 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 Service Provider shall submit a draft Rectification Plan even if the Service Provider 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 Service Provider 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 Service Provider shall promptly provide to the Customer any further documentation that the Customer requires to assess the Service Provider'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 Service Provider 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 Service Provider 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 Service Provider shall take the reasons into account in the preparation of a revised Rectification Plan. The Service Provider 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 Service Provider shall immediately start work on the actions set out in the Rectification Plan.

39. SERVICE PROVIDER RELIEF DUE TO CUSTOMER CAUSE

39.1 If the Service Provider has failed to:

- 39.1.1 Achieve a Milestone by its Milestone Date;
- 39.1.2 Not used;
- 39.1.3 comply with its obligations under this Call Off Contract,
(each a "Service Provider Non-Performance"),

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

- (a) the Service Provider shall not be treated as being in breach of this Call Off Contract to the extent the Service Provider can demonstrate that the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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; and
 - (iii) if failure to Achieve a Milestone attracts a Delay Payment, the Service Provider shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Service Provider

can demonstrate that such 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 Service Provider 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 Service Provider Non-Performance, give the Customer notice (a “**Relief Notice**”) setting out details of:
 - (a) the Service Provider Non-Performance;
 - (b) the Customer Cause and its effect on the Service Provider’s ability to meet its obligations under this Call Off Contract; and
 - (c) the relief claimed by the Service Provider.

39.3 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Service Provider Non-Performance and the alleged Customer Cause and whether it agrees with the Service Provider’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 Service Provider where necessary.

39.4 Without prejudice to Clauses 8.6 (Continuing obligation to provide the Services), if a Dispute arises as to:

- 39.4.1 whether a Service Provider 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 Service Provider,
- 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 Service Provider 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 Service Provider, 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 Service Provider in performing its obligations under this Call Off Contract which results from a failure or delay by an agent, Sub-Contractor or Service Provider shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or Service Provider is itself impeded by a Force Majeure Event from complying with an obligation to the Service Provider.

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 Service Provider 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 Services, including any BCDR Services, but the Service Provider has failed to do so; and/or

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

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

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

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

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

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

(b) the Service Provider 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 Service Provider 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; and

(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

(b) the Service Provider shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.

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

40.8 Relief from liability for the Affected Party under 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 Not Used.

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 Service Provider where:

- (a) Not used;
- (b) the representation and warranty given by the Service Provider pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading, and the Service Provider 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 Service Provider'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), 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 Service Provider commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Customer, capable of remedy;
- (f) the Service Provider 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; and/or
- (g) the Supplier fails to comply with any of Clause 35.3 (Publicity and Branding).

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 Service Provider 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 Service Provider which:
- (a) adversely impacts on the Service Provider's ability to supply the Services under this Call Off Contract; or
 - (b) could reasonably be expected to have an adverse impact on the Service Providers ability to supply the 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 Service Provider where an Insolvency Event affecting the Service Provider occurs.

41.5 Termination on Change of Control

- 41.5.1 The Service Provider shall notify the Customer immediately in writing and as soon as the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider if the Service Provider refuses or fails to comply with its obligations as set out in paragraphs 1 and 2 of Framework Schedule 12 (Continuous Improvement, Benchmarking and Gains Share).

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 Service Provider for failure of the Parties to agree or the Service Provider to implement a Variation in accordance with the Variation Procedure.

42. SERVICE PROVIDER TERMINATION RIGHTS

42.1 Termination on Customer Cause for Failure to Pay

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

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 Services and the Call Off Contract Charges, provided that the Service Provider shall not be entitled to:
- 44.3.1 an increase in the Call Off Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the 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 41.2 (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 Services,
- the Customer may recover from the Service Provider 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 Service Provider 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 Service Provider terminates this Call Off Contract pursuant to Clause 42.1 (Termination on Customer Cause for Failure to Pay),

the Customer shall indemnify the Service Provider against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Service Provider by reason of the termination of this Call Off Contract, provided that the Service Provider takes all reasonable steps to mitigate such Losses. The Service Provider 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 Service Provider 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 Service Provider, and the Service Provider 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 Service Provider under this Call Off Contract, exceeds the total sum that would have been payable to the Service Provider 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 Service Provider 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 Service Provider shall perform its obligations under this Call Off Contract (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Customer's health and safety policy (as provided to the Service Provider 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 Service Provider shall comply with any health and safety measures implemented by the Customer in respect of Service Provider 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 Service Provider shall:
- (a) perform its obligations under this Call Off Contract (including those in relation to provision of the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - (ii) any other requirements and instructions which the 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).
 - (c) comply with Call Off Schedule 15 (Equality and Diversity).

46.3 Official Secrets Act and Finance Act

- 46.3.1 The Service Provider 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 Service Provider 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 Service Provider upon the Service Provider's written request.

47. ASSIGNMENT AND NOVATION

- 47.1 The Service Provider 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 Service Provider 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 Service Provider in the event of insolvency of the Transferee (as if the references to Service Provider in Clause 41.4 (Termination on Insolvency) and to Service Provider 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 Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider 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 Service Provider 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 Service Provider 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 Service Provider and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Call Off Contract are compliant with the Relevant Requirements. The Service Provider 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 Service Provider Personnel or any person acting on the Service Provider's behalf from committing a Prohibited Act.

50.4 The Service Provider 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 Service Provider 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 Service Provider makes a notification to the Customer pursuant to Clause 50.4, the Service Provider 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 Service Provider breaches Clause 50.3, the Customer may by notice:
- 50.6.1 require the Service Provider to remove from performance of this Call Off Contract any Service Provider Personnel whose acts or omissions have caused the Service Provider'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 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 CRTPA to enforce any term of this Call Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

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	9.00am on the first	Dispatched as a pdf attachment to an e-mail to

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

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™ 1st 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 Service Provider shall continue to provide the Services in accordance with the terms of this Call Off Contract until a Dispute has been resolved.

57. GOVERNING LAW AND JURISDICTION

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

57.2 Subject to Clause 56 (Dispute Resolution) and Call Off Schedule 12 (Dispute Resolution Procedure) (including the 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:

"Achieve"	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Strategy Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "Achieved" , "Achieving" and "Achievement" shall be construed accordingly;
"Acquired Rights Directive"	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Additional Clauses"	means the additional Clauses in Call Off Schedule 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;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Alternative Clauses"	means the alternative Clauses in Call Off Schedule 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;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Approved Sub-Licensee"	means any of the following: a) a Central Government Body; b) any third party providing Services to a Central Government Body; and/or c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;
"Assignment"	means an assignment established pursuant to a Requisition under which a Worker sourced by a Contracting Authority via this Call Off Contract provides the Worker Services to that Contracting Authority;
"Auditor"	means:

	<ul style="list-style-type: none"> a) the Customer's internal and external auditors; b) the Customer's statutory or regulatory auditors; c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit 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;
"Authority"	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
"BACS"	means the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
"BCDR Plan"	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;
"BCDR Services"	means the Business Continuity Services and Disaster Recovery Services;
"Bespoke IPR"	means IPRs arising specifically as a result of the provision of the Services by the Service Provider, including any IPRs arising out of Worker Services;
"Business Continuity Services"	has the meaning given to it in paragraph 4.2.2 of Call Off Schedule 8 (Business Continuity and Disaster Recovery);
"Call Off Commencement Date"	means the date of commencement of this Call Off Contract set out in the Call Off Order Form;
"Call Off Contract"	means this contract between the Customer and the Service Provider (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;
"Call Off Contract Charges"	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Service Provider 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 Service Provider of its obligations under this Call Off Contract less any Deductions;
"Call Off Contract Period"	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date;
"Call Off Contract Year"	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each

	anniversary thereof;
"Call Off Expiry Date"	means: (a) the end date of the Call Off Initial Period or any Call Off Extension Period; or (b) if this Call Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call Off Contract;
"Call Off Extension Period"	means such period or periods up to a maximum of the number of years in total as may be specified by the Customer, pursuant to Clauses 5.2 and 5.2, and in the Call Off Order Form;
"Call Off Guarantee"	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);
"Call Off Guarantor"	means the person acceptable to the Customer to give a Call Off Guarantee;
"Call Off Initial Period"	means the initial term of this Call Off Contract from the Call Off Commencement Date to the end date of the initial term stated in the Call Off Order Form;
"Call Off Order Form"	means the order form applicable to and set out in Part 1 of this Call Off Contract;
"Call Off Procedure"	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);
"Call Off Schedule"	means a schedule to this Call Off Contract;
"Call Off Terms"	means the terms applicable to and set out in Part 2 of this Call Off Contract;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
"Change of Control"	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	means the charges raised under or in connection with this Call Off Contract from time to time, which shall be calculated in a manner that is consistent with the Charging Structure;

"Charging Structure"	means the structure to be used in the establishment of the charging model which is applicable to the Call Off Contract, which is set out in Framework Schedule 3 (Framework Prices and Charging Structure);
"Commercially Sensitive Information"	means the Confidential Information listed in the Call Off Order Form (if any) comprising of commercially sensitive information relating to: - (a) the pricing of the Services; (b) details of the Service Provider's IPR; (c) the Service Provider's business and investment plans; and/or (d) the Service Provider's trade secrets; which the Service Provider has indicated to the Customer that, if disclosed by the Customer, would cause the Service Provider significant commercial disadvantage or material financial loss;
"Comparable Supply"	means the supply of Services to another customer of the Service Provider that are the same or similar to the Services;
"Confidential Information"	means the Customer's Confidential Information and/or the Service Provider's Confidential Information, as the context specifies;
"Continuous Improvement Plan"	means a plan for improving the provision of the Services and/or reducing the Charges produced by the Service Provider pursuant to Framework Schedule 12 (Continuous Improvement, Benchmarking and Gains Share);
"Contracting Authority"	means the Authority, the Customer and any other bodies listed in the OJEU Notice;
"Control"	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
"Conviction"	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;
"Costs"	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Service Provider in providing the Services: a) the cost to the Service Provider or the Key Sub-

	<p>Contractor (as the context requires), calculated Worker Hour, of engaging the Service Provider Personnel, including:</p> <ul style="list-style-type: none"> i) base salary paid to the Service Provider 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 Services (but not including items included within limb (b) below); and ix) reasonable recruitment costs, as agreed with the Customer; <ul style="list-style-type: none"> b) costs incurred in respect of those Service Provider 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 Service Provider Assets by the Service Provider to the Customer or (to the extent that risk and title in any Service Provider Asset is not held by the Service Provider) any cost actually incurred by the Service Provider in respect of those Service Provider Assets; 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 Service Provider in the provision of the Services; d) Reimbursable Expenses to the extent these have been specified as allowable in the Call Off Order Form and are incurred in delivering any Services where the Call Off Contract Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism (as set out in Framework Schedule 3 (Framework Prices and Charging Structure); <p>but excluding:</p> <ul style="list-style-type: none"> a) Overhead; b) financing or similar costs; c) maintenance and support costs to the extent that these relate to maintenance and/or support Services provided beyond the Call Off Contract Period whether in relation to Service Provider Assets or otherwise;
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	<ul style="list-style-type: none"> 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);
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown Body"	means any department, office or executive agency of the Crown;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Customer"	means the Contracting Authority identified in the Call Off Order Form;
"Customer Assets"	means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Services;
"Customer Background IPR"	<p>means:</p> <ul style="list-style-type: none"> a) IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, software, processes and procedures; b) IPRs created by the Customer independently of this Call Off Contract; and/or c) Crown Copyright which is not available to the Service Provider otherwise than under this Call Off Contract;
"Customer Cause"	means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Customer is liable to the Service Provider;
"Customer Data"	<p>means:</p> <ul style="list-style-type: none"> 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"> i) are supplied to the Service Provider by or on behalf

	<p>of the Customer; or</p> <p>ii) the Service Provider is required to generate, process, store or transmit pursuant to this Call Off Contract; or</p> <p>b) any Personal Data for which the Customer is the Data Controller;</p>
"Customer Premises"	means premises owned, controlled or occupied by the Customer which are made available for use by the Service Provider or its Sub-Contractors for the provision of the Services (or any of them);
"Customer Property"	means the property, other than real property and IPR, including any equipment issued or made available to the Service Provider by the Customer in connection with this Call Off Contract;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to this Call Off Contract;
"Customer Responsibilities"	means the responsibilities of the Customer set out in 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;
"Customer's Confidential Information"	<p>means:</p> <p>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);</p> <p>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</p> <p>c) information derived from any of the above;</p>
"Data Controller"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Processor"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Protection Legislation" or "DPA"	means the Data Protection Act 1998, as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

"Data Subject"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
"Deductions"	means all Delay Payments or any other deduction which the Customer is paid or is payable under this Call Off Contract;
"Default"	means any breach of the obligations of the Service Provider (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 Service Provider, of its Sub-Contractors or any Service Provider Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Service Provider is liable to the Customer;
"Delay"	means: <ul style="list-style-type: none"> a) a delay in the Achievement of a Milestone by its Milestone Date; or b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
"Delay Payments"	means the amounts payable by the Service Provider to the Customer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
"Delay Period Limit"	shall be the number of days specified in Call Off Schedule 4 (Implementation Plan) for the purposes of Clause 6.4.1(b)(ii);
"Deliverable"	means an item or feature in the supply of the Services delivered or to be delivered by the Service Provider 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;
"Delivery"	means delivery in accordance with the terms of this Call Off Contract as confirmed by the issue by the Customer of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Call Off Contract and accepted by the Customer and " Deliver " and " Delivered " shall be construed accordingly;
"Disaster"	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Call Off Order Form (for the purposes of this definition the " Disaster Period ");
"Disaster Recovery"	means the Services embodied in the processes and

