

Crown Commercial Service

ORDER FORM AND CALL OFF TERMS

PART 1 – ORDER FORM

SECTION A

This Order Form is issued in accordance with the provisions of the RM1070 Vehicle Purchase Framework dated 2nd December 2014. The Supplier agrees to supply the Goods and/or Services specified below on and subject to the terms of this Call Off Contract and for the avoidance of doubt this Call Off Contract consists of the terms set out in this Order Form and the Call Off Terms.

DATE 19/12/2017, 20/12/2017 and 04/01/2018

ORDER NUMBER CB/BFG/0149 A-I

FROM Ministry of Defence
Army Commercial BFG Procurement Team
Catterick Barracks
Bielefeld
BFPO 39

Email: [REDACTED]

Tel: [REDACTED]

TO CB/BFG/0149A
Volvo Car UK Ltd
Scandinavia House, Norreys Drive, Maidenhead, Berks SL6 4FL

CB/BFG/0149B
YAMAHA MOTOR EUROPE N.V.
Units A2-A3, Kingswey Business Park, Forsyth Road, Woking
Surrey GU21 5SA

CB/BFG/0149C
Ford Motor Company Ltd
Room 1/321, Eagle Way, Brentwood, Essex CM13 3BW

CB/BFG/0149D
Jaguar Land Rover Limited
Abbey Road, Whitley, Coventry CV3 4LF

CB/BFG/0149E
Hyundai Motor UK Ltd
728 London Road, High Wycombe, Bucks HP11 1HE

CB/BFG/0149F
The Colt Car Company Ltd
Watermoor, Cirencester, Gloucestershire GL7 1LF

CB/BFG/0149G
Vauxhall Motors Ltd
Griffin House, Osborne Road, Luton, Bedfordshire LU1 3YT

CB/BFG/0149H
Volkswagen Group United Kingdom Ltd
Yeomans Drive, Blakelands, Milton Keynes, Buckinghamshire
MK14 5AN

CB/BFG/0149I
Kia Motors (UK) Ltd
Walton Green, Walton-On-Thames, Surrey KT12 1FJ

SECTION B

1. CALL OFF CONTRACT PERIOD

1.1 Call Off Commencement Date:

19 December 2017 (CB/BFG/0149A,B,D,E)

20 December 2017 (CB/BFG/0149C,F,G,H)

4 January 2018 (CB/BFG/0149I)

1.2 Call Off Expiry Date:

End date of Call Off Initial Period

18 December 2018 (CB/BFG/0149A,B,D,E)

19 December 2018 (CB/BFG/0149C,F,G,H)

3 January 2019 (CB/BFG/0149I)

End date of Call Off Extension Period

Not applicable - no Extension Period applies.

2. CUSTOMER CORE GOODS REQUIREMENTS

2.1 Goods required

In Call Off Schedule 2 (Goods)

2.2 Packing/Packaging (Goods only)

As per Clause 9.2.2 of the Call Off Terms.

2.3 Warranty Period (Goods only)

As per manufacturer standard warranty.

2.4 Location/Sites of Delivery

As specified in Call Off Schedule 2 (Goods).

2.5 Dates for Delivery of the Goods and/or the Services

Delivery of all vehicles to be completed by **April 2018**.

2.6 Standards

As per Clause 10 of the Call Off Terms.

2.7 Business Continuity and Disaster Recovery

Not applicable.

2.8 Security

In Call Off Schedule 8 (Security)

2.9 Period for providing the Rectification Plan

Five working days (see Clause 31.1.1(a) of the Call Off Terms).

2.10 Exit Management

Not applicable.

3. SUPPLIER'S INFORMATION

3.1 Supplier's inspection of Sites, Customer Property and Customer Assets

Not applicable.

3.2 Commercially Sensitive Information

The Prices to be paid under this Order shall be treated as Commercially Sensitive Information for a period of 3 years from the date of the Order.

4. CALL OFF CONTRACT CHARGES AND PAYMENT

4.1 Call Off Contract Charges payable by the Customer (including any applicable discount(s), but excluding VAT) and payment terms/profile including method of payment (e.g. Government Procurement Card (GPC) or BACS)

In Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)

4.2 Estimated Year 1 Call Off Contract Charges

[REDACTED]

4.3 Undisputed Sums Limit

Not applicable.

4.4 Support Rates

Not applicable.

SECTION C

5. CUSTOMER OTHER CONTRACTUAL REQUIREMENTS

5.1 Call Off Guarantee

Not applicable.

5.2 Relevant Convictions

Not applicable.

5.3 Failure of Supplier Equipment

Not applicable.

5.4 Protection of Customer Data

Not applicable.

5.5 Limitations on Liability

In Clause 29 of the Call Off Terms.

5.6 Insurance

Clause 30 of the Call Off Terms shall apply.

5.7 Termination without cause notice period

The minimum number of days for the purposes of Clause 34.6 of the Call Off Terms shall be ten (10).

6. ADDITIONAL AND/OR ALTERNATIVE CLAUSES

6.1 Supplemental requirements to the Call Off Terms

Not applicable.

6.2 Amendments to/refinements of the Call Off Terms

Not applicable.

6.3 Alternative and/or Additional Clauses (select from Call Off Schedule 14 (Alternative and/or Additional Clauses))

Clause 53 – Access to MOD Sites

DEFCON 522 (Edn 11/17) – Payment and Recovery of Sums Due

DEFCON 658 (Edn 10/17) – Cyber (for the purposes of this Order the Cyber Risk has been assessed as 'Very Low').

7. FORMATION OF CALL OFF CONTRACT

- 7.1 BY SIGNING AND RETURNING THIS ORDER FORM (which may be done by electronic means) the Supplier agrees to enter a Call Off Contract with the Customer to provide the Goods and/or Services.**
- 7.2 The Parties hereby acknowledge and agree that they have read the Order Form and the Call Off Terms and by signing below agree to be bound by this Call Off Contract.**
- 7.3 In accordance with paragraph 7 of Framework Schedule 5 (Call Off Procedure), the Parties hereby acknowledge and agree that this Call Off Contract shall be formed when the Customer acknowledges (which may be done by electronic means) the receipt of the signed copy of the Order Form from the Supplier within two (2) Working Days from receipt.**

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	██████████
Signature	██████████
Date	19/12/2017, 20/12/2017, 04/01/2018

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PART 2 – CALL OFF TERMS

TERMS AND CONDITIONS

A. ALEXAPRELIMINARIES

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 1.4.4 and 1.6 (Definitions and Interpretation), in the event of and only to the extent of any conflict between the 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 20 (Tender);
 - 1.4.2 the Order Form;
 - 1.4.3 the Call Off Terms;
 - 1.4.4 Framework Schedule 20 (Tender).
- 1.5 Any permitted changes by the Customer to the Template Call Off Terms and the Template Call Off Form under Clause 4 (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 Form and the Parties entering this Call Off Contract shall prevail over the Framework Agreement.
- 1.6 Where Framework Schedule 20 (Tender) contains provisions which are more favourable to the Customer in relation to this Call Off Contract, such provisions of the Tender shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in this context.

2. DUE DILIGENCE

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

3. REPRESENTATIONS AND WARRANTIES

- 3.1 Each Party represents and warranties that:
 - 3.1.1 it has full capacity and authority to enter into and to perform this Call Off Contract;

- 3.1.2 this Call Off Contract is executed by its duly authorised representative;
 - 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Call Off Contract; and
 - 3.1.4 its obligations under this Call Off Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
- 3.2 The Supplier represents and warrants that:
- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call Off Contract;
 - 3.2.3 its execution, delivery and performance of its obligations under this Call Off Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
 - 3.2.4 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to the PQQ (if applicable), its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract;
 - 3.2.5 as at the Call Off Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non-Compliance;
 - 3.2.6 it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Goods and/or Services by the Customer;
 - 3.2.7 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;

- 3.2.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Contract;
 - 3.2.9 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
 - 3.2.10 for the Call Off Contract Period and for a period of twelve (12) months after the termination or expiry of this Call Off Contract, the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Goods and/or Services without Approval or the prior written consent of the Customer which shall not be unreasonably withheld.
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.
- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.5 For the avoidance of doubt, the fact that any provision within this Call Off Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier which constitutes a material Default.

4. CALL OFF GUARANTEE

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

B. DURATION OF CALL OFF CONTRACT

5. CALL OFF CONTRACT PERIOD

- 5.1 This Call Off Contract shall commence on the Call Off Commencement Date and the term of this Call Off Contract shall be the Call Off Contract Period.