"Services"	procedures for restoring the provision of Services following the occurrence of a Disaster, as detailed further in Call Off Schedule 8 (Business Continuity and Disaster Recovery);
"Disclosing Party"	means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient;
"Dispute"	means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Call Off Schedule 11 (Dispute Resolution Procedure);
"Documentation"	<p>means descriptions of the Services, 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:</p> <ul style="list-style-type: none"> a) is required to be supplied by the Service Provider to the Customer under this Call Off Contract; b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services; c) is required by the Service Provider in order to provide the Services; and/or d) has been or shall be generated for the purpose of providing the Services;
"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"Due Diligence"	means any information supplied to the Service Provider by or on behalf of the Customer prior to the Call Off

Information"	Commencement Date;
"E-Payment Provider"	means the provider of the embedded commercial payment card(s) technology and services associated with the provision of the E-Payment Mechanism;
"E-Payment Solutions"	means the mechanism supporting prompt payment under the Call Off Contract and involving provision of embedded commercial payment card(s) technology and associated services to the Service Provider and the Customer by an E-Payment Provider;
"Employee Liabilities"	<p>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:</p> <ul style="list-style-type: none"> 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 Service Provider to a Transferring Service Provider Employee which would have been payable by the Service Provider 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 Service Provider 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;
"Exit Plan"	means the exit plan described in paragraph 5 of Call Off Schedule 9 (Exit Management);
"Expedited Dispute Timetable"	means the timetable set out in paragraph 5 of Call Off Schedule 11 (Dispute Resolution Procedure);
"Final Tender"	means the final tender submitted by the Service Provider to the Authority, a copy of which is annexed or referred to in Framework Schedule 21;
"FOIA"	means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Force Majeure"	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Service Provider of its obligations arising from:</p> <ul style="list-style-type: none"> a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Call Off Contract; b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of the Crown, local government or Regulatory Bodies; d) fire, flood or any disaster; and e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but

	<p>excluding:</p> <ul style="list-style-type: none"> i) any industrial dispute relating to the Service Provider, the Service Provider Personnel (including any subsets of them) or any other failure in the Service Provider or the Sub-Contractor's supply chain; and ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;
"Force Majeure Notice"	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Former Service Provider"	means a Service Provider supplying the Services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) including any Assignment, and shall include any sub-contractor of such Service Provider (or any sub-contractor of any such sub-contractor);
"Framework Agreement"	means the framework agreement between the Authority and the Service Provider referred to in the Call Off Order Form;
"Framework Commencement Date"	means 18 June 2018
"Framework Period"	means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;
"Framework Price(s)"	means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);
"Framework Schedule"	means a schedule to the Framework Agreement;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"General Anti-Abuse Rule"	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) or which affects or relates to a Comparable Supply;
"Good Industry Practice"	means standards, practices, methods and procedures

	conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Government Procurement Card"	means the Government's preferred method of purchasing and payment for low value goods or services https://www.gov.uk/government/publications/government-procurement-card-2 ;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	means Her Majesty's Revenue and Customs;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"ICT Policy"	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 Service Provider), as updated from time to time in accordance with the Variation Procedure;
"Impact Assessment"	has the meaning given to it in Clause 22.1.3 (Variation Procedure);
"Implementation Plan"	means the plan set out in the Call Off Schedule 4 (Implementation Plan);
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
"Insolvency Event"	<p>means, in respect of the Service Provider or Framework Guarantor or Call Off Guarantor (as applicable):</p> <ul style="list-style-type: none"> a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its

	<p>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</p> <p>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>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</p> <p>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>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</p> <p>h) where the Service Provider 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</p> <p>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>
"Intellectual Property Rights" or "IPR"	<p>means</p> <p>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;</p> <p>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</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"IPR Claim"	<p>means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Service Provider (or to which the Service Provider 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</p>

	its obligations under this Call Off Contract;
"Key Performance Indicators" or "KPIs"	means the performance measurements and targets in respect of the Service Provider's performance of the Call Off Contract set out in Call Off Schedule 18;
"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: <ul style="list-style-type: none"> a) listed in Framework Schedule 7 (Key Sub-Contractors); b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Service Provider is bound to comply;
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

"Milestone"	means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;
"Milestone Date"	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
"Milestone Payment"	means a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"Occasion of Tax Non-Compliance"	<p>means:</p> <ul style="list-style-type: none"> a) any tax return of the Service Provider submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging the Service Provider 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 Service Provider 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 Service Provider 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 "	<p>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:</p> <ul style="list-style-type: none"> a) the Service Provider'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 Services; b) operating expenditure relating to the provision of the

	<p>Services including an analysis showing:</p> <ul style="list-style-type: none"> i) the unit costs and quantity of any other consumables and bought-in Services; ii) manpower resources broken down into the number and grade/role of all Service Provider Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Service Provider's Profit Margin; and iv) Reimbursable Expenses, if allowed under the Call Off Order Form; <ul style="list-style-type: none"> c) Overheads; d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services; e) the Service Provider 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 Service Provider; g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and 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 Services, by way of Requisition, placed by the Customer with the Service Provider in accordance with the Framework Agreement and under the terms of this Call Off Contract;
"Other Service Provider"	means any Service Provider to the Customer (other than the Service Provider) which is notified to the Service Provider from time to time and/or of which the Service Provider should have been aware;

"Overhead"	means those amounts which are intended to recover a proportion of the Service Provider'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 Service Provider 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 Service Provider and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged by the same or similar business to the Service Provider. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Customer or the Service Provider and "Parties" shall mean both of them;
"Personal Data"	has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
"Processing"	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
"Prohibited Act"	<p>means any of the following:</p> <ul style="list-style-type: none"> 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"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; c) committing any offence: <ul style="list-style-type: none"> i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or ii) under legislation or common law concerning fraudulent acts; or iii) defrauding, attempting to defraud or conspiring to

	<p>defraud a Contracting Authority or other public body; or</p> <p>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.</p>
"Project Specific IPR"	<p>means:</p> <p>a) Intellectual Property Rights in items created by the Service Provider (or by a third party on behalf of the Service Provider) 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</p> <p>b) IPR in or arising as a result of the performance of the Service Provider's obligations under this Call Off Contract and all updates and amendments to the same; and/or</p> <p>c) Bespoke IPR;</p> <p>but shall not include the Service Provider Background IPR;</p>
"Project Specific IPR Items"	means the items in which the Project Specific IPRs subsist;
"Recipient"	mean the Party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party;;
"Rectification Plan"	means the rectification plan pursuant to the Rectification Plan Process;
"Rectification Plan Process"	means the process set out in Clause 38.2 (Rectification Plan Process);
"Registers"	has the meaning given to in Call Off Schedule 9 (Exit Management);
"Regulations"	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
"Reimbursable Expenses"	has the meaning given to it in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
"Related Service Provider"	means any person who provides Services to the Customer which are related to the Services from time to time;
"Relevant Conviction"	means a Conviction that is relevant to the nature of the Services to be provided or as specified in the Call Off Order Form;
"Relevant Requirements"	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of

	the Bribery Act 2010;
"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Service Provider is established;
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Relief Notice"	has the meaning given to it in Clause 39.2.2 (Service Provider Relief Due to Customer Cause);
"Replacement Service Provider"	means any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;
"Replacement Services"	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the Call Off Expiry Date, whether those services are provided by the Customer internally and/or by any third party;
"Replacement Sub-Contractor"	means a sub-contractor of the Replacement Service Provider to whom Transferring Service Provider Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"Request for Information"	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
"Requisition"	means a Customer request for a specific vacancy to be filled pursuant to a Call Off Contract, and filed electronically through the Fieldglass Vendor Management System;
"Requisition Form"	means the requisition form built into the Vendor Management System and Other Technology Platforms for submission of Requisitions by Contracting Authorities;
"Restricted Countries"	means a country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;
"Satisfaction Certificate"	means the certificate materially in the form of the document contained in Call Off Schedule 5 (Testing) granted by the Customer when the Service Provider has Achieved a Milestone or a Test;
"Security Management Plan"	means the Service Provider's security management plan prepared pursuant to paragraph 4 of Call Off Schedule 7 (Security) a draft of which has been provided by the Service Provider to the Customer in accordance with paragraph 4 of Call Off Schedule 7 (Security) and as updated from time to

	time;
"Security Policy"	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 Service Provider), as updated from time to time and notified to the Service Provider;
"Security Policy Framework"	the current HMG Security Policy Framework that can be found at https://www.gov.uk/government/publications/security-policy-framework ;
"Service Failure"	means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future;
"Service Provider"	means the person, firm or company with whom the Customer enters into this Call Off Contract as identified in the Call Off Order Form and references to the term in the Call Off Terms, also include all staff associated with such person, firm or company;
"Service Provider Assets"	means all assets and rights used by the Service Provider to provide the Services in accordance with this Call Off Contract but excluding the Customer Assets;
"Service Provider Background IPR"	means <ul style="list-style-type: none"> a) Intellectual Property Rights owned by the Service Provider before the Call Off Commencement Date, for example those subsisting in the Service Provider's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Service Provider's Know-How or generic business methodologies; and/or b) Intellectual Property Rights created by the Service Provider independently of this Call Off Contract,
"Service Provider Equipment"	means the Service Provider's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Service Provider (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Call Off Contract;
"Service Provider Non-Performance"	has the meaning given to it in Clause 39.1 (Service Provider Relief Due to Customer Cause);
"Service Provider Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Sub-Contractor engaged in the performance of the Service Provider's obligations under this Call Off Contract
"Service Provider Profit"	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;
"Service Provider Profit Margin"	means, in relation to a period or a Milestone (as the context requires), the Service Provider 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;
"Service Provider Representative"	means the representative appointed by the Service Provider named in the Call Off Order Form;
"Service Provider's Confidential Information"	means <ul style="list-style-type: none"> a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Service Provider (including the Service Provider Background IPR) trade secrets, Know-How, and/or personnel of the Service Provider; 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 Service Provider's attention or into the Service Provider's possession in connection with this Call Off Contract; c) information derived from any of the above;
"Service Transfer"	means any transfer of the Services (or any part of the Services), including any Assignment, for whatever reason, from the Service Provider or any Sub-Contractor to a Replacement Service Provider or a Replacement Sub-Contractor;
"Service Transfer Date"	means the date of a Service Transfer;
"Services"	means the services to be provided by the Service Provider to the Customer as referred to in Annex 1 of Call Off Schedule 2 (Services);
"Sites"	means any premises (including the Customer Premises, the Service Provider's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> a) the Services are (or are to be) provided; or b) the Service Provider manages, organises or otherwise directs the provision or the use of the Services;
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
"Staffing Information"	has the meaning give to it in Call Off Schedule 10 (Staff

	Transfer);
"Staff Vetting Procedures"	means the procedures and policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989, as set out in HMG's Baseline Security Standards and any policies and procedures notified to the Service Provider by the Customer from time to time;
"Standards"	means any: <ul style="list-style-type: none"> 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 Service Provider would reasonably and ordinarily be expected to comply with; b) standards detailed in the specification in Framework Schedule 2 (Services and Key Performance Indicators); c) standards detailed by the Customer in the Call Off Order Form or agreed between the Parties from time to time; d) relevant Government codes of practice, standards and guidance applicable and issued from time to time during the Contract Period;
"Statement of Requirements"	means a statement issued by the Customer detailing its requirements in respect of Services issued in accordance with the Call Off Procedure;
"Sub-Contract"	means any contract or agreement (or proposed contract or agreement) pursuant to which a third party: <ul style="list-style-type: none"> a) provides the Services (or any part of them); b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or c) is responsible for the management, direction or control of the provision of the Services (or any part of them);
"Sub-Contractor"	means any person other than the Service Provider, who is a party to a Sub-Contract and the servants or agents of that person;
"Template Call Off Order Form"	means the template Call Off Order Form in Annex 1 of Framework Schedule 4 (Template Call Off Order Form and Template Call Off Terms);
"Template Call Off Terms"	means the template terms and conditions in Annex 2 of Framework Schedule 4 (Template Call Off Order Form and

	Template Call Off Terms);
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Call Off Contract on a specified date and setting out the grounds for termination;
"Test Issue"	means any variance or non-conformity of the Services or Deliverables from their requirements as set out in the Call Off Contract;
"Test Plan"	means a plan: <ul style="list-style-type: none"> a) for the Testing of the Deliverables; and b) setting out other agreed criteria related to the achievement of Milestones, as described further in paragraph 4 of Call of Schedule 5 (Testing);
"Test Strategy"	means a strategy for the conduct of Testing as described further in paragraph 3 of Call Off Schedule 5 (Testing);
"Tests and Testing"	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;
"Third Party IPR"	means Intellectual Property Rights owned by a third party which is or will be used by the Service Provider for the purpose of providing the Services;
"Transferring Customer Employees"	those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;
"Transferring Former Service Provider Employees"	in relation to a Former Service Provider, those employees of the Former Service Provider to whom the Employment Regulations will apply on the Relevant Transfer Date;
"Transferring Service Provider Employees"	means those employees of the Service Provider and/or the Service Provider's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date;
"Transparency Reports"	means the information relating to the Services and performance of this Call Off Contract which the Service Provider is required to provide to the Customer in accordance with the reporting requirements in Schedule 13;
"Undelivered Services"	has the meaning given to it in Clause 8.4.1 (Services);
"Undisputed Sums Time Period"	has the meaning given to it Clause 42.1.1 (Termination of Customer Cause for Failure to Pay);
"Valid Invoice"	means an invoice issued by the Service Provider to the Customer that complies with the invoicing procedure in paragraph 7 (Invoicing Procedure) of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);

"Variation"	has the meaning given to it in Clause 22.1 (Variation Procedure);
"Variation Form"	means the form set out in Call Off Schedule 12 (Variation Form);
"Variation Procedure"	means the procedure set out in Clause 22.1 (Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Worker"	means a person supplied to a Contracting Authority to provide Worker Services, whether engaged through a Personal Services Company (PSC), Umbrella Company, PAYE, Fixed Term Appointment (FTA) or any other mechanism pursuant to a Requisition issued;
"Worker Hour"	means an hour regarded in terms of the amount of work that can be done by one person within this period;
"Worker Services"	means the services required to be performed by a Worker under supervision of the Customer in performing fulfilment of any vacant post pursuant to a Requisition;
"Worker Terms and Conditions"	means the contract terms on which Service Provider Personnel will be engaged by either the Service Provider or any Sub-Contractor to fulfil an Assignment, as approved by the Joint Governance Board pursuant to Clause 25.6 the Framework Agreement; and
"Working Day"	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: SERVICES

1. INTRODUCTION

- 1.1 This Call Off Schedule 2 specifies the Services to be provided under this Call Off Contract, in Annex 1.