C. CALL OFF CONTRACT PERFORMANCE

6. PURCHASING PROCEDURE

- 6.1 Where the Customer intends to place individual Purchase Orders under this Call Off Contract from time to time, the Customer, following consultation with the Supplier, shall specify the procedure for repeat ordering of Goods and/or Services under this Call Off Contract (in a separate Call Off Schedule if necessary), which shall include as a minimum the following:
- 6.1.1 [the method for ordering Goods and/or Services, whether online or by email or telephone;
 - 6.1.2 the Customer reference number/purchase order number;
 - 6.1.3 the required grade/type of Goods and/or Services;
 - 6.1.4 the quantity of Goods and/or Services required;
 - 6.1.5 the Premises;
 - 6.1.6 the required date of Delivery;
 - 6.1.7 the load size;
 - 6.1.8 restrictions on access and/or delivery;
 - 6.1.9 point of contact for Customer; and
 - 6.1.10 the method by which the Supplier will confirm the Purchase Order.]
 - 6.1.11 [the level of credit note for late delivery, in the case of Goods and/or Services in Lots 7, 8 & 9]
- 6.2 The Customer may amend or cancel a Purchase Order by giving written notice to the Supplier up to 30 days prior:
- 6.2.1 to the agreed Delivery date where the Goods do not require conversion, or
 - 6.2.2 to the Delivery date of the base unconverted vehicle(s) or chassis by the manufacturer or provider to the Supplier in respect of Goods for conversion.
- 6.3 If the Supplier receives the written notice in accordance with clause 6.2, the Supplier shall not be entitled to recovery any costs from the Customer in relation to any amendment or cancellation of a Purchase Order.
- 6.4 If the Customer amends or cancels the Purchase Order within 30 days of the dates set out in clause 6.2, the Supplier shall be entitled to reimbursement of its reasonably incurred costs provided that it mitigates such costs and provides evidence of them to the Customer.
- 6.5 Where the amendment or cancellation of a Purchase Order is directly or indirectly due to the Supplier's failure to comply with its obligations under this Call Off Contract, the Customer shall have no liability to the Supplier in respect of it.
- 6.6 For the avoidance of doubt, a Purchase Order shall be carried out in accordance with the provisions of this Call Off Contract and the Parties agree that any purchase order not carried out in this way shall not constitute a valid Purchase Order.

7. GOODS AND/OR SERVICES

7.1 Provision of the Goods and/or Services

- 7.1.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Goods and/or Services and the performance of its obligations under this Call Off Contract.
- 7.1.2 The Supplier shall ensure that the Goods and/or Services:
- (a) comply in all respects with any Standards and description of the Goods and/or Services in Call Off Schedule 2 (Goods and Services) or elsewhere in this Call Off Contract; and
 - (b) are supplied in accordance with the provisions of this Call Off Contract or the Tender; and
 - (c) are free from defects in design and workmanship and are fit for the purpose that such Goods are ordinarily used for, and for any particular purpose made known to the Supplier by the Customer and shall be fit for such purpose immediately after Delivery.
- 7.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:
- (a) all applicable Law;
 - (b) Good Industry Practice;
 - (c) the Standards;
 - (d) the Security Policy;
 - (e) the ICT Policy (if so required by the Customer); and
 - (f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 7.1.3(a) to 7.1.3(e).
- 7.1.4 The Supplier shall:
- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Goods and/or Services in accordance with this Call Off Contract;
 - (b) subject to Clause 17.1 (Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Goods and/or Services;
 - (c) ensure that any products or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Goods and/or the Services shall enable the Goods and/or the Services to meet the requirements of the Customer;
 - (d) ensure that the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer); and
 - (e) ensure that the Goods and/or Services are fully compatible with any Customer Property;
 - (f) minimise any disruption to the Sites and/or the Customer's operations when providing the Goods and/or Services;

- (g) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (h) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Goods and/or Services to any Other Supplier and, on the Call Off Expiry Date for any reason, to enable the timely transition of the supply of the Goods and/or Services (or any of them) to the Customer and/or to any Replacement Supplier;
- (i) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Goods and/or Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
- (j) provide the Customer with such assistance as the Customer may reasonably require during the Call Off Contract Period in respect of the supply of the Goods and/or Services;
- (k) deliver the Goods and/or Services in a proportionate and efficient manner;
- (l) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and
- (m) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.

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

7.1.6 Where the Customer has outsourced its fleet management or procurement function to a third party, the Supplier shall co-operate with such third party as if that third party was the Customer.

8. SERVICES

Not used.

9. GOODS

9.1 Time of Delivery of the Goods

9.1.1 The Supplier shall provide the Goods on the date(s) specified in the Order Form.

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

9.2 Location and Manner of Delivery of the Goods

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

9.2.2 The Goods shall be marked, stored, handled and delivered in a proper manner and in accordance the Customer's instructions as set out in the Order Form (or elsewhere in this Call Off Contract), Good Industry Practice, any applicable Standards and any Law. In particular, the Goods shall be marked with the Order number and accompanied by all relevant Documentation.

9.2.3 On dispatch of any consignment of the Goods the Supplier shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the details of the consignment, together with the all other relevant documentation and information required to be provided under any Laws.

9.2.4 The Goods shall only be delivered once a duly authorised representative of the Customer signs a delivery sheet (which shall quote the Supplier order number and full details of the Goods supplied) to confirm delivery of the Goods, but any such signature shall not be evidence that the Goods delivered comply with the requirements of the Call-Off Contract.

9.2.5 If, for any reason, the Customer is unable to take delivery of the Goods on or after the due date for Delivery the Supplier shall, at its expense, store or arrange for the storage of the Goods for a reasonable time and shall safeguard the Goods until their actual Delivery.

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

9.3 Undelivered Goods

9.3.1 In the event that not all of the Goods are delivered in accordance with Clauses 9.1 (Time of Delivery of the Goods) and 9.2 (Location and Manner of Delivery of the Goods) ("**Undelivered Goods**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Goods that were not so delivered until such time as the Undelivered Goods are Delivered.

9.3.2 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 9.1 (Time of Delivery of the Goods) and 9.2 (Location and Manner of Delivery of the Goods) to be a material Default.

9.4 Over-Delivered Goods

- 9.4.1 The Customer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity specified in the Order Form (or elsewhere in this Call Off Contract) ("**Over-Delivered Goods**").
- 9.4.2 If the Customer elects not to accept such Over-Delivered Goods it may, without prejudice to any other rights and remedies of the Customer howsoever arising, give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such Over-Delivered Goods (including but not limited to the costs of moving and storing the Over-Delivered Goods).
- 9.4.3 If the Supplier fails to comply with the Customer's notice under Clause 9.4.2, the Customer may dispose of such Over-Delivered Goods and charge the Supplier for the costs of such disposal. The risk in any Over-Delivered Goods shall remain with the Supplier.

9.5 Delivery of the Goods by Instalments

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

9.6 Risk and Ownership in Relation to the Goods

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

9.7 Responsibility for Damage to or Loss of the Goods

- 9.7.1 Without prejudice to the Supplier's other obligations to provide the Goods in accordance with this Call Off Contract, the Supplier accepts responsibility for all damage to or loss of the Goods if the:
 - (a) same is notified in writing to the Supplier within three (3) Working Days of receipt and inspection of the Goods by the Customer; and
 - (b) Goods have been handled by the Customer in accordance with the Supplier's instructions.
- 9.7.2 Where the Supplier accepts responsibility under Clause 9.7.1, it shall, at its sole option, replace or repair the Goods (or part thereof) within such time as is reasonable having regard to the circumstances and as agreed with the Customer.

9.8 Warranty of the Goods

- 9.8.1 The Supplier hereby guarantees the Goods for the Warranty Period against faulty materials and workmanship.

9.8.2 The Supplier shall, in addition, provide a manufacturer's warranty in respect of the Goods in accordance with the Tender or, if different, as set out in the Order Form.

9.8.3 If the Customer shall within such Warranty Period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies of the Customer howsoever arising) promptly remedy such faults or defects (whether by repair or replacement as the Customer shall elect) free of charge.

9.9 Obligation to Remedy Default in the Supply of the Goods

9.9.1 Subject to Clauses 26.9.2 and 26.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 9.3 (Undelivered Goods) and 31 (Customer Remedies for Default)), where the Goods are not supplied in accordance with Clauses 7.1.1, 7.1.2, 7.1.3, 9.1, and/or 9.2, the Customer may do any or more of the following:

- (a) reject the Goods and require the Supplier to remove the Goods (in whole or in part) at the risk and cost of the Supplier on the basis that a full refund of the Charges paid for such Goods will be refunded to the Customer; or
- (b) refuse to accept any further Goods, but without such refusal incurring any liability of the Customer; or
- (c) request that the Supplier remedy any breach of its obligations in this Clause 9, and the Supplier shall comply 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), with all the costs of and incidental to the performance of such remedial work being met by the Supplier.

9.10 Continuing Obligation to Provide the Goods

9.10.1 The Supplier shall continue to perform all of its obligations under this Call Off Contract and shall not suspend the provision of the Goods, notwithstanding:

- (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Customer to pay any Call Off Contract Charges,

unless the Supplier is entitled to terminate this Call Off Contract under Clause 35.1 (Termination for Customer Cause for Failure to Pay) for failure to pay undisputed Call Off Contract Charges.