ANNEX 1: THE SERVICES



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:

"Indexation"	means the adjustment of an amount or sum in accordance with paragraph 9 of the Framework Agreement Schedule 3 – Framework Prices and Charging Structure;
"Indexation Adjustment Date"	has the meaning given to it in paragraph 11.1.1(a) 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 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 Service Provider acknowledges and agrees that:

- 3.2.1 in accordance with paragraph 2 (General Provisions) of Framework Schedule 3 (Framework Prices and Charging Structure), the Call Off Contract Charges can in no event exceed the Framework Prices set out in Annex 3 to Framework Schedule 3 (Framework Prices and Charging Structure); and
- 3.2.2 subject to paragraph 8 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 Services and/or the Service Provider's performance of its obligations under this Call Off Contract and no further amounts shall be payable by the Customer to the Service Provider in respect of such performance, including in respect of matters such as:

- 4.1.1 any incidental expenses that the Service Provider incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Service Provider 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 Service Provider prior to the Call Off Commencement Date.

5. NOT USED

6. PAYMENT TERMS/PAYMENT PROFILE

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

7. INVOICING PROCEDURE

- 7.1 The Customer shall pay all sums properly due and payable to the Service Provider in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Customer in the Call Off Order Form, and in accordance with the provisions of this Call Off Contract.
- 7.2 The Service Provider 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 7.3 below)):
- 7.2.1 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 Services, including the Milestone(s) (if any) and Deliverable(s) within this Call Off Contract to which the Delivered Services relate, against the applicable due and payable Call Off Contract Charges; and
- 7.2.2 shows separately:
- (a) Not used
 - (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
- 7.2.3 is exclusive of any Management Charge (and the Service Provider 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
- 7.2.4 it is supported by any other documentation reasonably required by the Customer to substantiate that the invoice is a Valid Invoice.
- 7.3 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), which sets out the policy in respect of unstructured electronic invoices submitted by the Service Provider to the Customer (as may be amended from time to time).
- 7.4 The Service Provider shall accept the Government Procurement Card as a means of payment for the Services where such card is agreed with the Customer to be a suitable means of payment. The Customer 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 Service Provider.
- 7.5 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.

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

8. ADJUSTMENT OF CALL OFF CONTRACT CHARGES

- 8.1 The Call Off Contract Charges shall only be varied:

- 8.1.1 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);
- 8.1.2 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;
- 8.1.3 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);
- 8.1.4 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);
- 8.1.5 where all or part of the Call Off Contract Charges are reviewed and reduced in accordance with paragraph 9 of this Call Off Schedule 3;
- 8.1.6 not used
- 8.1.7 not used.

- 8.2 Subject to paragraphs 8.1.1 to 8.1.5 of this Call Off Schedule 3, the Call Off Contract Charges will remain fixed for the number of Contract Years specified in the Framework Agreement.

9. INDEXATION

- 9.1 Indexation shall have the meaning as defined in the Framework Agreement and the Service Provider may adjust the Charges per the Framework Agreement provision.

10. NOT USED

11. NOT USED

12. IMPLEMENTATION OF ADJUSTED CALL OFF CONTRACT CHARGES

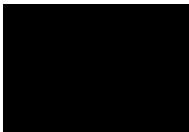
- 12.1 Variations in accordance with the provisions of this Call Off Schedule 3 to all or part the Call Off Contract Charges (as the case may be) shall be made by the Customer to take effect:

- 12.1.1 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 8.1.1 of this Call Off Schedule 3;

- 12.1.2 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 8.1.2 of this Call Off Schedule 3;
- 12.1.3 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 8.1.3 of this Call Off Schedule 3;
- 12.1.4 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 8.1.4 of this Call Off Schedule 3;
- 12.1.5 not used;
- 12.1.6 not used;
- 12.1.7 not used;

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



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[Redacted text block]

ANNEX 2: PAYMENT TERMS/PROFILE

Payment Terms – will be as laid out in 5.2 of the Call Off Order Form.

Payment Profile Payment made via BACS with invoices received weekly as per the framework terms.

CALL OFF SCHEDULE 4: IMPLEMENTATION PLAN

1. [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]						
[REDACTED]						

CALL OFF SCHEDULE 5: NOT USED

CALL OFF SCHEDULE 6: NOT USED

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 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 Service Provider 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 Service Provider 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 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 Service Provider acknowledges that the Customer places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on security.

3.2 The Service Provider 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 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 Service Provider from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Service Provider 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 Service Provider which provision the Service Provider shall be required to comply with.

4. SECURITY MANAGEMENT PLAN

4.1 Introduction

- 4.1.1 The Service Provider shall develop and maintain a Security Management Plan in accordance with this Call Off Schedule 7. The Service Provider 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 Service Provider;
 - (c) detail the process for managing any security risks from Sub-Contractors and third parties authorised by the Customer with access to the Services, processes associated with the provision of the 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 Services;
 - (d) unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the provision of the 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 Service Provider 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 Services;
 - (e) set out the security measures to be implemented and maintained by the Service Provider in relation to all aspects of the Services and all processes associated with the provision of the Services and shall at all times comply

with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Call Off Contract;

- (f) set out the plans for transitioning all security arrangements and responsibilities for the Service Provider 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 Service Provider and the Customer engaged in the provision of the 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider at least annually to reflect:
 - (a) emerging changes in Good Industry Practice;

- (b) any change or proposed change to the 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 Service Provider 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 Service Provider 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 Service Provider 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 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 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;
"Service Provider'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 thirty 30 Working Days from the Call Off Commencement Date the Service Provider shall prepare and deliver to the Customer for the Customer's written approval a plan, which shall detail the processes and arrangements that the Service Provider 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 Services; and
- 2.1.2 the recovery of the 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 Service Provider, 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 Service Provider 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 Service Provider in writing of its reasons for its rejection; and
- 2.4.2 the Service Provider 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 Services and any Services provided to the Customer by a Related Service Provider;
- 3.1.3 contain an obligation upon the Service Provider to liaise with the Customer and (at the Customer's request) any Related Service Providers 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 Service Provider in each case as notified to the Service Provider 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 Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the provision of Services and with the Services provided by a Related Service Provider; 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 Service Provider (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 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 ISO/IEC 27002 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 Services or to the business processes facilitated by and the business operations supported by the provision of Services.
- 3.4 The Service Provider shall not be entitled to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Service Provider 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 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 Services; and
 - 4.1.2 the steps to be taken by the Service Provider upon resumption of the provision of 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 Services;
 - 4.2.2 set out the Services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such Services and steps, the "**Business Continuity Services**");
 - 4.2.3 not used; 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 Service Provider 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 Service Provider 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 Service Provider'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 Services to address any prevailing effect of the failure or disruption of the provision of Services;]
 - 5.3.3 not used;
 - 5.3.4 details of how the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider to such effect in writing, whereupon the Service Provider shall conduct such reviews in accordance with the Customer's written requirements. Prior to starting its review, the Service Provider 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 Service Provider 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 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 Service Provider 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 Service Provider 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 Services; and
 - 6.2.3 the Service Provider's proposals (the **"Service Provider'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 Service Provider 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 Service Provider's Proposals, the Customer shall:
- 6.3.1 review and comment on the Review Report and the Service Provider's Proposals as soon as reasonably practicable; and
 - 6.3.2 notify the Service Provider in writing that it approves or rejects the Review Report and the Service Provider'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 Service Provider's Proposals:
- 6.4.1 the Customer shall inform the Service Provider in writing of its reasons for its rejection; and
 - 6.4.2 the Service Provider shall then revise the Review Report and/or the Service Provider'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 Service Provider'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 Service Provider's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 6.5 The Service Provider shall as soon as is reasonably practicable after receiving the Customer's approval of the Service Provider'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 Service Provider's Proposals. Any such change shall be at the Service Provider's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7. TESTING OF THE BCDR PLAN

- 7.1 The Service Provider 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 Service Provider 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 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 Service Provider written notice and the Service Provider shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Service Provider's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Service Provider's costs of that failed test shall be borne by the Service Provider.
- 7.3 The Service Provider 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 Service Provider 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 Service Provider 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 Service Provider's proposals for remedying any such failures.
- 7.6 Following each test, the Service Provider 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 Service Provider, 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 Service Provider of any of its obligations under this Call Off Contract.
- 7.8 The Service Provider shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the 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 Service Provider shall immediately invoke the BCDR Plan (and shall inform the Customer promptly of such invocation). In all other instances the Service Provider 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:

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

	Provider Background IPR, Project Specific IPR, licences for Third Party IPR or other agreements which are necessary to enable the Customer or any Replacement Service Provider to provide the Services or the Replacement Services, including in relation to licences all relevant Documentation;
"Transferring Assets"	has the meaning given to it in paragraph 9.2.1 of this Call Off Schedule 9;
"Transferring Contracts"	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 Service Provider 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 Service Provider.
- 2.2 The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Services from the Service Provider to the Customer and/or a Replacement Service Provider 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 Service Provider shall:
 - 3.1.1 create and maintain a Register of all:
 - (a) Service Provider 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 Services;
 - 3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Service Provider provides the Services, which shall contain sufficient detail to permit the Customer and/or Replacement Service Provider to understand how the Service Provider provides the Services and to enable the smooth transition of the 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 Services.
- 3.2 The Service Provider 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 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 Service Provider upon the Service Provider ceasing to provide the 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 Service Provider 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 Service Provider 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 Service Provider without restriction or payment, the Service Provider 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 Service Provider seeking an alternative Sub-Contractor or provider of 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 Service Provider's Exit Manager shall be responsible for ensuring that the Service Provider and its employees, agents and Sub-Contractors comply with this Call Off Schedule 9. The Service Provider shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Service Provider as are reasonably necessary to enable the Service Provider 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 SERVICES

- 4.1 On reasonable notice at any point during the Call Off Contract Period, the Service Provider shall provide to the Customer and/or its potential Replacement Service Providers (subject to the potential Replacement Service Providers 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 Service Providers undertaking due diligence:
 - 4.1.1 details of the Service(s);
 - 4.1.2 a copy of the Registers, updated by the Service Provider up to the date of delivery of such Registers;
 - 4.1.3 an inventory of Customer Data in the Service Provider'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 Services;
 - 4.1.6 all information relating to Transferring Service Provider Employees or those who may be Transferring Service Provider Employees' required to be provided by the Service Provider 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 Service Provider acknowledges that the Customer may disclose the Service Provider's Confidential Information to an actual or prospective Replacement Service Provider 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 Service Provider's Confidential Information which is information relating to the Service Provider's or its Sub-Contractors' prices or costs).
- 4.3 The Service Provider 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 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 Service Provider 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 Service Provider shall be such as would be reasonably necessary to enable a third party to:
- 4.5.1 prepare an informed offer for those Services; and
 - 4.5.2 not be disadvantaged in any subsequent procurement process compared to the Service Provider (if the Service Provider is invited to participate).

5. EXIT PLAN

- 5.1 The Service Provider 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 Service Provider's proposed methodology for achieving an orderly transition of the Services from the Service Provider to the Customer and/or its Replacement Service Provider 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 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 Services will transfer to the Replacement Service Provider 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 Service Provider 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 Service Provider upon the Call Off Expiry Date together with any reasonable costs required to effect such transfer (and the Service Provider agrees that all assets and contracts used by the Service Provider in connection with the provision of the Services will be available for such transfer);
 - 5.3.7 proposals for the training of key members of the Replacement Service Provider's personnel in connection with the continuation of the provision of the 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 Service Provider copies of all documentation:
 - (a) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Service Provider; and
 - (b) relating to the use and operation of the 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 Service Provider in connection with the performance of the supply of the Services;
 - 5.3.10 proposals for the identification and return of all Customer Property in the possession of and/or control of the Service Provider or any third party (including any Sub-Contractor);
 - 5.3.11 proposals for the disposal of any redundant Services and materials;
 - 5.3.12 procedures to:

- (a) deal with requests made by the Customer and/or a Replacement Service Provider for Staffing Information pursuant to Call Off Schedule 10 (Staff Transfer);
 - (b) determine which Service Provider Personnel are or are likely to become Transferring Service Provider Employees; and
 - (c) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Service Provider 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 Services from the Service Provider to the Replacement Service Provider and/or the Customer with the aim of ensuring that there is no disruption to or degradation of the 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 Service Provider in order to effect an orderly handover of the provision of the 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 Service Provider (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 Service Provider ceases to provide the 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 Service Provider ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Service Provider 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 Service Provider to such effect.

7. TERMINATION ASSISTANCE PERIOD

- 7.1 Throughout the Termination Assistance Period, or such shorter period as the Customer may require, the Service Provider shall:
 - 7.1.1 continue to provide the 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 Services and the Termination Assistance, provide to the Customer any reasonable assistance requested by the Customer to allow the 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 Services to the Customer and/or its Replacement Service Provider;
 - 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 not used; 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 Service Provider's obligations under paragraph 7.1.3 of this Call Off Schedule 9, if it is not possible for the Service Provider 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 Service Provider 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 Not used.

8. TERMINATION OBLIGATIONS

- 8.1 The Service Provider 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 Service Provider's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule 9), the Service Provider shall:
- 8.2.1 cease to use the Customer Data;
 - 8.2.2 provide the Customer and/or the Replacement Service Provider 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 Service Provider 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 Service Provider's possession or control:
 - (a) all materials created by the Service Provider 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 Service Provider 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 Services not Delivered by the Call Off Expiry Date;

8.2.5 vacate any Customer Premises;

8.2.6 remove the Service Provider Equipment together with any other materials used by the Service Provider to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Service Provider 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 Service Provider and/or any Service Provider Personnel;

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

- (a) such information relating to the Services as remains in the possession or control of the Service Provider; and
- (b) such members of the Service Provider Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Service Provider, provided that the Customer and/or the Replacement Service Provider shall pay the reasonable costs of the Service Provider 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 Service Provider's performance of the 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 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 Service Provider in relation to the 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 Service Provider 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 Service Provider Assets or acquire any new Service Provider Assets; or

- 9.1.3 terminate, enter into or vary any licence for software in connection with the provision of Services.
- 9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Service Provider pursuant to paragraph 7.1.5 of this Call Off Schedule 9, the Customer shall provide written notice to the Service Provider 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 Service Provider (**"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 Service Provider 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 Service Provider (the **"Transferring Contracts"**),

in order for the Customer and/or its Replacement Service Provider to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Customer and/or its Replacement Service Provider, the Service Provider shall provide all reasonable assistance to the Customer and/or its Replacement Service Provider to enable it to determine which Transferable Assets and Transferable Contracts the Customer and/or its Replacement Service Provider requires to provide the Services or the Replacement Services.
- 9.3 With effect from the expiry of the Termination Assistance Period, the Service Provider shall sell the Transferring Assets to the Customer and/or its nominated Replacement Service Provider 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 Service Provider 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 Service Provider (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Service Provider (as appropriate) on payment for the same.
- 9.5 Where the Service Provider is notified in accordance with paragraph 9.2.2 of this Call Off Schedule 9 that the Customer and/or the Replacement Service Provider requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Service Provider 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 Service Provider 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 Service Provider shall bear the reasonable proven costs of procuring the same.

- 9.6 The Service Provider shall as soon as reasonably practicable assign or procure the novation to the Customer and/or the Replacement Service Provider of the Transferring Contracts. The Service Provider 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 Service Provider or join with the Service Provider 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 Service Provider, 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 Service Provider does the same.
- 9.8 The Service Provider 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 Service Provider has been effected.
- 9.9 The Service Provider shall indemnify the Customer (and/or the Replacement Service Provider, 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 Service Provider) 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. SERVICE PROVIDER PERSONNEL

- 10.1 The Customer and Service Provider agree and acknowledge that in the event of the Service Provider ceasing to provide the Services or part of them for any reason, Call Off Schedule 10 (Staff Transfer) shall apply.
- 10.2 The Service Provider 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 Services from transferring their employment to the Customer and/or the Replacement Service Provider and/or Replacement Sub-Contractor.
- 10.3 During the Termination Assistance Period, the Service Provider shall and shall procure that any relevant Sub-Contractor shall:
- 10.3.1 give the Customer and/or the Replacement Service Provider and/or Replacement Sub-Contractor reasonable access to the Service Provider's personnel and/or their consultation representatives to present the case for transferring their employment to the Customer and/or the Replacement Service Provider and/or to discuss or consult on any measures envisaged by the Customer, Replacement Service Provider and/or Replacement Sub-Contractor in respect of persons expected to be Transferring Service Provider Employees;
 - 10.3.2 co-operate with the Customer and the Replacement Service Provider to ensure an effective consultation process and smooth transfer in respect of Transferring Service Provider Employees in line with good employee relations and the effective continuity of the Services.

- 10.4 The Service Provider shall immediately notify the Customer or, at the direction of the Customer, the Replacement Service Provider of any period of notice given by the Service Provider or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 10.5 The Service Provider shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, Service Providers or Sub-Contractors whose employment or engagement is transferred to the Customer and/or the Replacement Service Provider 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 Service Provider Employee not identified in the Service Provider's Final Service Provider Personnel List.

11. CHARGES

- 11.1 Except as otherwise expressly specified in this Call Off Contract, the Service Provider shall not make any charges for the services provided by the Service Provider pursuant to, and the Customer shall not be obliged to pay for costs incurred by the Service Provider 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 Service Provider and/or the Replacement Service Provider and the Service Provider (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 Service Provider 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 Service Provider 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 Service Provider 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:

“Admission Agreement”	An admission agreement in the form available on the Civil Service Pensions website immediately prior to the First Relevant Transfer Date to be entered into by the Service Provider where it agrees to participate in the Schemes in respect of the Services;
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
“Fair Deal Employees”	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 Service Provider 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);
“First Relevant Transfer Date”	the date the first Fair Deal Employee transfers under a Relevant Transfer to the Service Provider;
“Former Service Provider”	a Service Provider 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) including any Assignment, and shall include any sub-contractor of such Service Provider (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	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;
“Notified Sub-Contractor”	a Sub-Contractor identified in the Annex to this Call Off Schedule 10 to whom Transferring Customer Employees and/or Transferring Former Service Provider Employees will transfer on a Relevant Transfer Date;
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

“Replacement Sub-Contractor”	a sub-contractor of the Replacement Service Provider to whom Transferring Service Provider Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Schemes”	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;
“Service Provider's Provisional Service Provider Personnel List”	a list prepared and updated by the Service Provider of all Service Provider 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 including any Assignment which it is envisaged as at the date of such list will no longer be provided by the Service Provider;
“Service Provider's Final Service Provider Personnel List”	a list provided by the Service Provider of all Service Provider Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Service Transfer”	any transfer of the Services (or any part of the Services) including any Assignment, for whatever reason, from the Service Provider or any Sub-Contractor to a Replacement Service Provider or a Replacement Sub-Contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
“Staffing Information”	<p>in relation to all persons identified on the Service Provider's Provisional Service Provider Personnel List or Service Provider's Final Service Provider 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"> (a) their ages, dates of commencement of employment or engagement, gender and place of work; (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including

redundancy procedures, and redundancy payments;

- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (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;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in 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;

“Transferring Customer Employees”

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

“Transferring Former Service Provider Employees”

in relation to a Former Service Provider, those employees of the Former Service Provider to whom the Employment Regulations will apply on the Relevant Transfer Date; and

“Transferring Service Provider Employees”

those employees of the Service Provider and/or the Service Provider’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 Service Provider to provide an indemnity, undertaking or warranty, the Service Provider shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Customer, Former Service Provider, Replacement Service Provider 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 Service Provider 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 Service Provider 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 Service Provider and/or any Notified Sub-Contractor (as appropriate).

2. CUSTOMER INDEMNITIES

- 2.1 Subject to Paragraph 2.2, the Customer shall indemnify the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider and/or

any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- 2.3.1 the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider and/or any Sub-Contractor; or
 - (b) any claim that the termination of employment was unfair because the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider and/or any Notified Sub-Contractor and the Service Provider shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. SERVICE PROVIDER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2 the Service Provider shall indemnify the Customer against any Employee Liabilities arising from or as a result of:
- 3.1.1 any act or omission by the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider.

4. INFORMATION

The Service Provider 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 Service Provider and each Notified Sub-Contractor in writing such information as is necessary to enable the Service Provider 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 Service Provider of employees whose employment begins after the Relevant Transfer Date, and the Service Provider undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Service Provider 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 Service Provider 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 Service Provider undertakes to enter into the Admission Agreement.
- 1.2 The Service Provider 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 Service Provider 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 Service Provider breaches any obligations it has under the Admission Agreement;
 - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider to remedy it.
- 1.3 The Service Provider 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 Service Provider participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

2. FUTURE SERVICE BENEFITS

- 2.1 The Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider and/or the Customer may reasonably require to enable the Replacement Service Provider 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 Service Provider 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 Service Provider has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Service Provider 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 Service Provider and/or the Customer may reasonably require, to enable the Replacement Service Provider 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 Service Provider 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 SERVICE PROVIDER EMPLOYEES AT COMMENCEMENT OF SERVICES AND/OR ASSIGNMENT

1. RELEVANT TRANSFERS

- 1.1 The Customer and the Service Provider agree that:
 - 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services or any Assignment will be a Relevant Transfer in relation to the Transferring Former Service Provider Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Service Provider and the Transferring Former Service Provider 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 Service Provider and/or Notified Sub-Contractor and each such Transferring Former Service Provider Employee.
- 1.2 Subject to Paragraph 6, the Customer shall procure that each Former Service Provider 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 Service Provider 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 Service Provider shall make, and the Customer shall procure that each Former Service Provider makes, any necessary apportionments in respect of any periodic payments.

2. FORMER SERVICE PROVIDER INDEMNITIES

- 2.1 Subject to Paragraphs 2.2 and 6, the Customer shall procure that each Former Service Provider shall indemnify the Service Provider 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 Service Provider in respect of any Transferring Former Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Service Provider Employee arising before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Former Service Provider arising before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Service Provider Employees; and/or

- (b) any custom or practice in respect of any Transferring Former Service Provider Employees which the Former Service Provider 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 Service Provider 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 Service Provider 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 Service Provider to the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider other than a Transferring Former Service Provider Employee for whom it is alleged the Service Provider 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 Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Service Provider Employee relating to any act or omission of the Former Service Provider 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 Service Provider 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 Service Provider 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 Service Provider Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Service Provider 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 Service Provider 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 Service Provider Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Former Service Provider Employee, that his/her contract of employment has been transferred from a Former Service Provider to the Service Provider and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Service Provider 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 Service Provider; and
- 2.3.2 the Former Service Provider may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Service Provider and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Service Provider 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 Service Provider and/or the Customer, the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider indemnifies the Service Provider 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 Service Provider 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 Service Provider and/or any Sub-Contractor; or

- (b) any claim that the termination of employment was unfair because the Service Provider 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 Service Provider and/or any Notified Sub-Contractor (as appropriate) to the Customer and, if applicable, the Former Service Provider, 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 Service Provider nor dismissed by the Service Provider 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 Service Provider or Notified Sub-Contractor and the Service Provider shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

3. SERVICE PROVIDER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2, the Service Provider shall indemnify the Customer and/or the Former Service Provider against any Employee Liabilities arising from or as a result of:

3.1.1 any act or omission by the Service Provider or any Sub-Contractor in respect of any Transferring Former Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Service Provider Employee whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Service Provider or any Sub-Contractor on or after the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Former Service Provider Employee; and/or

- (b) any custom or practice in respect of any Transferring Former Service Provider Employees which the Service Provider 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 Service Provider Employees arising from or connected with any failure by the Service Provider 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 Service Provider 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 Service Provider Employees to their material detriment on or after their transfer to the Service Provider 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 Service Provider 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 Service Provider or a Sub-Contractor to, or in respect of, any Transferring Former Service Provider Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Service Provider 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 Service Provider 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 Service Provider 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 Service Provider to the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Service Provider Employee relating to any act or omission of the Service Provider 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 Service Provider's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
 - 3.1.9 a failure by the Service Provider 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 Service Provider whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Service Provider's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Service Provider 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 Service Provider 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 Service Provider and the Former Service Provider.

4. INFORMATION

The Service Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and/or at the Customer's direction, the Former Service Provider, in writing such information as is necessary to enable the Customer and/or the Former Service Provider to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 6, the Customer shall procure that the Former Service Provider shall promptly provide to the Service Provider and each Notified Sub-Contractor in writing such information as is necessary to enable the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer has a contract with the Former Service Provider, which 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 Service Provider does or does not act accordingly.

7. PENSIONS

The Service Provider 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 Service Provider undertakes to enter into the Admission Agreement.
- 1.2 The Service Provider 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 Service Provider 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 Service Provider breaches any obligations it has under the Admission Agreement;
 - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider to remedy it.
- 1.3 The Service Provider 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 Service Provider participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

2. FUTURE SERVICE BENEFITS

- 2.1 If the Service Provider is rejoining the Schemes for the first time, the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider and/or the Customer and/or the Replacement Sub-Contractor may reasonably require to enable the Replacement Service Provider and/or the Replacement Sub-Contractor 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 Service Provider and/or the Replacement Sub-Contractor 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 subparagraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8. BULK TRANSFER

- 8.1 Where the Service Provider has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.3 above of this Annex, the Service Provider 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 Service Provider and/or the Customer and/or the Replacement Sub-Contractor may reasonably require, to enable the Replacement Service Provider and/or the Replacement Sub-Contractor 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 Service Provider 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.

9. SUB-CONTRACTORS

- 9.1 If the Service Provider enters into a Sub-Contract for the delivery of all or part of the Services including any Assignment, which will involve the transfer of employment of any Eligible Employee it will impose obligations on its Sub-Contractor in identical terms as those imposed on the Service Provider by this Pensions Annex to Schedule 10 (Staff Transfer).
- 9.2 The Service Provider shall procure that each Sub-Contractor provides indemnities to the Customer that are identical to the indemnities set out in Paragraph 5 of this Pensions Annex. Where a Sub-Contractor fails to satisfy any claim made under such one or more indemnities, the Service Provider will be liable for satisfying any such claim as if it had provided the indemnity itself.