10. STANDARDS AND QUALITY

- 10.1 The Supplier shall at all times during the Call Off Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.
- 10.2 Throughout the Call Off Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Customer, of the Goods and/or Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure. Any change to an existing Standard which is included in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) shall, in addition, require the written consent of the Authority.
- 10.3 Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Customer's receipt of the Goods and/or Services is explained to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 10.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Call Off Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard or Standards shall require Approval (and the written consent of the Authority where the relevant Standard or Standards is/are included in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) and shall be implemented within an agreed timescale.
- 10.5 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
 - 10.5.1 be appropriately experienced, qualified and trained to supply the Goods and/or Services in accordance with this Call Off Contract;
 - 10.5.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Good and/or Services; and
- 10.6 obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Goods and/or Services to the reasonable satisfaction of the Customer.
- 10.7 Where a standard, policy or document is referred to in Call Off Schedule 7, (Standards) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall agree the impact of such change.

11. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 11.1 Where specified in the Order Form, or elsewhere this Call Off Contract the Parties shall comply with the provisions of Call Off Schedule 9 (Business Continuity and Disaster Recovery).

12. DISRUPTION

- 12.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call Off Contract it does not disrupt the operations of

the Customer, its employees or any other contractor employed by the Customer.

- 12.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.
- 12.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods and/or Services in accordance with its obligations under this Call Off Contract.
- 12.4 If the Supplier's proposals referred to in Clause 12.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.
- 12.5 If the Supplier is temporarily unable to fulfil the requirements of this Call Off Contract owing to disruption of normal business solely due to a Customer Cause notified to the Customer by the Supplier in accordance with Clause 13 (Supplier Notification of Customer Cause), an appropriate allowance by way of an extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

13. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

- 13.1 Without prejudice to any other obligations of the Supplier in this Call Off Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 35.1.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall:
 - 13.1.1 notify the Customer as soon as reasonably practicable ((and in any event within two (2) Working Days of the Supplier becoming aware)) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:
 - (a) the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Call Off Contract; and
 - (b) any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
 - (c) use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any delay or anticipated delay.

14. CONTINUOUS IMPROVEMENT

- 14.1 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Goods and/or Services in accordance with this Clause 14 with a view to reducing the Customer's costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Goods and/or Services and their supply to the Customer. As part of this obligation the Supplier shall identify and report to the Customer once every twelve (12) months:

- 14.1.1 the emergence of new and evolving relevant technologies which could improve the Sites and/or the provision of the Goods and/or Services, and those technological advances potentially available to the Supplier and the Customer which the Parties may wish to adopt;
 - 14.1.2 new or potential improvements to the provision of the Goods and/or Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Goods and/or Services;
 - 14.1.3 changes in business processes and ways of working that would enable the Goods and/or Services to be provided at lower costs and/or at greater benefits to the Customer; and/or
 - 14.1.4 changes to the Sites business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Goods and/or Services.
- 14.2 The Supplier shall ensure that the information that it provides to the Customer shall be sufficient for the Customer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Customer requests.
- 14.3 If the Customer wishes to incorporate any improvement identified by the Supplier, the Customer shall request a Variation in accordance with the Variation Procedure and the Supplier shall implement such Variation at no additional cost to the Customer.

D. CALL OFF CONTRACT GOVERNANCE

15. REPRESENTATIVES

- 15.1 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.
- 15.2 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 21 (Supplier Personnel).
- 15.3 The Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Call Off Commencement Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.

16. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

- 16.1 The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Goods and/or Services provided under it, any Sub-Contracts and the amounts paid by the Customer.
- 16.2 The Supplier shall:
 - 16.2.1 keep the records and accounts referred to in Clause 16.1 in accordance with Good Industry Practice and Law; and

16.2.2 afford any Auditor access to the records and accounts referred to in Clause 16.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 16.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call Off Contract Agreement including for the following purposes to:

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

- (n) 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
 - (o) review the integrity, confidentiality and security of the Customer Data.
- 16.3 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.
- 16.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
 - 16.4.1 all reasonable information requested by the Customer within the scope of the audit;
 - 16.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Goods and/or Services; and
 - 16.4.3 access to the Supplier Personnel.
- 16.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 16, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

17. CHANGE

17.1 Variation Procedure

- 17.1.1 Subject to the provisions of this Clause 17 and of 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**".
- 17.1.2 A Party may request a Variation by completing 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.
- 17.1.3 The Customer may require the Supplier to carry out an impact assessment of the Variation on the Goods and/or Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:
 - (a) details of the impact of the proposed Variation on the Goods and/or Services and the Supplier's ability to meet its other obligations under this Call Off Contract;
 - (b) details of the cost of implementing the proposed Variation;

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

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

17.1.5 Subject to 17.1.4, 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 Order and the proposed Variation.

17.1.6 In the event that:

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

the Customer may:

- (i) agree to continue to perform its obligations under this Call Off Contract without the Variation; or
- (ii) terminate this Call Off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Order in accordance with this Call Off Contract or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, 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.

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

17.2 **Legislative Change**

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

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

- 17.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 17.2.1(b)), the Supplier shall:
- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
 - (i) whether any Variation is required to the provision of the Goods and/or Services, the Call Off Contract Charges or this Call Off Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required; and
 - (b) provide to the Customer with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 14 (Continuous Improvement), has been taken into account in amending the Call Off Contract Charges.
- 17.2.3 Any change in the Call Off Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 17.2.1(b)) shall be implemented in accordance with the Variation Procedure.

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

18. CALL OFF CONTRACT CHARGES AND PAYMENT

18.1 Call Off Contract Charges

- 18.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Goods and/or Services, the Customer shall pay the undisputed Call Off Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).
- 18.1.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 16 (Records, Audit Access and Open Book Data), 27.5 (Freedom of Information), 27.6 (Protection of Personal Data).
- 18.1.3 If the Customer fails to pay any undisputed Call Off Contract Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

18.2 VAT

18.2.1 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.

18.2.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 18.2 (VAT) shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

18.3 Retention and Set Off

18.3.1 The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Call Off Contract or under any other agreement between the Supplier and the Customer.

18.3.2 If the Customer wishes to exercise its right pursuant to Clause 18.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Call Off Contract Charges.

18.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

18.4 Foreign Currency

18.4.1 Any requirement of Law to account for the Goods and/or Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.

18.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 18.4.1 by the Supplier.

18.5 Income Tax and National Insurance Contributions

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

(a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

(b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand

pursuant to the indemnity hereunder) in connection with the provision of the Goods and/or Services by the Supplier or any Supplier Personnel.

19. PROMOTING TAX COMPLIANCE

- 19.1 If, at any point during the Call Off Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 19.1.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
 - 19.1.2 promptly provide to the Customer:
 - (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.
- 19.2 In the event that the Supplier fails to comply with this Clause 19 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.

20. BENCHMARKING

- 20.1 Notwithstanding the Supplier's obligations under Clause 14 (Continuous Improvement), the Customer shall be entitled to regularly benchmark the Call Off Contract Charges and level of performance by the Supplier of the supply of the Goods and/or Services, against other suppliers providing goods and/or services substantially the same as the Goods and/or Services during the Call Off Contract Period.
- 20.2 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 20.1 above.
- 20.3 The Customer shall be entitled to disclose the results of any benchmarking of the Call Off Contract Charges and provision of the Goods and/or Services to the Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).
- 20.4 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking and such information requirements shall be at the discretion of the Customer.
- 20.5 Where, as a consequence of any benchmarking carried out by the Customer, the Customer decides improvements to the Goods and/or Services should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Customer.
- 20.6 The benefit of any work carried out by the Supplier at any time during the Call Off Contract Period to update, improve or provide the Goods and/or Services, facilitate their delivery to any other Contracting Body and/or any alterations or variations to the Charges or the provision of the Goods and/or Services, which are identified in the Continuous Improvement Plan produced by the Supplier

and/or as a consequence of any benchmarking carried out by the Authority pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking), shall be implemented by the Supplier in accordance with the Variation Procedure and at no additional cost to the Customer.

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

21. SUPPLIER PERSONNEL

21.1 Supplier Personnel

21.1.1 The Supplier shall:

- (a) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Goods and/or Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards; and
 - (iii) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call Off Schedule 8 (Security);
- (c) retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Call Off Contract shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.

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

- (a) refuse admission to the relevant person(s) to the Customer Premises; and/or

- (b) direct the Supplier to end the involvement in the provision of the Goods and/or Services of the relevant person(s).

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

21.2 Relevant Convictions

21.2.1 Where specified in the Order Form or elsewhere in this Call Off Contract, the Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Goods and/or Services without Approval.