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Customer and the Service Provider agree that the commencement of the provision of the Services or of any part of the Services, and/or any Assignment, will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Service Provider.
- 1.2 If any employee of the Customer and/or a Former Service Provider claims, or it is determined in relation to any employee of the Customer and/or a Former Service Provider, that his/her contract of employment has been transferred from the Customer and/or the Former Service Provider to the Service Provider and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - 1.2.1 the Service Provider 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 Service Provider; and
 - 1.2.2 the Customer and/or the Former Service Provider may offer (or may procure that a third party may offer) employment to such person within two weeks of the notification by the Service Provider or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Customer or Former Service Provider (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 Service Provider), the Service Provider 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 two week 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 Service Provider and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person. If such an offer was made but rejected by the employee at an earlier date, the Service Provider and/or the Sub-Contractor may give such notice within five (5) Working Days of the rejection of that offer.

2. INDEMNITIES

- 2.1 Subject to the Service Provider 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 Service Provider and/or the relevant Notified 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 Service Provider 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 Service Provider indemnifies the Service Provider and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Service Provider referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Service Provider 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 Service Provider as appropriate nor dismissed by the Service Provider 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 Service Provider and/or the Sub-Contractor (as appropriate) and the Service Provider 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 Service Provider and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Service Provider and/or the Sub-Contractor and the Service Provider shall indemnify the Customer and any Former Service Provider, and shall procure that the Sub-Contractor shall indemnify the Customer and any Former Service Provider, against any Employee Liabilities that either of them may incur in respect of any such employees of the Service Provider 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 Service Provider and/or any Sub-Contractor; or
 - (b) any claim that the termination of employment was unfair because the Service Provider 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 Service Provider and/or any Sub-Contractor to the Customer and, if applicable, Former Service Provider 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 Service Provider 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 Service Provider 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 Service Provider does or does not act accordingly.

PART D

EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Service Provider 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 to the Customer or at the direction of the Customer to any Replacement Service Provider and/or any Replacement Sub-Contractor, in a suitably anonymised format so as to comply with the Data Protection Legislation, the Service Provider's Provisional Service Provider Personnel List, together with the Staffing Information in relation to the Service Provider's Provisional Service Provider Personnel List and it shall provide an updated Service Provider's Provisional Service Provider 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 Service Provider shall provide to the Customer or at the direction of the Customer to any Replacement Service Provider and/or any Replacement Sub-Contractor:

- 1.2.1 the Service Provider's Final Service Provider Personnel List, which shall identify which of the Service Provider Personnel are Transferring Service Provider Employees; and
- 1.2.2 the Staffing Information in relation to the Service Provider's Final Service Provider 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 Service Provider under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Service Provider and/or Replacement Sub-Contractor.

1.4 The Service Provider warrants, for the benefit of the Customer, any Replacement Service Provider, 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 Service Provider agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services or any Assignment who is not listed on the Service Provider's Provisional Service Provider 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 Service Provider Personnel listed on the Service Provider Provisional Service Provider 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 Service Provider 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) or any Assignment by any of the Service Provider 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 Service Provider's Provisional Service Provider 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 any Assignment; or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Service Provider's Provisional Service Provider 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 Service Provider and any Replacement Sub-Contractor of any notice to terminate employment given by the Service Provider or relevant Sub-Contractor or received from any persons listed on the Service Provider's Provisional Service Provider Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Service Provider 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 and any Assignment;
- 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 Service Provider shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Service Provider and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Service Provider 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 Service Provider 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

Service Provider shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Service Provider and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Service Provider's Final Service Provider Personnel List who is a Transferring Service Provider 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 Service Provider 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 including any Assignment being undertaken by a Replacement Service Provider and/or a Replacement Sub-Contractor. Such change in the identity of the Service Provider of such Services including any Assignment may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Service Provider further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Service Provider or any Sub-Contractor and the Transferring Service Provider 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 Service Provider and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Service Provider Employee.
- 2.2 The Service Provider shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Service Provider 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 Service Provider 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 Service Provider and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Service Provider and/or Replacement Sub-Contractor.
- 2.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs the Service Provider shall indemnify the Customer and/or the Replacement Service Provider 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 Service Provider or any Sub-Contractor in respect of any Transferring Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Service Provider Employee whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the Service Provider or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Service Provider Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Service Provider Employees which the Service Provider 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 Service Provider Employees arising from or connected with any failure by the Service Provider 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 Service Provider 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 Service Provider's Final Service Provider 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 Service Provider to the Customer and/or Replacement Service Provider 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 Service Provider 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 Service Provider 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 Service Provider or any Sub-Contractor other than a Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Personnel List for whom it is alleged the Customer and/or the Replacement Service Provider 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 Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Service Provider Employee relating to any act or omission of the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Service Provider 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 Service Provider'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 Service Provider's Final Service Provider Personnel List claims, or it is determined in relation to any person who is not identified in the Service Provider's Final Service Provider Personnel List that his/her contract of employment has been transferred from the Service Provider or any Sub-Contractor to the Replacement Service Provider 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 Service Provider shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Service Provider; and
 - 2.5.2 the Service Provider 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 Service Provider 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 Service Provider or a Sub-Contractor, the Customer shall procure that the Replacement Service Provider 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 Service Provider 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 Service Provider 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 Service Provider shall indemnify the Replacement Service Provider 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 Service Provider 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 Service Provider and/or Replacement Sub-Contractor; or

(b) any claim that the termination of employment was unfair because the Replacement Service Provider 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 Service Provider and/or Replacement Sub-Contractor to the Service Provider 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 Service Provider or any Sub-Contractor nor dismissed by the Replacement Service Provider 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 Service Provider Employee.

2.11 The Service Provider 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 Service Provider's Final Service Provider 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 Service Provider and/or any Sub-Contractor; and

2.11.2 the Replacement Service Provider and/or the Replacement Sub-Contractor.

- 2.12 The Service Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and any Replacement Service Provider and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Customer, the Replacement Service Provider 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 Service Provider and/or Replacement Sub-Contractor, shall promptly provide to the Service Provider and each Sub-Contractor in writing such information as is necessary to enable the Service Provider 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 Service Provider indemnifies the Service Provider 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 Service Provider and/or Replacement Sub-Contractor in respect of any Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Service Provider Employee;
 - 2.13.2 the breach or non-observance by the Replacement Service Provider and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Personnel List; and/or
 - (b) any custom or practice in respect of any Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Personnel List which the Replacement Service Provider 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 Service Provider Employees identified in the Service Provider's Final Service Provider Personnel List arising from or connected with any failure by the Replacement Service Provider 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 Service Provider and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Personnel List on or after their transfer to the Replacement Service Provider 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 Service Provider's Final Service Provider Personnel List who would have been a Transferring Service Provider 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 Service Provider or Replacement Sub-Contractor to, or in respect of, any Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Service Provider 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 Service Provider Employee identified in the Service Provider's Final Service Provider 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 Service Provider Employee identified in the Service Provider's Final Service Provider 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 Service Provider or Sub-Contractor, to the Replacement Service Provider 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 Service Provider 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 Service Provider Employees identified in the Service Provider's Final Service Provider 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 Service Provider Employee identified in the Service Provider's Final Service Provider Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Service Provider Employee relating to any act or omission of the Replacement Service Provider 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 Service Provider 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 Service Provider 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

Name and full contact details	Obligation
<p>Brook Street UK Limited</p> <p>34 George Street, Luton, Bedfordshire, LU1 2AZ [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>	<p>Master Vendor for provision of Clerical, Administration & Operational Workers across the UK.</p>
<p>SAP UK LTD</p> <p>Clockhouse Place, Bedfont Road, Feltham, Middlesex, TW14 8HD [REDACTED] [REDACTED] [REDACTED]</p>	<p>Provider of Government wide Vendor Management System (SAP Fieldglass VMS (SaaS) allowing workflow of all requisitions engagement with line requestors cost and spend management, approvals of timesheets and requisitions, integrations with ERP applications for organisational structures and invoicing. Workflow for interactions with staffing agency vendors, on-line time sheeting and invoice value calculations, model for Contracting Authority Service users to search for Talent Pooled Workers and Source of Management Information.</p>
<p>NQC Limited</p> <p>1 George Leigh Street, Manchester, RM4 5DL [REDACTED] [REDACTED] [REDACTED]</p>	<p>Designing and hosting the Online Marketplace Portal to display and present all open assignments and allow potential Workers to register their interest and/or apply for roles.</p>
<p>SAFE Computing Limited</p> <p>20 Freeschool Lane, Leicester LE1 4FY [REDACTED]</p>	<p>A system to on-board Non-Agency Workers to manage their assignments and to search for workers who apply through the NQC Marketplace Portal.</p>

<p>[REDACTED]</p> <p>[REDACTED]</p>	
<p>Giant Precision Limited</p> <p>3 Harbour Exchange Square, London, E14 9TQ</p> <p>[REDACTED].</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Payrolling & Employment of PAYE Workers and Off Payroll Workers.</p>
<p>Serco Limited</p> <p>Serco House 16 Bartley Wood Business Park Bartley Way, Hook, Hampshire, RG27 9UY</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Strategic Governance and Advisory support to extend the Programme across Government Agencies, Departments and the wider Public Sector.</p>

CALL OFF SCHEDULE 11: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

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

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Counter Notice"	has the meaning given to it in paragraph 6.2 of this Call Off Schedule 11;
"Exception"	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Services;
"Expert"	the person appointed by the Parties in accordance with paragraph 5.2 of this Call Off Schedule 11;
"Extraordinary Meeting"	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;
"Mediator"	the independent third party appointed in accordance with paragraph 4.2 of this Call Off Schedule 11; and
"Senior Officers"	are senior officials of the Customer and Service Provider that have been instructed by the Customer Representative and Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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

ALEXANDER MANN SOLUTIONS ("the Service Provider")

1. This Call Off Contract is varied as follows:

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

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

Signature

Date

Name (in
Capitals)

Address

7 – 11 Bishopsgate, London, EC2N 3AQ

CALL OFF SCHEDULE 13: TRANSPARENCY REPORTS

1. INTRODUCTION

- 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 Service Provider 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 Service Provider 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 Service Provider 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.

ANNEX 1: LIST OF TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
Monthly Payment Card Data over £500	https://www.gov.uk/government/publications/payment-cards-pan-government-policy		
Prompt Payment Data	https://www.gov.uk/government/publications/procurement-policy-note-0515-prompt-payment-and-performance-reporting		
Central Government Spend over £25k	https://www.gov.uk/government/publications/guidance-for-publishing-spend-over-25000		
Workforce Management Reporting	https://www.gov.uk/guidance/how-to-publish-workforce-management-information		
Gender Pay Gap Reporting	https://www.gov.uk/guidance/gender-pay-gap-reporting-guidance		

CALL OFF SCHEDULE 14: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION

- 1.1 This Call Off Schedule 14 specifies the range of Alternative Clauses and Additional Clauses that may be requested in the Call Off Order Form and, if requested in the Call Off Order Form, shall apply to this Call Off Contract.

2. CLAUSES SELECTED

- 2.1 The Customer may, in the Call Off Order Form, request the following Alternative Clauses:
- 2.1.1 Scots Law (see paragraph 4.1 of this Call Off Schedule 14);
 - 2.1.2 Northern Ireland Law (see paragraph 4.2 of this Call Off Schedule 14);
 - 2.1.3 Non-Crown Bodies (see paragraph 4.3 of this Call Off Schedule 14);
 - 2.1.4 Non-FOIA Public Bodies (see paragraph 4.4 of this Call Off Schedule 14);
 - 2.1.5 Financial Limits (see paragraph 4.5 of this Call Off Schedule 14).
- 2.2 The Customer may, in the Call Off Order Form, request the following Additional Clauses should apply:
- 2.2.1 Security Measures (see paragraph 5.1 of this Call Off Schedule 14);
 - 2.2.2 NOT USED;
 - 2.2.3 MOD (“Ministry of Defence”) Additional or Alternative Clauses (see paragraph 7 of this Call Off Schedule 14)
 - 2.2.4 Obligations to Advertise Supply Chain Opportunities (see paragraph 8 of this Call Off Schedule 14)

3. IMPLEMENTATION

- 3.1 The appropriate changes have been made in this Call Off Contract to implement the Alternative and/or Additional Clauses specified in paragraph 2.1 of this Call Off Schedule 14 and the Additional Clauses specified in paragraphs 2.2 and 2.2.1 of this Call Off Schedule 14 shall be deemed to be incorporated into this Call Off Contract.

4. ALTERNATIVE CLAUSES

4.1 SCOTS LAW

- 4.1.1 Law and Jurisdiction (Clause 57)
 - (a) References to “England and Wales” in the original Clause 57 of this Call Off Contract (Law and Jurisdiction) shall be replaced with “Scotland”.
 - (b) Where legislation is expressly mentioned in this Call Off Contract the adoption of Clause 4.1.1 (a) shall have the effect of substituting the equivalent Scots legislation.

4.2 NORTHERN IRELAND LAW

- 4.2.1 Law and Jurisdiction (Clause 57)

- (a) References to "England and Wales" in the original Clause 57 of this Call Off Contract (Law and Jurisdiction) shall be replaced with "Northern Ireland".
- (b) Where legislation is expressly mentioned in this Call Off Contract the adoption of Clause 4.1.1(a) shall have the effect of substituting the equivalent Northern Ireland legislation.

4.2.2 Insolvency Event

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

4.3 NON-CROWN BODIES

Clause 46.3.1(a) of this Call Off Contract (Official Secrets Act and Finance Act) shall be deleted.

Delete the following wording in the definition of Staff Vetting Procedures:

", including but not limited to, the provisions of the Official Secrets Act 1911 to 1989".

4.4 NON-FOIA PUBLIC BODIES

Replace Clause 34.4 of this Call Off Contract (Transparency and Freedom of Information) with "The Customer has notified the Service Provider that the Customer is exempt from the provisions of FOIA and EIR."

4.5 FINANCIAL LIMITS

In Clause 36.2.1(b)(i) remove the monetary amount and the percentage stated therein and replace respectively with:

[enter monetary amount in words] [£ X]

[enter percentage in words] [£ X]

In Clause 36.2.1(b)(ii) remove the monetary amount and the percentage stated therein and replace respectively with:

[enter monetary amount in words] [£ X]

[enter percentage in words] [£ X]

In Clause 36.2.1(b)(iii) remove the monetary amount and the percentage stated therein and replace respectively with:

[enter monetary amount in words] [£ X]

[enter percentage in words] [£ X]

5. ADDITIONAL CLAUSES: GENERAL

5.1 SECURITY MEASURES

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

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

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

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

references to a person employed by the Service Provider shall be construed as references to any person employed or engaged by the Service Provider to do anything in connection with this Contract, whether under a contract of service with the Service Provider or under any other contract or arrangement whatsoever.

5.1.2 The following new Clause [58] shall apply:

58. [SECURITY MEASURES]

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

58.1.1. without the prior consent in writing of the Customer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;

58.1.2. disclosed to or acquired by a person as respects whom the Customer has given to the Service Provider a notice in writing which has not been cancelled stating that the Customer requires that secret matters shall not be disclosed to that person;

58.1.3. without the prior consent in writing of the Customer, disclosed to or acquired by any person who is not a servant of the Service Provider; or

58.1.4. disclosed to or acquired by a person who is an employee of the Service Provider except in a case where it is necessary for the proper performance of this Call Off Contract that such person shall have the information.

58.2. Without prejudice to the provisions of Clause 58.1, the Service Provider shall, both before and after the completion or termination of this Call Off Contract, take all reasonable steps to ensure:

58.2.1. no such person as is mentioned in Clauses 58.1, 58.1.1 or 58.1.2 hereof shall have access to any item or document under the control of the Service Provider containing information about a secret matter except with the prior consent in writing of the Customer;

- 58.2.2. that no visitor to any premises in which there is any item to be supplied under this Call Off Contract or where Services are being supplied shall see or discuss with the Service Provider or any person employed by him any secret matter unless the visitor is authorised in writing by the Customer so to do;
- 58.2.3. that no photograph of any item to be supplied under this Call Off Contract or any portions of the Services shall be taken except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;
- 58.2.4. that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and
- 58.2.5. that if the Customer gives notice in writing to the Service Provider at any time requiring the delivery to the Customer of any such document, model or item as is mentioned in Clause 58.2.3, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
- 58.3. The decision of the Customer on the question whether the Service Provider has taken or is taking all reasonable steps as required by the foregoing provisions of Clause 58 shall be final and conclusive.
- 58.4. If and when directed by the Customer, the Service Provider shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 58.5. If and when directed by the Customer, the Service Provider shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Call Off Contract.
- 58.6. If, at any time either before or after the expiry or termination of this Call Off Contract, it comes to the notice of the Service Provider that any person acting without lawful authority is seeking or has sought to obtain information concerning this Call Off Contract or anything done

or to be done in pursuance thereof, the matter shall be forthwith reported by the Service Provider to the Customer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Service Provider shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Service Provider with a statement of the facts as aforesaid.

- 58.7. The Service Provider shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the Service Provider to observe the same obligations in relation to that matter as are imposed on the Service Provider by Clauses 58.1 and 58.2 and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of Clause 58 observes the said obligations, and the Service Provider shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Service Provider with all necessary particulars.
- 58.8. The Service Provider shall, if directed by the Customer, include in the Sub-Contract provisions in such terms as the Customer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Service Provider by Clause 58, but with such variations (if any) as the Customer may consider necessary. Further the Service Provider shall:
- 58.8.1. give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under Clause 58 into operation in such cases and to such extent as the Customer may direct;
- 58.8.2. if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of Clause 58, notify such breach forthwith to the Customer; and
- 58.8.3. if and when so required by the Customer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause 58.11.
- 58.9. The Service Provider shall give the Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer that the obligations imposed by or

under the foregoing provisions of Clause 58 have been and are being observed and as to what the Service Provider has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Service Provider shall secure that a representative of the Customer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Call Off Contract or in which there is or will be any item to be supplied under this Call Off Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Call Off Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

58.10. Nothing in Clause 58 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

58.11. If the Customer shall consider that any of the following events has occurred:

58.11.1. that the Service Provider has committed a breach of, or failed to comply with any of, the foregoing provisions of Clause 58; or

58.11.2. that the Service Provider has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Customer, or with any department or person acting on behalf of the Crown; or

58.11.3. that by reason of an act or omission on the part of the Service Provider, or of a person employed by the Service Provider, which does not constitute such a breach or failure as is mentioned in 58.11.2, information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the Customer, ought not to have such information;

and shall also decide that the interests of the State require the termination of this Call Off Contract, the Customer may by notice in writing terminate this Call Off Contract forthwith.

58.12. A decision of the Customer to terminate this Call Off Contract in accordance with the provisions of Clause 58.11 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Customer's decision is based.

58.13. Service Provider's notice

58.13.1. The Service Provider may within five (5) Working Days of the termination of this Call Off Contract in accordance with the

provisions of Clause 58.11, give the Customer notice in writing requesting the Customer to state whether the event upon which the Customer's decision to terminate was based is an event mentioned in Clauses 58.11, 58.11.1 or 58.11.2 and to give particulars of that event; and

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

58.14. Matters pursuant to termination

- 58.14.1. The termination of this Call Off Contract pursuant to Clause 58.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;

- 58.14.2. The Service Provider shall be entitled to be paid for any work or thing done under this Call Off Contract and accepted but not paid for by the Customer at the date of such termination either at the price which would have been payable under this Call Off Contract if this Call Off Contract had not been terminated, or at a reasonable price;

- 58.14.3. The Customer may take over any work or thing done or made under this Call Off Contract (whether completed or not) and not accepted at the date of such termination which the Customer may by notice in writing to the Service Provider given within thirty (30) Working Days from the time when the provisions of Clause 58 shall have effect, elect to take over, and the Service Provider shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Service Provider shall in accordance with directions given by the Customer, deliver any work or thing taken over under this Clause, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this Clause; and

- 58.14.4. Save as aforesaid, the Service Provider shall not be entitled to any payment from the Customer after the termination of this Call Off Contract

- 58.15. If, after notice of termination of this Call Off Contract pursuant to the provisions of 58.11:

- 58.15.1. the Customer shall not within ten (10) Working Days of the receipt of a request from the Service Provider, furnish such a statement and particulars as are detailed in Clause 58.13.1; or

58.15.2. the Customer shall state in the statement and particulars detailed in Clause 58.13.2. that the event upon which the Customer's decision to terminate this Call Off Contract was based is an event mentioned in Clause 58.11.3,

the respective rights and obligations of the Service Provider and the Customer shall be terminated in accordance with the following provisions:

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

58.15.4. the Service Provider shall prepare and deliver to the Customer within an agreed period or in default of agreement within such period as the Customer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Customer and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Service Provider fair and reasonable handling and delivery charges incurred in complying with such directions;

58.15.5. the Customer shall indemnify the Service Provider against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Service Provider in connection with this Call Off Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Service Provider by reason of the termination of this Call Off Contract;

58.15.6. if hardship to the Service Provider should arise from the operation of Clause 58.15 it shall be open to the Service Provider to refer the circumstances to the Customer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this Clause 58.15 shall be final and conclusive; and

subject to the operation of Clauses 58.15.3, 58.15.4, 58.15.5 and 58.15.6 termination of this Call Off Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

6. NOT USED

7. MOD ADDITIONAL CLAUSES –

- 7.1 The definition of Call Off Contract in Schedule 1 (Definitions) to the Call Off Terms shall be replaced with the following:
- 7.1.1 **"Call Off Contract"** means this written agreement between the Customer and the Service Provider consisting of the Call Off Order Form and the Call Off Terms and the MoD Terms and Conditions.
- 7.2 The following definitions shall be inserted into in Schedule 1 (Definitions) to the Call Off Terms:
- 7.3 **"MoD Terms and Conditions"** means the contractual terms and conditions listed in Schedule [...] which form part of the Call Off Terms:
- 7.3.1 **"Site"** shall include any of Her Majesty's Ships or Vessels and Service Stations.
- 7.3.2 **"Officer in charge"** shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.
- 7.4 The following clauses shall be inserted into Clause 2 of this Call Off Contract (Due Diligence):
- 7.5 The Service Provider confirms that it has had the opportunity to review the MoD Terms and Conditions and has raised all due diligence questions in relation to those documents with the Customer prior to the Commencement Date.
- 7.5.1 Where required by the Customer, the Service Provider shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Service Provider.
- 7.6 The following new Clause [60] shall apply:

60. [ACCESS TO MOD SITES]

60.1. In this Clause 60:

- 60.1.1. The Customer shall issue passes for those representatives of the Service Provider who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Customer and shall be surrendered on demand or on completion of the supply of the Services.
- 60.1.2. The Service Provider's representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship,

compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.

- 60.1.3. The Service Provider shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Customer wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Service Provider's personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Call Off Contract where so asked by the Service Provider. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Customer and shall be obtained by the Service Provider from the Officer in charge. Such certificate shall be presented to the Customer with other evidence relating to the costs of this Call Off Contract.
- 60.1.4. Where the Service Provider's representatives are required by this Call Off Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Service Provider shall make such arrangements through the Technical Branch named for this purpose in this Call Off Contract. When such transport is not available within a reasonable time, or in circumstances where the Service Provider wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Service Provider shall make its own transport arrangements. The Customer shall reimburse the Service Provider's reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Service Provider's representatives locally overseas which is necessary for the purpose of this Call Off Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.
- 60.1.5. Out-patient medical treatment given to the Service Provider's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of

charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Service Provider's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Service Provider at rates fixed in accordance with current Ministry of Defence regulations.

60.1.6. Accidents to the Service Provider's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.

60.1.7. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Service Provider's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.

60.1.8. The Service Provider shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Customer shall, upon request by the Service Provider and subject to any limitation required by the Service Provider, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Service Provider's representatives are attached. All such advances made by the Customer shall be recovered from the Service Provider.

7.7 The following new Call Off Schedule [16] shall apply:

CALL OFF SCHEDULE [16]: MOD DEFCONS AND DEFFORMS

The following MOD DEFCONS and DEFFORMs form part of this Call Off Contract:

DEFCONS

DEFCON No	Version	Description
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DEFFORMs (Ministry of Defence Forms)

DEFFORM No	Version	Description

[insert text of applicable DEFCONs and DEFFORMs]

8. OBLIGATION TO ADVERTISE SUPPLY CHAIN OPPORTUNITIES

8.1 The following new Clause [61] shall apply:

61. [Obligation to Advertise Supply Chain Opportunities]

61.1. The Service Provider shall ensure that all Sub-Contracts, which the Service Provider intends to procure following date of this Call Off Contract, and which the Service Provider has not, before the date of

this Call Off Contract, already awarded to a particular Sub-Contractor, are:

- 61.1.1. advertised; and
 - 61.1.2. awarded following a fair, transparent and competitive process proportionate to the nature and value of the Sub-Contract.
- 61.2. Any Sub-Contract awarded by the Service Provider pursuant to Clause 61.1 must contain suitable provisions to impose, as between the parties of the Sub-Contract:
- 61.2.1. requirements to the same effect as those in Clause 61.1; and
 - 61.2.2. 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: EQUALITY AND DIVERSITY

1. INTRODUCTION

1.1 This Call Off Schedule 15 sets out the equality and diversity requirements which are applicable to the provision of the Services.

1.2 This Call Off Schedule 15 comprises:

- (a) Part A: Low Risk and / or Low Value Procurement
- (b) Part B: High Risk and / or High Value Procurement

PART A

Low Risk and / or Low Value Procurement

1. GENERAL

- 1.1 The Service Provider acknowledges that the Customer has a duty to promote equality and must at all times be seen to be actively promoting equality of opportunity for, and good relations between, all persons, irrespective of their race, gender, gender reassignment, disability, age, sexual orientation or religion/belief or in terms of pregnancy and maternity or marriage and civil partnership. The Service Provider must ensure that each of its Sub-Contractors and Agency Providers involved in delivery of this Call Off Contract are aware of, and acknowledge, that the Customer has a duty to promote equality.
- 1.2 In delivering the Services, the Service Provider shall, and shall procure that its Sub-Contractors and Agency Providers, assist and cooperate with the Customer in satisfying equality Law duties by fully complying with the requirements of this Call Off Schedule 15.