21.2.2 Notwithstanding Clause 21.2.1, for each member of Supplier Personnel who, in providing the Goods and/or Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):

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

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

22. SUPPLY CHAIN RIGHTS AND PROTECTION

22.1 Appointment of Sub-Contractors

22.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:

- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Call Off Contract in the delivery of the Goods and/or Services; and
- (c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Call Off Contract.

22.1.2 Prior to sub-contacting any of its obligations under this Call Off Contract, the Supplier shall provide the Customer with:

- (a) the proposed Sub-Contractor's name, registered office and company registration number;

- (b) the scope of any Goods and/or Services to be provided by the proposed Sub-Contractor; and
- (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.

22.1.3 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 22.1.2, the Supplier shall also provide:

- (a) a copy of the proposed Sub-Contract; and
- (b) any further information reasonably requested by the Customer.

22.1.4 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 22.1.2 (or, if later, receipt of any further information requested pursuant to Clause 22.1.3), object to the appointment of the relevant Sub-Contractor they consider that:

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to the interests respectively of the Customer under this Call Off Contract;
 - (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (c) the proposed Sub-Contractor employs unfit persons,
- in which case, the Supplier shall not proceed with the proposed appointment.

22.1.5 If:

- (a) the Customer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 22.1.2; and
 - (ii) any further information requested by the Customer pursuant to Clause 22.1.3; 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 22.2 (Appointment of Key Sub-Contractors),

the Supplier may proceed with the proposed appointment.

22.2 Appointment of Key Sub-Contractors

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

22.2.2 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Customer (the decision to consent or otherwise not to be unreasonably withheld or delayed). The Authority

and/or the Customer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:

- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to its interests;
- (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-Contractor employs unfit persons.

22.2.3 Except where the Authority and the Customer have given their prior written consent under Clause 22.2.1, the Supplier shall ensure that each Key Sub-Contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Call Off Contract;
- (b) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
- (c) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Call Off Contract in respect of:
 - (i) data protection requirements set out in Clauses 27.1 (Security Requirements), 27.2 (Protection of Customer Data) and 27.6 (Protection of Personal Data);
 - (ii) FOIA requirements set out in Clause 27.5 (Freedom of Information);
 - (iii) the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in Clause 7.1.4(l) (Provision of Services);
 - (iv) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
 - (v) the conduct of audits set out in Clause 16 (Records, Audit Access & Open Book Data);
- (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 34 (Customer Termination Rights), 36 (Termination by Either Party) and 38 (Consequences of Expiry or Termination) of this Call Off Contract;
- (g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Goods and/or Services provided to the Supplier under the Sub-

Contract without first seeking the written consent of the Customer;

22.3 Supply Chain Protection

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

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice; and
- (b) a right for the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

22.3.2 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;

22.3.3 Notwithstanding any provision of Clauses 27.3 (Confidentiality) and 28 (Publicity and Branding) if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

22.4 Termination of Sub-Contracts

22.4.1 The Customer may require the Supplier to terminate:

- (a) a Sub-Contract where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant any of the termination events in Clause 34 (Customer Termination Rights) except Clause 34.6 (Termination Without Cause); and/or
 - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Goods and/or Services or otherwise; and/or
- (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
 - (i) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Customer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

22.5 Competitive Terms

22.5.1 If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Goods and/or Services, then the Customer may:

- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or
- (b) subject to Clause 22.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

22.5.2 If the Customer exercises the option pursuant to Clause 22.5.1, then the Call Off Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.

22.5.3 The Customer's right to enter into a direct agreement for the supply of the relevant items is subject to:

- (a) the Customer making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Goods and/or Services; and
- (b) any reduction in the Call Off Contract Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

22.6 Retention of Legal Obligations

22.6.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 22 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

G. PROPERTY MATTERS

23. CUSTOMER PREMISES

23.1 Licence to occupy Customer Premises

23.1.1 Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Call Off Contract. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Call Off Contract and in accordance with Call Off Schedule 10 (Exit Management).

23.1.2 The Supplier shall limit access to the Customer Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Call Off Contract and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with

such other persons working concurrently on such Customer Premises as the Customer may reasonably request.

- 23.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2 (Due Diligence) and set out in the Order Form (or elsewhere in this Call Off Contract), should the Supplier require modifications to the Customer Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this Clause 23.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 23.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Customer Premises and conduct of personnel at the Customer Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 23.1.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Call Off Contract, the Customer retains the right at any time to use any Customer Premises in any manner it sees fit.

23.2 Security of Customer Premises

- 23.2.1 The Customer shall be responsible for maintaining the security of the Customer Premises in accordance with the Security Policy. The Supplier shall comply with the Security Policy and any other reasonable security requirements of the Customer while on the Customer Premises.
- 23.2.2 The Customer shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

24. CUSTOMER PROPERTY

- 24.1 Where the Customer issues Customer Property free of charge to the Supplier such Customer Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Customer Property.
- 24.2 The Supplier shall not in any circumstances have a lien or any other interest on the Customer Property and at all times the Supplier shall possess the Customer Property as fiduciary agent and bailee of the Customer.
- 24.3 The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Customer Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Customer Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.

- 24.4 The Customer Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.
- 24.5 The Supplier shall maintain the Customer Property in good order and condition (excluding fair wear and tear) and shall use the Customer Property solely in connection with this Call Off Contract and for no other purpose without Approval.
- 24.6 The Supplier shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Goods and/or Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.
- 24.7 The Supplier shall be liable for all loss of, or damage to the Customer Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Customer Cause. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Customer Property.

25. SUPPLIER EQUIPMENT

- 25.1 Unless otherwise stated in the Order Form (or elsewhere in this Call Off Contract), the Supplier shall provide all the Supplier Equipment necessary for the provision of the Goods and/or Services.
- 25.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.
- 25.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Call Off Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.
- 25.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Supplier's property located on Customer Premises which is due to the negligent act or omission of the Customer.
- 25.5 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Goods and/or Services in accordance with this Call Off Contract.
- 25.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.
- 25.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
 - 25.7.1 remove from the Customer Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Call Off Contract; and

- 25.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.
- 25.8 For the purposes of this Clause 25.8, '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 Order Form or elsewhere in this Call Off Contract. If this Clause is specified to apply, and there are no values specified for 'X' and/or 'Y', in default, 'X' shall be two (2) and 'Y' shall be twelve (12). Where a failure of Supplier Equipment or any component part of Supplier Equipment causes X or more Service Failures in any Y Month period, the Supplier shall notify the Customer in writing and shall, at the Customer's request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced).

H. INTELLECTUAL PROPERTY AND INFORMATION

26. INTELLECTUAL PROPERTY RIGHTS

26.1 Allocation of title to IPR

26.1.1 Save as expressly granted elsewhere under this Call Off Contract:

- (a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
 - (i) the Supplier Background IPR;
 - (ii) the Third Party IPR;
 - (iii) the Project Specific IPR.
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the:
 - (i) Customer Background IPR; and
 - (ii) Customer Data.

26.1.2 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 26.1, 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).

26.1.3 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.

26.2 Licence granted by the Supplier: Project Specific IPR

26.2.1 The Supplier hereby grants to the Customer, or shall procure the direct grant to the Customer of, a perpetual, royalty-free, irrevocable, non-exclusive licence to use the Project Specific IPR including but not limited to the right to copy, adapt, publish and distribute such Project Specific IPR.

26.3 [NOT USED]

26.4 **[NOT USED]**

26.5 **Customer's right to assign/novate licences**

- 26.5.1 The Customer shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 26.2 (Licence granted by the Supplier: Project Specific IPR).
- 26.5.2 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 26.2 (Licence granted by the Supplier: Project Specific 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 26.2 (Licence granted by the Supplier: Project Specific IPR).
- 26.5.3 If a licence granted in Clause 26.2 (Licence granted by the Supplier: Project Specific IPR) is novated under Clauses 26.5.1 or there is a change of the Customer's status pursuant to Clause 26.5.2 (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.

26.6 **[NOT USED]**

26.7 **[NOT USED]**

26.8 **[NOT USED]**

26.9 **IPR Indemnity**

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

26.9.3 If the Supplier elects to procure a licence in accordance with Clause 26.9.2(a) or to modify or replace an item pursuant to Clause 26.9.2(b), but this has not avoided or resolved the IPR Claim, then:

- (i) the Customer may terminate this Call Off Contract by written notice with immediate effect; and
- (ii) without prejudice to the indemnity set out in Clause 26.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute goods and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

27. SECURITY AND PROTECTION OF INFORMATION

27.1 Security Requirements

27.1.1 The Supplier shall comply with the Security Policy and the requirements of Call Off Schedule 8 (Security) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

27.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.

27.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Goods and/or Services it may propose a Variation to the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call Off Contract Charges shall then be subject to the Variation Procedure.

27.1.4 Until and/or unless a change to the Call Off Contract Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Goods and/or Services in accordance with its existing obligations.

27.2 Protection of Customer Data

27.2.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

27.2.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call Off Contract or as otherwise Approved by the Customer.