2. COMPLIANCE

- 2.1 The Service Provider acknowledges the provisions of equality Law.
- 2.2 The Service Provider shall provide a copy of their Equality and Diversity Policy in accordance with paragraphs 2.5 and 2.6 (and sub paragraphs) of Part A of this Call Off Schedule 15, within six (6) Months of the Call Off Commencement Date, and on any revision within the Contract Period thereafter.
- 2.3 The Service Provider will provide workforce monitoring data in accordance with paragraph 3 (and sub paragraphs) of Part A of this Call Off Schedule 15, within six (6) Months of the Call Off Commencement Date and annually thereafter during the Contract Period.
- 2.4 The Customer will consider and agree the submissions made by the Service Provider when complying with paragraphs 2 and 3 of Part A of this Call Off Schedule 15. Any issues will be raised with the Service Provider by the Customer Representative. If an issue relates to a Sub-Contractor or Agency Provider, the Service Provider must raise and resolve the issue with the Sub-Contractor or Agency Provider. Once submissions are approved by the Customer the Service Provider will formally review, revise and resubmit all information required in paragraph 2.2 and paragraph 2.3 of Part A of this Call Off Schedule 15 on an annual basis. Equality and diversity aspects will also be discussed jointly by the Customer and the Service Provider as an ongoing item at the Call Off Contract review meetings.
- 2.5 The Service Provider shall produce an Equality and Diversity Policy within six (6) Months of the Call Off Commencement Date to which it shall adhere in delivering the Services, though it does not have to be specific to the contract, the Equality and Diversity Policy, as a minimum shall:
- a) address the prevention of unlawful discrimination and promoting equality of opportunity in respect of:

- i) Race

- ii) Gender
- iii) Gender reassignment
- iv) Disability
- v) Age
- vi) Sexual orientation
- vii) Religion/Belief
- viii) Pregnancy and maternity
- ix) Marriage and civil partnerships;

- b) contain commitment and sign off from senior management;
- c) apply to the treatment of Service Provider Personnel, Customers, Sub-Contractors, Agency Providers and other stakeholders;
- d) identify the structures (if any) already in place, or which will be in place (and by when) and what resources are, or will be (and by when), directed towards diversity and equality within the Service Provider's organisation including in relation to:
 - i. Harassment
 - ii. Bullying
 - iii. Victimisation
 - iv. Recruitment procedures
 - v. Staff training and development;
- e) provide for the setting and monitoring of targets in relation to equality and diversity, and
- f) detail how the policy will be (and by when) communicated to Service Provider Personnel, Sub-Contractors and Agency Providers.

2.6 In delivering the Services, the Service Provider shall provide written evidence that demonstrate:

- a) reasonable adjustments are made, as required by equality Law to make those Services accessible to disabled people and that in the case of information technology services, those services are in accordance with the Customer's standards;

- b) all Service Provider Personnel have had appropriate training so that they understand the duties required by equality Law not to discriminate and to promote equality.
- 2.7 The Customer may request further information and assurance relating to equality and diversity at any point during the duration of this Call Off Contract.
- 2.8 The Service Provider shall notify the Customer of the details of any equality and diversity cases and tribunals (including volumes and outcomes) relating to the Service Provider and any Sub-Contractors or Agency Providers.

3. MONITORING AND REPORTING

- 3.1 The Service Provider shall provide workforce monitoring data as detailed in paragraph 3.2 of this Call Off Schedule 15. A template for data collected in paragraphs 3.2, 3.3 and 3.4 will be provided by the Customer. Completed templates for the Service Provider and each Sub-Contractor will be submitted by the Service Provider with the Equality and Diversity Delivery Plan within six (6) Months of the Call Off Commencement Date and annually thereafter for the duration of the Contract Period. Service Providers are required to provide workforce monitoring data for the workforce involved in delivery of this Call Off Contract. Data in respect of the candidates offered to the Customer in accordance with the terms of this Call Off Contract would however be well received by the Customer. Service Providers and any Sub-Contractors are required to submit percentage figures only in response to paragraphs 3.2(a), 3.2(b) and 3.2(c) of this Call Off Schedule 15.
- 3.2. The Service Provider and Sub-Contractors will each provide separate information detailing:
 - a) the proportion of employees who are:
 - i) female; and/or
 - ii) disabled;
 - iii) those who prefer not to state gender and/or disability.
 - b) the proportion of Staff who in terms of ethnicity are:
 - White
 - i) white British;
 - ii) white Irish;
 - iii) of any other white background.
 - Mixed
 - iv) white and black Caribbean;
 - v) white and black African;
 - vi) white and Asian;
 - vii) of any other mixed background.
 - Asian or Asian British
 - viii) Indian;
 - ix) Pakistani;

- x) Bangladeshi;
- xi) of any other Asian background.

Black or Black British

- xii) Caribbean;
- xiii) African;
- xiv) of any other Black background.

Chinese or other ethnic group

- xv) Chinese;
- xvi) of any other ethnic group.

Prefer not to state

- xvii) Prefer not to state ethnicity.

For the avoidance of doubt, the seventeen (17) percentage figures submitted under categories i) to xvii) of this paragraph 3.2(b) of Part A of Call Off Schedule 15 (in each template in respect of the Service Provider's employees and each Sub-Contractors employees) should total one hundred percent (100%).

- c) The Service Provider will provide details of the proportion of i) its Sub-Contractors and ii) Agency Providers retained in relation to this Call Off Contract that are:
 - i) small to medium sized enterprises (meaning enterprises with less than two hundred and fifty (250) employees and a maximum annual turnover of forty (40) million pounds);
 - (ii) ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of one (1) or more ethnic minority groups, or, if there are few owners, where at least fifty percent (50%) of the owners are members of one (1) or more ethnic minority groups). For this purpose, ethnic minority groups means ethnic groups other than White as referred to at paragraph 3.2(b) of Part A of this Call Off Schedule 15: and
 - iii) black ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least fifty percent (50%) of the owners are members of the Black or Black British ethnic group). For this purpose, the Black or Black British ethnic group has the meaning referred to at categories xii) to xiv) in paragraph 3.2(b) of Part A of this Call Off Schedule 15.

For the avoidance of doubt, any given Sub-Contractor or Agency Provider may fall into one (1), two (2), or three (3) of the categories i) to iii) listed in paragraph 3.2(c) of this Call Off Schedule 15, depending on its composition.

- 3.3 The Service Provider shall, and shall procure that its Sub-Contractors and Agency Providers will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Customer.

PART B

High Risk and / or High Value Procurement

1. GENERAL

- 1.1 The Service Provider acknowledges that the Customer has a duty to promote equality and must at all times be seen to be actively promoting equality of opportunity for, and good relations between, all persons, irrespective of their race, gender, gender reassignment, disability, age, sexual orientation or religion/belief or in terms of pregnancy and maternity or marriage and civil partnership. The Service Provider must ensure that each of its Sub-Contractors and Agency Providers involved in delivery of this Call Off Contract are aware of, and acknowledge, that the Customer has a duty to promote equality.
- 1.2 In delivering the Services, the Service Provider shall, and shall procure that its Sub-Contractors and Agency Providers, assist and cooperate with the Customer in satisfying equality Law duties by fully complying with the requirements of this Call Off Schedule 15.

2. COMPLIANCE

- 2.1 The Service Provider acknowledges the provisions of the equality Law.
- 2.2 The Service Provider shall produce an Equality and Diversity Delivery Plan in accordance with paragraphs 2.5 and 2.6 of this Part B of Call Off Schedule 15, within six (6) Months of the Call Off Commencement Date, and annually thereafter during the Contract Period. The Equality and Diversity Delivery Plan must be specific to this Call Off Contract and include details for all Sub-Contractors involved in delivery of this Call Off Contract and indicate whether workforce monitoring data will be provided on an annual or monthly basis.
- 2.3 The Service Provider will provide workforce monitoring data in accordance with paragraph 3 of Part B of this Call Off Schedule 15, within six (6) Months of the Call Commencement Date and annually or monthly thereafter as indicated in the Equality and Diversity Delivery Plan.
- 2.4 The Customer will consider and agree the submissions made by the Service Provider when complying with paragraphs 2 and 3 of this Call Off Schedule 15. Any issues will be raised with the Service Provider by the Customer Representative. If an issue relates to a Sub-Contractor or Agency Provider, the Service Provider must raise and resolve the issue with the Sub-Contractor or Agency Provider. Once submissions are approved by the Customer the Service Provider will formally review, revise and resubmit all information required in paragraphs 2.2 and 2.3 of Part B of this Call Off Schedule 15 on an annual basis. Equality and diversity aspects will also be discussed jointly by the Customer and the Service Provider as an ongoing item at the Call Off Contract review meetings.
- 2.5 In delivering the Services, the Service Provider shall prepare the Equality and Diversity Delivery Plan which as a minimum includes:

- a) an overview of Service Provider and any Sub-Contractor's policy/policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:
 - i) Race
 - ii) Gender
 - iii) Gender reassignment
 - iv) Disability
 - v) Age
 - vi) Sexual orientation
 - vii) Religion/Belief
 - viii) Pregnancy and maternity
 - ix) Marriage and civil partnerships
- b) an overview of Service Provider and any Sub-Contractor's policy/policies and procedures covering:
 - i) Harassment
 - ii) Bullying
 - iii) Victimisation
 - iv) Recruitment procedures
 - v) Staff training and development

Full policy documents must be made available to the Customer on request;

- c) details of the way in which the above policy/policies and procedures are, or will be (and by when), communicated to the Service Provider Personnel;
- d) details of what general equality and diversity related training has been, or will be delivered (and by when), to Service Provider Personnel;
- e) details of what structure is already in place, or will be in place (and by when) and what resources are, or will be (and by when), directed towards equality and diversity within the Service Provider and any Sub-Contractor's organisation; and
- f) details of any equality and diversity cases and tribunals (including volumes and outcomes) relating to the Service Provider and any Sub-Contractors and Agency Providers.

2.6 In delivering the Services, the Service Provider shall provide written evidence within the Equality and Diversity Delivery Plan:

- a) Equality Impact Assessments have been carried out in conjunction with the Customer prior to the Services being delivered and will be carried out in the event of any changes to the Services, in accordance with equality Law;

- b) reasonable adjustments are made, as required by equality Law to make those Services accessible to disabled people and that in the case of information technology services, those services are in accordance with the Customer's standards;
 - c) all Staff have had appropriate training so that they understand the duties required by the equality Law.
- 2.7 The Customer may request further information and assurance relating to equality and diversity at any point during the duration of this Call Off Contract.

3. MONITORING AND REPORTING

- 3.1 The Service Provider shall provide workforce monitoring data as detailed in paragraph 3.2 of Part B of this Call Off Schedule 15. A template for data collected in paragraphs 3.2, 3.3 and 3.4 of Part B of this Call Off Schedule 15 will be provided by the Customer. Completed templates for the Service Provider and each Sub-Contractor will be submitted by the Service Provider with the Equality and Diversity Delivery Plan within six (6) Months of the Call Off Commencement Date and annually or monthly thereafter for the duration of the Contract Period as indicated in the Diversity and Equality Delivery Plan. Service Providers are required to provide workforce monitoring data for the workforce involved in delivery of this Call Off Contract. Data in respect of the candidates offered to the Customer in accordance with the terms of this Call Off Contract would however be well received by the Customer. Service Providers and any Sub-Contractors are required to submit percentage figures only in response to paragraphs 3.2(a), 3.2(b) and 3.2(c) of Part B of this Call Off Schedule 15.
- 3.2 The Service Provider and Sub-Contractors will each provide separate information detailing:
 - a) the proportion of employees who are:
 - i) female; and/or
 - ii) disabled;
 - iii) those who prefer not to state gender and/or disability.
 - b) the proportion of Staff who in terms of ethnicity are:

White

- i) white British;
- ii) white Irish;
- iii) of any other white background.

Mixed

- iv) white and black Caribbean;
- v) white and black African;
- vi) white and Asian;
- vii) of any other mixed background.

Asian or Asian British

- viii) Indian;
- ix) Pakistani;
- x) Bangladeshi;
- xi) of any other Asian background.

Black or Black British

- xii) Caribbean;
- xiii) African;
- xiv) of any other Black background.

Chinese or other ethnic group

- xv) Chinese;
- xvi) of any other ethnic group.

Prefer not to state

- xvii) Prefer not to state ethnicity

For the avoidance of doubt, the seventeen (17) percentage figures submitted under categories i) to xvii) of this paragraph 3.2(b) of Part B of Call Off Schedule 15 (in each template in respect of the Service Provider's employees and each Sub-Contractors employees) should total one hundred percent (100%).

- c) The Service Provider will provide details of the proportion of its Sub-Contractors and Agency Providers that are:
- i) small to medium sized enterprises (meaning enterprises with less than two hundred and fifty (250) employees and a maximum annual turnover of forty (40) million pounds);
 - ii) ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of one (1) or more ethnic minority groups, or, if there are few owners, where at least fifty percent (50%) of the owners are members of one (1) or more ethnic minority groups). For this purpose, ethnic minority groups means ethnic groups other than White as referred to at paragraph 3.2(b) of this Schedule: and
 - iii) black ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least fifty percent (50%) of the owners are members of the Black or Black British ethnic group). For this purpose, the Black or Black British ethnic group has the meaning referred to at categories xii) to xiv) in paragraph 3.2(b) of Part B of this Call Off Schedule 15.

For the avoidance of doubt, any given Sub-Contractor or Agency Provider may fall into one (1), two (2), or three (3) of the categories i) to iii) listed in paragraph 3.2(c) of Part B of this Call Off Schedule 15, depending on its composition.

- 3.3 The Service Provider and any Sub-Contractors will compare their figures, in all categories listed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of Part B of this Call Off Schedule 15, and provide (where possible) comparisons against any official national/regional statistics that are publicly available.
- 3.4 The Service Provider and any Sub-Contractors will provide evidence of activities undertaken, or planned, in order to try and improve their current position in the categories detailed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of Part B of this Call Off Schedule 15.
- 3.5 The Service Provider shall, and shall procure that its Sub-Contractors and Agency Providers will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Customer.

CALL OFF SCHEDULE 16: NON DISCLOSURE AGREEMENT

CALL OFF SCHEDULE 17: VENDOR MANAGEMENT SYSTEM AND OTHER TECHNOLOGY PLATFORMS



VMS
Downtime.docx

CALL OFF SCHEDULE 18: KEY PERFORMANCE INDICATORS

PROFESSIONAL WORKERS			
KPI Measurement	Measurement	Monthly Target %	Description
Time to shortlist. From Fully Approved Requirement to 2nd CV to Hiring Manager	72 Hrs	90%	Time taken from receipt of a fully approved requirement in Fieldglass to the submission of a shortlist to the Hiring Manager. <i>Measurement: Time from Approved requisition to 2nd CV sent to HM for all roles filled within the previous month.</i>
CV to Interview	2.5 to 1	85%	Minimum number of CVs submitted for each interview arranged <i>Measurement: total number of CVs submitted to total number of interviews held for all roles filled within the previous month.</i>
Interview to Offer	2 to 1	85%	Number of interviews held for each offer made. <i>Measurement: total number of interviews submitted to total number verbal offers issued for all roles filled within the previous month.</i>
Time to Offer	12 working days	85%	Time taken to make an offer. <i>Measurement: Time from approved requirement in Fieldglass to offer made for all roles filled within the previous month.</i>
Time from Offer to On-board	10 working days	85%	Time taken to on-board a worker. <i>Measurement: Time from offer extended to a completed on-board (issue of verification record) made for all roles filled within the previous month. Subject to 3^d party process exceptions beyond PSR control.</i>
C-SAT - Hiring Manager satisfaction	80%	80%	% of responses scoring 'satisfied' or above in the customer satisfaction surveys issued following conclusion of a fulfilled worker requirement. <i>Measurement: Measured quarterly, based on the issue of C-SATs issued in reporting period (statistical relevance to be reflected).</i>
Rate Alignment: % candidates at or below the rate set out on the rate card	75%	75%	% of successful candidates placed in a role at or below the agreed rate card rate. <i>Measurement: % based on all successful candidates placed against roles filled in the previous Month.</i>
Fulfilment Rate	N/A	90%	Determining the fulfilment Rate. <i>Measurement: Total number of roles filled divided by (total number of roles raised minus any roles legitimately cancelled or closed by CA) = fulfilment rate %. Reported</i>

			<i>Monthly.</i> <i>To be Measured Quarterly.</i>
ADMIN, CLERICAL AND OPERATIONAL WORKERS			
Time to Offer	5 days - 1-9 workers 10 days 10+ workers	85%	Time taken to make an offer. <i>Measurement: Time from approved requirement to offer made for all roles filled within the previous Month.</i>
Time from Offer to On-board (measured from Approved offer to verification record)	5 days - 1-9 workers 10 days – 10+ workers	85%	Time taken to on-board a worker. <i>Measurement: Time from offer extended to a completed on-board (issue of verification record) made for all roles filled within the previous Month, subject to 3rd party process exceptions beyond PSR control. Measured Monthly.</i>
C-SAT - Hiring Manager satisfaction - score of satisfaction	80%	80%	% of responses scoring 'satisfied' or above in the customer satisfaction surveys issued <i>Measurement: Measured quarterly, based on the issue of C-SATs issued in reporting Month (statistical relevance to be reflected).</i>
Rate Alignment: % candidates deployed in line with AWR legislation	100%	100%	% successfully candidates placed in role meeting AWR requirements. <i>Measurement: % based on all successful candidates placed against roles filled in the previous month.</i>
Fulfilment Rate	N/A	90%	Determining the fulfilment Rate. <i>Measurement: Total number of roles filled divided by (total number of roles raised minus any roles legitimately cancelled or closed by CA) = fulfilment rate %. Reported Monthly.</i> <i>To be Measured Quarterly.</i>
CUSTOMER LEVEL CONTRACT MANAGEMENT KPIs			
Provision of accurate MI	Monthly	100%	<i>Accurate MI Reporting to be received by the Customer on an agreed day of the Month.</i>
Ensure any ad hoc request for MI is delivered in 72 hours from request.		100%	<i>Service Provider – To provide MI as per ad hoc request.</i>

KPI's will be reviewed and updated on a 6 monthly basis to ensure the Call Off remains best-in-class.

The first review session will be scheduled in January 2019.

CALL OFF SCHEDULE 19: ECONOMIC AND SOCIAL VALUES

1. This Call Off Schedule 19 sets out additional requirements relating to economic and social values, which a Customer may wish to apply to the provision of Services by the Service Provider.

2. Where the Customer wishes to impose additional requirements relating to economic and social values the Customer shall specify this in paragraph 10.14 of the Call Off Order Form and the Service Provider shall comply with those requirements, which may include some or all of the requirements set out in paragraph 3 of this Call Off Schedule 19.

3. The Service Provider may be asked to comply with any or all of the following requirements and / or any further requirements as specified by the Customer in paragraph 10.14 of the Call Off Order Form:

3.1 the delivery of economic benefits such as:

- (a) job creation;
- (b) supply chain spend with SMEs / the area in which the service is being delivered;
- (c) capability and skills improvement such as training and apprenticeships, research and development;
- (d) savings through better process design or working in different ways;
- (e) leveraging / accessing funding and finance for projects, maximising the overall value for money of solutions; and

3.2 the delivery of social benefits such as:



- (a) working with VCSE (Voluntary and Community and Social Enterprise);
- (b) supporting marginalised or deprived groups into employment or further education, employment or training;
- (c) health outcomes and improvements, including mental health;
- (d) community integration;
- (e) improvements in diversity and equality; and

3.3 the delivery of environmental benefits such as:

- (a) improvement to the environmental quality of the area;
- (b) reduction in pollution;
- (c) closed loop systems to turn waste into resources; and
- (d) innovative environmentally friendly delivery models, such as closed loop systems and low or zero carbon / emission solutions.

CALL OFF SCHEDULE 20: AUTHORISED PROCESSING TEMPLATE

ANNEX 1

1. The contract details of the Customer Data Protection Officer is:

2. The contract details of the Service Provider Data Protection Officer is:

3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Contract Reference:	TBC
Date:	
Description Of Authorised Processing	Details
Identity of the Controller and Processor	<p>i) The Parties acknowledge that for the purposes of the Data Protection Legislation: the Customer is the Controller and the Service Provider is the Processor for the following Personal Data under this Contract:</p> <ul style="list-style-type: none"> • Customer Staff • Workers recruited under the non-agency route. <p>ii) the Service Provider is the Controller and the Customer is the Processor for the following Personal Data under this Contract:</p> <ul style="list-style-type: none"> • Service Provider Staff other than those recruited under the agency route. <p>iii) The Parties acknowledge that they are joint Controllers for the purposes of the Data Protection Legislation in respect of the Personal Data of Service Provider Staff recruited under the agency route and Annex A – Joint Control Agreement to this Schedule shall apply in replacement of Clause 34.</p>
Subject matter of the processing	Managing Workers performing assignments under the Call Off Contract, including the sourcing and selection, ongoing management, exit management, and other associated activities.
Duration of the processing	From the outset of the Call-Off Contract date, and up to 7 years after the last Worker finishes their assignment in order to meet legal obligations.
Nature and purposes of the processing	any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means), contingent workforce management processing, statutory obligation, recruitment assessment etc for the purposes of processing applications under the Call Off Contract for Worker assignments, including running the sourcing and selection process, managing the ongoing assignments, exit management, and other associated

	<p>activities such as reporting and conducting surveys. This includes collection, recording, organizing, storage, retrieval, consultation, use, disclosure, transmission, dissemination, alignment, restriction, and erasure or destruction.]</p> <p>Providing the information to the Authority for the purpose of fulfilling its obligations under the Framework Agreement</p>
Type of Personal Data	<p>All Data Subjects</p> <p>Full name</p> <p>Workplace address</p> <p>Workplace Phone Number</p> <p>Workplace email address</p> <p>Worker recruits Only</p> <p>Date of birth</p> <p>Gender</p> <p>Physical Address</p> <p>Phone number</p> <p>Email address</p> <p>Proof of identification and right to work</p> <p>Qualifications or Certifications</p> <p>Nationality</p> <p>Education & training history</p> <p>Previous work history</p> <p>Personal Interests</p> <p>References and referee details</p> <p>Driving license details</p> <p>National insurance number</p> <p>Bank statements</p> <p>Utility bills</p>

	<p>Job title or role</p> <p>Job application details</p> <p>Start date</p> <p>End date & reason for termination</p> <p>Contract type</p> <p>Compensation data</p> <p>Photographic Facial Image</p> <p>Biometric data</p> <p>Birth certificates</p> <p>IP Address</p> <p>Details of physical and psychological health or medical condition</p> <p>Next of kin & emergency contact details</p> <p>Record of absence, time tracking & annual leave</p>
Categories of Data Subject	<p>Service Provider Staff</p> <p>Workers</p> <p>Customer Staff</p> <p>Next of kin of Workers</p>
	<p>The personal data will be retained for each Worker for up to 7 years after the last payment is made in relation to the assignment performed. For those Worker applicants not engaged the personal data will be retained only as long as is necessary to fulfil the purposes identified in the data protection statement. Typically this is 12 months for application data further to the Conduct of Employment Agency and Employment Businesses Regulations (amendment) 2007 (as amended).]</p>

ANNEX A: Joint Controller Agreement

- 1.1 With respect to Personal Data which has been identified in Annex A as under Joint Control of the Parties because envisage that they shall jointly determine the purpose and means of processing and each be a Data Controller in respect of that Personal Data. Accordingly, the Parties each undertake to comply with the applicable Data Protection Law in respect of their Processing of such Personal Data as Joint Data Controllers.
- 1.2 The Service Provider shall be the Exclusive Point of Contact for Data Subjects in Annex 1 In who shall:
- (a) direct Data Subjects to the Exclusive Point of Contact's Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
 - (b) be responsible for the Parties' compliance with all duties to provide information under Articles 13 and 14 of the GDPR; and
 - (c) shall make available to Data Subjects the essence of this Schedule (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as Exclusive Point of Contact. This must be outlined in the Exclusive Point of Contact's privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 The Joint Controllers each undertake that they shall:
- (a) report to the other Party every three months on:
 - (i) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
 - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
 - (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Law;
 - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
 - (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;that it has received in relation to the Personal Data under Joint Control during that period;
 - (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 1.3(a)(i) to (v); and

- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 1.3(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Law.
- (d) obtain the consent of Data Subjects or carrying out and documenting legitimate interest assessments, in accordance with the GDPR, for all Processing;
- (e) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under this Agreement or is required by Law). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex.
- (f) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information.
- (g) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data
- (h) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
 - (i) are aware of and comply with their 's duties under this Annex 1 (*Data Sharing Agreement*) and those in respect of Confidential Information
 - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Law;
- (i) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures.
- (j) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Law, to provide or correct or delete at the

request of a Data Subject all the Personal Data relating to that Data Subject that the Contractor holds; and

- (i) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

1.4 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Law and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of the it's obligations under applicable Data Protection Law to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

1.5 Each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Laws;
- (b) all reasonable assistance, including:
 - (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - (ii) co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
 - (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;
 - (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 1.6.

1.6 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours upon becoming aware of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;

- (d) the name and contact details of the Provider's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (e) measures taken or proposed to be taken to address the Personal Data Breach; and
- (f) describe the likely consequences of the Personal Data Breach.

1.7 The Parties shall:

- (a) provide all reasonable assistance to the each other in preparing any data protection impact assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);
- (b) maintain full and complete records of all processing carried out in respect of the Personal Data in connection with this [Framework Agreement/Call Off Contract], such records shall include the following information:
 - (i) the categories and purposes of processing carried out in respect of the Personal Data;
 - (ii) where applicable, complete information about transfers of Personal Data outside the EU, and the safeguards implemented in respect of such transfers necessary to comply with Law;
 - (iii) a general description of the Protective Measures which the Provider has implemented to safeguard the Personal Data in accordance with this clause and in compliance with Law.

1.8 If financial penalties are imposed by the Information Commissioner on either Joint Controller for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

- a) if the Authority/Customer is responsible for the personal data breach, in that it is caused as a result of the actions or inaction of the Authority/Customer, its employees, agents, contractors (other than the Contractor) or systems and procedures controlled by the Authority/Customer, then the Authority/Customer shall be responsible for the payment of such Financial Penalties. In this case, the Authority/Customer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Service Provider shall provide to the Authority/Customer and its third party investigators and auditors, on request and at the Authority/Customer's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;
- b) If the Service Provider is responsible for the personal data breach, in that it is not a breach that the Authority/Customer is responsible for, then the Service Provider shall be responsible for the payment of these Financial Penalties. The Authority/Customer will provide to the Service Provider and its auditors, on request and at the Service Provider's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident.

- c) If responsibility is unclear, then the Joint Controllers shall work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any Financial Penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to Dispute Resolution.
- 1.9 if any of the joint controllers is the defendant in a legal claim brought by a third party in respect of a personal data breach, then unless the parties otherwise agree, the party that is determined by the final decision of a court of competent jurisdiction or the information commissioner to be responsible for the personal data breach shall be liable for the losses arising from such breach. Where both parties are liable, the liability will be apportioned between the parties in accordance with the decision of the court or the information commissioner, as the case may be.
- 1.10 in respect of any losses, cost claims or expenses incurred by either party as a result of a personal data breach (the “claim losses”):
 - a) the Party responsible for the relevant breach shall be responsible for the Claim Losses; and
 - b) if responsibility is unclear, then the Parties shall be responsible for the Claim Losses equally.
- 1.11 In respect of any Processing of Personal Data under Joint Control by a sub-contractor or agents of a Party, each Party shall:
 - (a) carry out adequate due diligence on such third party or the sub-contractor to ensure that it is capable of providing the level of protection for the Personal Data as is required by Clause 1.3(e), and provide evidence of such due diligence to the other Party where reasonably requested by the other Party or the Information Commissioner; and
 - (b) ensure that a suitable agreement is in place with the third party or the Sub-contractor or Key Sub-contractor including as may be required under applicable Data Protection Law
- 1.12 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be appropriate for them to retain such Personal Data under applicable Data Protection Law and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by this Agreement), and taking all further actions as may be necessary or desirable to ensure its compliance with Data Protection Law and its privacy policy.