27.2.3 To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified in this Call Off Contract and in any event as specified by the Customer from time to time in writing.

27.2.4 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.

- 27.2.5 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with any BCDR Plan or otherwise. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 27.2.6 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 27.2.7 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 27.2.8 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Supplier may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Call Off Schedule 9 (Business Continuity and Disaster Recovery) or as otherwise required by the Customer, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
 - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Call Off Schedule 9 (Business Continuity and Disaster Recovery) or as otherwise required by the Customer.

27.3 Confidentiality

- 27.3.1 For the purposes of this Clause 27.3, 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.
- 27.3.2 Except to the extent set out in this Clause 27.3 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.
- 27.3.3 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 27.5 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;
 - (ii) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Goods and/or Services provided under this Call Off Contract; or
 - (iii) the conduct of a Central Government Body review in respect of this Call Off Contract; or
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 27.3.4 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.
- 27.3.5 Subject to Clauses 27.3.2 and 27.3.7, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:
- (a) Supplier Personnel who are directly involved in the provision of the Goods and/or Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Call Off Contract; and
 - (b) its professional advisers for the purposes of obtaining advice in relation to this Call Off Contract.
- 27.3.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 27.3.5, 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.

27.3.7 The Customer may disclose the Confidential Information of the Supplier:

- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 27.3.7(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,
- (g) 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 this Clause 27.3.

27.3.8 Nothing in this Clause 27.3 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.

27.3.9 In the event that the Supplier fails to comply with Clauses 27.3.2 to 27.3.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

27.4 **Transparency**

27.4.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Contract is not Confidential Information. The Customer shall determine whether any of the content of this Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

27.4.2 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives his consent for the Customer to publish this Call Off Contract in its entirety (but with any information which is

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

27.4.3 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Call Off Contract.

27.5 Freedom of Information

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

- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;
- (b) transfer to the Customer all Requests for Information relating to this Call Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Customer with a copy of all Information belonging to 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 unless authorised in writing to do so by the Customer.

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

27.6 Protection of Personal Data

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

27.6.2 The Supplier shall:

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

- loss, destruction, or damage to the Personal Data, including the measures as are set out in Clauses 27.1 (Security Requirements) and 27.2 (Protection of Customer Data);
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call Off Contract)
 - (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under this Clause 27.6.2 and Clauses 27.1 (Security Requirements), 27.2 (Protection of Customer Data) and 27.3 (Confidentiality);
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
 - (e) notify the Customer within five (5) Working Days if it receives:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
 - (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint, communication or request made (as referred to at Clause 27.6.2(e)), including by promptly providing:
 - (i) the Customer with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and

- (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 27.6.2 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

27.6.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to any 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 (together "**Restricted Countries**"). If, after the Call Off Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a Variation to the Customer which, if it is agreed by the Customer, shall be dealt with in accordance with the Variation Procedure and Clauses 27.6.3(b) to 27.6.3(c);
- (b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
 - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
 - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off

Contract or a separate data processing agreement between the Parties; and

- (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (A) a direct data processing agreement with the Customer on such terms as may be required by the Customer; or
 - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-Contractor relating to the relevant Personal Data transfer, and
- (iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

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

28. PUBLICITY AND BRANDING

28.1 The Supplier shall not:

- 28.1.1 make any press announcements or publicise this Call Off Contract in any way; or
- 28.1.2 use the Customer's name or brand in any promotion or marketing or announcement of orders,
- 28.1.3 without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed).

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

I. LIABILITY AND INSURANCE

29. LIABILITY

29.1 **Unlimited Liability**

29.1.1 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.

29.1.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 26.9 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

29.2 Financial Limits

29.2.1 Subject to Clause **Error! Reference source not found.** (Unlimited Liability), the Supplier's total aggregate liability:

- (a) in respect of all Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:
 - (i) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, the higher of two million pounds (£2,000,000) and a sum equal to one hundred and twenty-five per cent (125%) 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 two million pounds (£2,000,000) in each such Call Off Contract Year and a sum equal to one hundred and twenty-five percent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
 - (iii) in relation to any Defaults occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, the higher of two million pounds (£2,000,000) in each such Call Off Contract Year and a sum equal to one hundred and twenty-five percent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.

29.2.2 Subject to Clauses **Error! Reference source not found.** (Unlimited Liability) and **Error! Reference source not found.** (Financial Limits) and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:

- (a) in relation to any Customer Causes occurring from the Call Off Commencement Date to the end of the first Call Off Contract

Year, a sum equal to the Estimated Year 1 Call Off Contract Charges;

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

29.3 Non-recoverable Losses

29.3.1 Subject to Clause **Error! Reference source not found.** (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).

29.4 Recoverable Losses

29.4.1 Subject to Clause **Error! Reference source not found.** (Financial Limits), and notwithstanding Clause **Error! Reference source not found.** (Non-recoverable Losses), the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Goods and/or Services for the remainder of the Call Off Contract Period, which shall include any incremental costs associated with such Replacement Goods and/or Services 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.

29.5 Miscellaneous

29.5.1 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.

30. INSURANCE

- 30.1 This Clause **Error! Reference source not found.** will only apply where specified in the Order Form or elsewhere in this Call Off Contract.
- 30.2 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause **Error! Reference source not found.** (Insurance) of the Framework Agreement, the Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Framework Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract.
- 30.3 Without limitation to the generality of Clause **Error! Reference source not found.** the Supplier shall ensure that it maintains the policy or policies of insurance as are stipulated in the Order Form or elsewhere in this Call Off Contract.
- 30.4 The Supplier shall effect and maintain the policy or policies of insurance referred to in this Clause **Error! Reference source not found.** for six (6) years after the Call Off Expiry Date.
- 30.5 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this Clause **Error! Reference source not found.** 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.
- 30.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under this Clause **Error! Reference source not found.** the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 30.7 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 30.8 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

J. REMEDIES AND RELIEF

31. CUSTOMER REMEDIES FOR DEFAULT

31.1 Remedies

- 31.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising, if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Goods and/or Services have been Delivered) do one or more of the following:

- (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Customer's instructions;
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Goods and/or Services comply with this Call Off Contract; if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) instruct the Supplier to comply with the Rectification Plan Process;
 - (ii) suspend this Call Off Contract (whereupon the relevant provisions of Clause 37 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Goods and/or Services; or
 - (iii) without terminating or suspending the whole of this Call Off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Goods and/or Services only (whereupon the relevant provisions of Clause 37 (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;

31.1.2 Where the Customer exercises any of its step-in rights under Clauses **Error! Reference source not found.** or **Error! Reference source not found.**, the Customer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or Services by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Goods and/or Replacement Services.

31.2 Rectification Plan Process

31.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause **Error! Reference source not found.**:

- (a) the Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within the number of Working Days specified in the Order Form or elsewhere in this Call Off Contract (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft

Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.

- (b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a root cause analysis;
 - (ii) the actual or anticipated effect of the Default; and
 - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

31.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of Call Off Schedule 12 (Dispute Resolution Procedure).

31.2.3 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Default; and/or
- (d) will rectify the Default but in a manner which is unacceptable to the Customer.

31.2.4 The Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.

31.2.5 If the Customer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

32. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

32.1 If the Supplier has failed to comply with its obligations under this Call Off Contract (a "**Supplier Non-Performance**"), and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 13 (Supplier Notification of Customer Cause)):

- 32.1.1 the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;

- 32.1.2 the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 34 (Customer Termination Rights) except Clause 34.6 (Termination Without Cause);
- 32.2 In order to claim any of the rights and/or relief referred to in Clause 32.1, the Supplier shall:
- 32.2.1 comply with its obligations under Clause 13 (Notification of Customer Cause); and
- 32.2.2 within ten (10) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer notice (a "**Relief Notice**") setting out details of:
- (a) the Supplier Non-Performance;
 - (b) the Customer Cause and its effect on the Supplier's ability to meet its obligations under this Call Off Contract; and
 - (c) the relief claimed by the Supplier.
- 32.3 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief, consulting with the Supplier where necessary.
- 32.4 Without prejudice to Clauses **Error! Reference source not found.** (Continuing obligation to provide the Services) and 9.10 (Continuing obligation to provide the Goods), if a Dispute arises as to:
- 32.4.1 whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or
- 32.4.2 the nature and/or extent of the relief claimed by the Supplier,
- either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 32.5 Any Variation that is required to the Call Off Contract Charges pursuant to this Clause 32 shall be implemented in accordance with the Variation Procedure.

33. FORCE MAJEURE

- 33.1 Subject to the remainder of this Clause 33 (and, in relation to the Supplier, subject to its compliance with any obligations in Clause 11 (Business Continuity and Disaster Recovery)), a Party may claim relief under this Clause 33 from liability for failure to meet its obligations under this Call Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 33.2 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.

33.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 33 to the extent that consequences of the relevant Force Majeure Event:

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

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

33.4 Subject to Clause 33.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Goods and/or Services affected by the Force Majeure Event.

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

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

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

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

(b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Cause arising as a result of such failure;

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

(a) the Customer shall not be entitled:

(i) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause **Error! Reference source not found.** (Customer Remedies for Default) as a result of such failure;

(b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Goods and/or Services (or part of the Goods and/or Services) continue to be provided in accordance with the

terms of this Call Off Contract during the occurrence of the Force Majeure Event.

- 33.7 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.
- 33.8 Relief from liability for the Affected Party under this Clause 33 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 33.7.

K. TERMINATION AND EXIT MANAGEMENT

34. CUSTOMER TERMINATION RIGHTS

34.1 Termination in Relation to Guarantee

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

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

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

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

34.2 Termination on Material Default

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

- (a) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable;
- (b) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clause **Error! Reference source not found.** (Liability);
- (c) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: **Error! Reference source not found.** (Services), 9.3.2, 9.5.1 (Goods), 12.4 (Disruption), 16.5

(Records, Audit Access and Open Book Data), 19 (Promoting Tax Compliance), 27.3.9 (Confidentiality), or 43.6.2 (Prevention of Fraud and Bribery);

- (d) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Customer, capable of remedy; and/or
- (e) the Supplier commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer in accordance with the Rectification Plan Process;

34.2.2 For the purpose of Clause 34.2.1, 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.

34.3 Termination in Relation to Financial Standing

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

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

34.4 Termination on Insolvency

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

34.5 Termination on Change of Control

34.5.1 The Supplier shall notify the Customer immediately if the Supplier undergoes or is intending to undergo a Change of Control and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation or has taken place. The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier within six (6) Months of:

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

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

34.6 Termination Without Cause

34.6.1 The Customer shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving

written notice of at least the number of days stipulated, for the purposes of this Clause 34.6.1, in the Order Form or elsewhere in this Call Off Contract.

34.7 Termination in Relation to Framework Agreement

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

34.8 Termination In Relation to Benchmarking

34.8.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in paragraphs 1 and 2 of Framework Schedule 12 (Continuous Improvement and Benchmarking).

34.9 Termination in Relation to Variation

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

35. SUPPLIER TERMINATION RIGHTS

35.1 Termination on Customer Cause for Failure to Pay

35.1.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call Off Contract if the Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract which in aggregate exceeds the amount stipulated in the Order Form or elsewhere in this Call Off Contract for the purposes of this Clause 35.1.1 (the “**Undisputed Sums Limit**”), and the said undisputed sum due remains outstanding for forty (40) Working Days (the “**Undisputed Sums Time Period**”) after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

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

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 18.3 (Retention and Set off).

35.1.2 The Supplier shall not suspend the supply of the Goods and/or Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part).

36. TERMINATION BY EITHER PARTY

36.1 Termination for continuing Force Majeure Event

36.1.1 Either Party may, by, by issuing a Termination Notice to the other Party terminate this Call Off Contract if, in accordance with Clause 33.6.1(a) (Force Majeure).

37. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

37.1 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.

37.2 Any suspension of this Call Off Contract under Clause 37.1 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.

37.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Goods and/or Services and the Call Off Contract Charges, provided that the Supplier shall not be entitled to:

37.3.1 an increase in the Call Off Contract Charges in respect of the provision of the Goods and/or Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 34 (Customer Termination Rights) except Clause 34.6 (Termination Without Cause); and

37.3.2 reject the Variation.

38. CONSEQUENCES OF EXPIRY OR TERMINATION

38.1 Consequences of termination under Clauses 34.1 (Termination in Relation to Guarantee), 34.2 (Termination on Material Default), 34.3 (Termination in Relation to Financial Standing), 34.7 (Termination in Relation to Framework Agreement), 34.8 (Termination in Relation to Benchmarking) and 34.9 (Termination in Relation to Variation)

38.1.1 Where the Customer:

- (a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 38.1; and
- (b) then makes other arrangements for the supply of the Goods and/or Services,

the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period provided that Customer shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Customer to the Supplier until the

Customer has established the final cost of making those other arrangements.

38.2 Consequences of termination under Clauses 34.6 (Termination without Cause) and 35.1 (Termination on Customer Cause for Failure to Pay)

38.2.1 Where:

- (a) the Customer terminates (in whole or in part) this Call Off Contract under Clause 34.6 (Termination without Cause); or
- (b) the Supplier terminates this Call Off Contract pursuant to Clause 35.1 (Termination on Customer Cause for Failure to Pay),

the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 34.6 (Termination without Cause).

38.2.2 The Customer shall not be liable under Clause 38.2.1 to pay any sum which:

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

38.3 Consequences of termination under Clause 36.1 (Termination for Continuing Force Majeure Event)

38.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause 36.1 (Termination for Continuing Force Majeure Event).

38.4 Consequences of Termination for Any Reason

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

- (a) termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 16 (Records, Audit Access & Open Book Data), 26 (Intellectual Property Rights), 27.3 (Confidentiality), 27.5 (Freedom of Information)

27.6 (Protection of Personal Data), 29 (Liability), 38 (Consequences of Expiry or Termination), 44 (Severance), 46 (Entire Agreement), 47 (Third Party Rights), 49 (Dispute Resolution) and 50 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), Call Off Schedule 10 (Exit Management), Call Off Schedule 12 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

38.5 Exit management

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

L. MISCELLANEOUS AND GOVERNING LAW

39. COMPLIANCE

39.1 Health and Safety

39.1.1 The Supplier shall perform its obligations under this Call Off Contract (including those in relation to the Goods and/or Services) in accordance with:

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

39.1.2 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.

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

39.2 Equality and Diversity

39.2.1 The Supplier shall:

- (a) perform its obligations under this Call Off Contract (including those in relation to provision of the Goods and/or Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - (ii) any other requirements and instructions which the Customer reasonably imposes in connection with any

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

- (b) take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

39.3 **Official Secrets Act and Finance Act**

39.3.1 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

39.4 **Environmental Requirements**

39.4.1 The Supplier shall, when working on the Sites, perform its obligations under this Call Off Contract in accordance with the Environmental Policy of the Customer.

39.4.2 The Customer shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

40. **ASSIGNMENT AND NOVATION**

40.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Call Off Contract or any part of it without Approval.

40.2 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:

40.2.1 any other Contracting Body; or

40.2.2 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

40.2.3 any private sector body which substantially performs the functions of the Customer,

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 40.2.

40.3 A change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 40.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.

40.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a body which is not a Contracting Body or if a body which is not a Contracting Body succeeds the Customer (both "**Transferee**" in the rest of this Clause) the right of termination of the Customer in Clause 34.4 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in Clause 34.4 (Termination on Insolvency) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee).

41. WAIVER AND CUMULATIVE REMEDIES

- 41.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 48 (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 such right or remedy.
- 41.2 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.

42. RELATIONSHIP OF THE PARTIES

- 42.1 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.

43. PREVENTION OF FRAUD AND BRIBERY

- 43.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Call Off Commencement Date:
- 43.1.1 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
 - 43.1.2 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.
- 43.2 The Supplier shall not during the Call Off Contract Period:
- 43.2.1 commit a Prohibited Act; and/or
 - 43.2.2 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.
- 43.3 The Supplier shall during the Call Off Contract Period:
- 43.3.1 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;
 - 43.3.2 keep appropriate records of its compliance with its obligations under Clause 43.3.1 and make such records available to the Customer on request;
 - 43.3.3 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 of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Goods and/or Services in connection with this Call Off Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and

- 43.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 43.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 43.1, or has reason to believe that it has or any of the Supplier Personnel have:
 - 43.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 43.4.2 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
 - 43.4.3 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.
- 43.5 If the Supplier makes a notification to the Customer pursuant to Clause 43.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with Clause 16 (Records, Audit Access and Open Book Data).
- 43.6 If the Supplier breaches Clause 43.3, the Customer may by notice:
 - 43.6.1 require the Supplier to remove from performance of this Call Off Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
 - 43.6.2 immediately terminate this Call Off Contract for material Default.
- 43.7 Any notice served by the Customer under Clause 43.4 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).

44. SEVERANCE

- 44.1 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.
- 44.2 In the event that any deemed deletion under Clause 44.1 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.

- 44.3 If the Parties are unable to resolve the Dispute arising under this Clause 44 within twenty (20) Working Days of the date of the notice given pursuant to Clause 44.2, this Call Off Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Contract is terminated pursuant to this Clause 44.

45. FURTHER ASSURANCES

- 45.1 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.

46. ENTIRE AGREEMENT

- 46.1 This Call Off Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 46.2 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.
- 46.3 Nothing in this Clause 46 shall exclude any liability in respect of misrepresentations made fraudulently.

47. THIRD PARTY RIGHTS

- 47.1 The provisions of Clause 7.1.6 and paragraph **Error! Reference source not found.** of Schedule 10 (Exit Management) (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 47.2 Subject to Clause 47.1, 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.
- 47.3 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.
- 47.4 Any amendments or modifications to this Call Off Contract may be made, and any rights created under Clause 47.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

48. NOTICES

- 48.1 Except as otherwise expressly provided within this Call Off Contract, any notices sent under this Call Off Contract must be in writing. For the purpose of this Clause 48, an e-mail is accepted as being "in writing".
- 48.2 Subject to Clause 48.3, the following table sets out the method by which notices may be served under this Call Off Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 48.3 and 48.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 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

- 48.3 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 48.2:

48.3.1 any Termination Notice (Clause 34 (Customer Termination Rights)),

48.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 37 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 41 (Waiver and Cumulative Remedies))
- (c) Default; and

48.3.3 any Dispute Notice.

- 48.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 48.3 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 48.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- 48.5 This Clause 48 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).
- 48.6 For the purposes of this Clause 48, the address and email address of each Party shall be the address and email address set out in the Order Form.

49. DISPUTE RESOLUTION

- 49.1 The Parties shall resolve Disputes arising out of or in connection with this Call Off Contract in accordance with the Dispute Resolution Procedure.
- 49.2 The Supplier shall continue to provide the Goods and/or Services in accordance with the terms of this Call Off Contract until a Dispute has been resolved.

50. GOVERNING LAW AND JURISDICTION

- 50.1 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.
- 50.2 Subject to Clause 49 (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 shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.

CALL OFF SCHEDULE 1: DEFINITIONS

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

"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 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 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;
"Auditor"	means: 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;
"BCDR Plan"	means the plan prepared pursuant to paragraph 2 of Call Off Schedule 9 (Business Continuity and Disaster Recovery), as may be amended from time to time;
"BCDR Services"	means the Business Continuity Services and Disaster Recovery Services;
"Business Continuity Services"	has the meaning given to it in paragraph Error! Reference source not found. of Call Off Schedule 9 (Business Continuity and Disaster Recovery);
"Call Off Agreement"	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Goods and/or Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
"Call Off Commencement Date"	means the date of commencement of this Call Off Contract set out in paragraph 1.1 of the Order Form;
"Call Off Contract"	means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Order Form and the Call Off Terms;
"Call Off Contract Charges"	means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract, as set out in Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Call Off Contract;
"Call Off Contract Period"	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date, which shall in no event exceed a maximum duration of four (4) years;
"Call Off Contract Year"	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;
"Call Off Expiry Date"	means: <ul style="list-style-type: none"> 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 the extension term of this Call Off Contract from the end date of the Call Off Initial Period to the end date of the extension period stated in the Order Form;
"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, in the event that a Call Off Guarantee is required under this Call Off Contract, 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 Order Form;
"Call Off Schedule"	means a schedule to this Call Off Contract;
"Call Off Terms"	means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Goods and/or Services, together with the Call Off Schedules hereto;
"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: <ul style="list-style-type: none"> 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 in Law"	means any change in Law which impacts on the supply of the Goods and/or Services and performance of the Call Off Terms which comes into force after the Call Off Commencement Date;
"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 a Call Off Agreement from time to time, which Charges shall be calculated in a manner which 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 each Call Off Agreement, which

	structure is set out in Framework Schedule 3 (Charging Structure);
"Commercially Sensitive Information"	means the Confidential information listed in the Order Form (if any) comprising of a commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services;
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
"Continuous Improvement Plan"	means a plan for improving the provision of the Goods and/or Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);
"Contracting Body"	means the Authority, the Customer and any other bodies listed in paragraph VI.3 of the OJEU Notice;
"Control"	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted 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"	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Goods and/or Services:</p> <p>a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:</p> <ul style="list-style-type: none"> i) base salary paid to the Supplier Personnel; ii) employer's national insurance

	<p>contributions;</p> <ul style="list-style-type: none"> iii) pension contributions; iv) car allowances; v) any other contractual employment benefits; vi) staff training; vii) work place accommodation; viii) work place IT equipment and tools reasonably necessary to provide the Goods and/or Services (but not including items included within limb (b) below); and ix) reasonable recruitment costs, as agreed with the Customer; <p>b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Customer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Goods and/or Services;</p> <p>but excluding:</p> <ul style="list-style-type: none"> i) Overhead; ii) financing or similar costs; iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Call Off Contract Period whether in relation to Supplier Assets or otherwise; iv) taxation; v) fines and penalties; vi) amounts payable under Clause 20 (Benchmarking); and vii) 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 customer(s) identified in the 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 Goods and/or Services;
"Customer Background IPR"	means: <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 Supplier 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 Supplier;
"Customer Data"	means: <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 Supplier by or on behalf of the Customer; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or b) any Personal Data for which the Customer is

	the Data Controller;
"Customer Premises"	means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for provision of the Goods and/or 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 Supplier 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's Confidential Information"	means: <ul style="list-style-type: none"> 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); 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 c) information derived from any of the above;
"Data Controller"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Processor"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Protection Legislation" or "DPA"	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Subject Access 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;
"Default"	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default) after

	the words, act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;
"Delivery"	means, in respect of Goods, the time at which the Goods have been delivered and, in respect of Services, the time at which the Services have been provided or performed by the Supplier as confirmed by the issue by the Customer of a Delivery sheet in accordance with Clause 9.2.4 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 Goods and/or Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Order Form or elsewhere in the Call Off Contract (for the purposes of this definition the "Disaster Period")
"Disaster Recovery Services"	means the services embodied in the processes and procedures for restoring the provision of Goods and/or Services following the occurrence of a Disaster, as detailed further in Call Off Schedule 9 (Business Continuity and Disaster Recovery);
"Disclosing Party"	has the meaning given to it in Clause 27.3.1 (Confidentiality);
"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 Goods and/or Services, failure to agree in accordance with the Variation Procedure or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"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 12 (Dispute Resolution Procedure);
"Documentation"	means all documentation as: <ul style="list-style-type: none"> a) is required to be supplied by the Supplier to the Customer under this Call Off Contract; b) would reasonably be required by a competent third party capable of Good Industry Practice

	<p>contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Goods and/or Services;</p> <p>c) is required by the Supplier in order to provide the Goods and/or Services; and/or</p> <p>d) has been or shall be generated for the purpose of providing the Goods and/or Services;</p>
"DOTAS"	<p>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;</p>
"Due Diligence Information"	<p>means any information supplied to the Supplier by or on behalf of the Customer prior to the Call Off Commencement Date;</p>
"Environmental Information Regulations or EIRs"	<p>means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;</p>
"Environmental Policy"	<p>means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;</p>
"Estimated Year 1 Call Off Contract Charges"	<p>means the sum in pounds estimated by the Customer to be payable by it to the Supplier as the total aggregate Call Off Contract Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year stipulated in the Order Form or elsewhere in this Call Off Contract;</p>
"Expedited Dispute Timetable"	<p>means the timetable set out in paragraph 5 of Schedule 12 (Dispute Resolution Procedure);</p>
"FOIA"	<p>means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;</p>

"Force Majeure"	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> 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 excluding: <ul style="list-style-type: none"> i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and 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"	<p>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;</p>
"Framework Agreement"	<p>means the framework agreement between the Authority and the Supplier referred to in the Order Form;</p>
"Framework Commencement Date"	<p>means the date of commencement of the Framework Agreement as stated in the Call Off Schedule 1 (Definitions);</p>
"Framework Period"	<p>means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;</p>
"Framework Schedule"	<p>means a schedule to the Framework Agreement;</p>
"Fraud"	<p>means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in</p>

	respect of fraudulent acts including acts of forgery;
"Further Competition Procedure"	means the award procedure described in paragraph 3 of Framework Schedule 5 (Call Off Procedure);
"General Anti-Abuse Rule"	means (a) the legislation in Part 5 of the Finance Act 2013 and; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"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 Supplier) 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;
"Goods"	means the goods to be provided by the Supplier to the Customer as specified in Annex 2 of Call Off Schedule 2 (Goods and Services);
"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;
"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 ICT policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
"Impact Assessment"	has the meaning given to it in Clause 17.1.3 (Variation Procedure);
"Information"	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
"Insolvency Event"	means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable): a) a proposal is made for a voluntary arrangement

	<p>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</p> <ul style="list-style-type: none"> 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 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 d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or 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 f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or h) where the Supplier or Framework Guarantor or Call Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;
<p>"Intellectual Property Rights" or "IPR"</p>	<p>means</p> <ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information; b) applications for registration, and the right to apply for registration, for any of the rights listed

	<p>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"	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Goods and/or Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of its obligations under this Call Off Contract;
"Key Sub-Contract"	means each Sub-Contract with a Key Sub-Contractor;
"Key Sub-Contractor"	<p>means any Sub-Contractor:</p> <p>a) listed in Framework Schedule 7 (Key Sub-Contractors);</p> <p>b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Goods and/or Services; and/or</p> <p>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;</p>
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"Man Day"	means 7.5 Man Hours, whether or not such hours

	are worked consecutively and whether or not they are worked on the same day;
"Man Hours"	means the hours spent by the Supplier Personnel properly working on the provision of the Goods and/or Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"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 Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a civil penalty for fraud or evasion;
"Open Book Data "	<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 Supplier's Costs broken down against each Good and/or Service, including actual capital expenditure (including capital replacement costs); b) operating expenditure relating to the provision of the Goods and/or Services including an analysis showing:

	<ul style="list-style-type: none"> i) the unit costs and quantity of Goods and any other consumables and bought-in services; ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and <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 Supplier Profit achieved over the Call Off Contract Period and on an annual basis; f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier; g) an explanation of the type and value of risk and contingencies associated with the provision of the Goods and/or Services, including the amount of money attributed to each risk and/or contingency; and h) the actual Costs profile for each Service Period.
"Order"	means the order for the provision of the Goods and/or Services placed by the Customer with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;
"Order Form"	means the form, as completed and forming part of this Call Off Contract, which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Goods and/or Services to be supplied;
"Other Charges"	means any values, rates or amounts set out in Annex 1 of Framework Schedule 3;
"Other Supplier"	means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Over-Delivered Goods"	has the meaning given to it in Clause 9.4.1 (Over-Delivered Goods);
"Overhead"	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-

	Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Customer or the Supplier and " Parties " shall mean both of them;
"Personal Data"	has the meaning given to it in the Data Protection Act 1998;
"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"	means any of the following: <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority or other Contracting Body or any other public body a financial or other advantage to: <ul style="list-style-type: none"> 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) ii) under legislation or common law concerning fraudulent acts; or iii) defrauding, attempting to defraud or

	<p>conspiring to defraud the Customer; 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 Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>b) IPR in or arising as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier Background IPR;</p>
"Purchase Order"	means an Order under this Call Off Contract made in accordance with the Purchasing Procedure;
"Purchase Procedure"	means the procedure for repeat purchasing of Goods and/or Services under this Call Off Contract specified by the Customer in accordance with Clause 6;
"Recipient"	has the meaning given to it in Clause 27.3.1 (Confidentiality);
"Rectification Plan"	means the rectification plan pursuant to the Rectification Plan Process;
"Rectification Plan Process"	means the process set out in Clause Error! Reference source not found. (Rectification Plan Process);
"Registers"	has the meaning given to in Call Off Schedule 10 (Exit Management);
"Regulations"	means the Public Contracts Regulations 2006 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
"Related Supplier"	means any person who provides goods and/or services to the Customer which are related to the Goods and/or Services from time to time;
"Relevant Conviction"	means a Conviction that is relevant to the nature of the Goods and/or Services to be provided or as specified by the Customer in the Order Form or elsewhere in this Call Off Contract;
"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 Supplier is established;
"Replacement Goods"	means any goods which are substantially similar to any of the Goods and which the Customer receives in substitution for any of the Goods following the Call Off Expiry Date, whether those goods are provided by the Customer internally and/or by any third party;
"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 Supplier"	means any third party provider of Replacement Goods and/or Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Goods and/or Services for its own account, shall also include the Customer;
"Request for Information"	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Goods and/or Services or an apparent request for such information under the FOIA or the EIRs;
"Restricted Countries"	has the meaning given to it in Clause 27.6.3 (Protection of Personal Data);
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph Error! Reference source not found. of Call Off Schedule 8 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph Error! Reference source not found. of Call Off Schedule 8 (Security) and as updated from time to time;
"Security Policy"	means the Customer's security policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
"Security Policy Framework"	the HMG Security Policy Framework https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf ;
"Service Failure"	means an unplanned failure and interruption to the provision of the Goods and/or Services, reduction in the quality of the provision of the Goods and/or Services or event which could affect the provision of

	the Goods and/or Services in the future;
"Services"	means the services to be provided by the Supplier to the Customer as referred to Annex A of Call Off Schedule 2 (Goods and Services);
"Sites"	means: <ul style="list-style-type: none"> a) any premises (including the Customer Premises, the Supplier's premises or third party premises): <ul style="list-style-type: none"> i) from, to or at which: <ul style="list-style-type: none"> (1) the Goods and/or Services are (or are to be) provided; or (2) the Supplier manages, organises or otherwise directs the provision or the use of the Goods and/or 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;
"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 Supplier would reasonably and ordinarily be expected to comply with; b) standards detailed in the specification in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators); c) standards detailed by the Customer in Call Off Schedule 7 (Standards) or agreed between the Parties from time to time; d) relevant Government codes of practice and guidance applicable from time to time.
"Sub-Contract"	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods and/or Services or any part thereof or facilities, services necessary for the provision of the Goods and/or Services or any part thereof or necessary for the management, direction or control of the provision of the Goods and/or Services or any part thereof;
"Sub-Contractor"	means any third party engaged by the Supplier, including any Key Sub-Contractor, from time to time under a Sub-Contract permitted pursuant to the

	Framework Agreement and this Call Off Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;
"Supplier"	means the person, firm or company with whom the Customer enters into this Call Off Contract as identified in the Order Form;
"Supplier Assets"	means all assets and rights used by the Supplier to provide the Goods and/or Services in accordance with this Call Off Contract but excluding the Customer Assets;
"Supplier Background IPR"	means <ul style="list-style-type: none"> a) Intellectual Property Rights owned by the Supplier before the Call Off Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or b) Intellectual Property Rights created by the Supplier independently of this Call Off Contract,
"Supplier Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Call Off Contract;
"Supplier Equipment"	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Call Off Contract;
"Supplier Profit"	means, in relation to a period, 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;
"Supplier Profit Margin"	means, in relation to a period, the Supplier Profit for the relevant period divided by the total Call Off Contract Charges over the same period and expressed as a percentage;
"Supplier Representative"	means the representative appointed by the Supplier named in the Order Form;
"Supplier'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 Supplier (including the Supplier

	<p>Background IPR) trade secrets, Know-How, and/or personnel of the Supplier;</p> <p>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Call Off Contract;</p> <p>c) information derived from any of the above.</p>
"Support Rate(s)"	means the discount(s) applicable to the provision of the Goods and/or Services as set out in the Order Form;
"Template Call Off Terms"	means the template terms and conditions in Annex 2 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
"Template Order Form"	means the template order form in Annex 1 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
"Tender"	means the tender submitted by the Supplier to the Authority and annexed to or referred to in Framework Schedule 20;
"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;
"Third Party IPR"	means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Goods and/or Services;
"Undelivered Goods"	has the meaning given to it in Clause 9.3.1 (Goods);
"Undelivered Services"	has the meaning given to it in Clause Error! Reference source not found. (Services);
"Undisputed Sums Time Period"	has the meaning given to it Clause 35.1.1 (Termination Notice for Customer's Failure to Pay);
"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph 6 (Invoicing Procedure) of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
"Variation"	has the meaning given to it in Clause 17.1 (Variation Procedure);
"Variation Form"	means the form set out in Call Off Schedule 13 (Variation Form);
"Variation Procedure"	means the procedure set out in Clause 17.1 (Variation Procedure);

"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Warranty Period"	means, in relation to any Goods, the warranty period specified in the Order Form;
"Working Day"	means any Day other than a Saturday or Sunday or public holiday in England and Wales.

CALL OFF SCHEDULE 2: GOODS

1. INTRODUCTION

1.1 This Call Off Schedule specifies the:

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

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

1. DEFINITIONS

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

2. GENERAL PROVISIONS

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

3. CALL OFF CONTRACT CHARGES

- 3.1 The Call Off Contract Charges which are applicable to this Call Off Contract are set out in Annex 1 of this Call Off Schedule.
- 3.2 The Supplier acknowledges and agrees that:
 - 3.2.1 In accordance with paragraph 1 (General Provisions) of Framework Schedule 3 (Charging Structure), the Call Off Contract Charges can in no event exceed the Other Charges nor apply discounts less than the Support Rates; and
 - 3.2.2 subject to paragraph 7 of this Call Off Schedule (Adjustment of Call Off Contract Charges), the Call Off Contract Charges cannot be increased during the Call Off Contract Period.

4. COSTS AND EXPENSES

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

5. PAYMENT TERMS/PAYMENT PROFILE

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

6. INVOICING PROCEDURE

- 6.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Customer in paragraph 6.5 of this Call Off Schedule and in accordance with the provisions of this Call Off Contract.
- 6.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Customer may specify):
- 6.2.1 contains:
- (a) all appropriate references, including the unique Order reference number; and
 - (b) a detailed breakdown of the Delivered Goods and/or delivered Services within this Call Off Contract to which the Delivered Goods and/or delivered Services relate, against the applicable due and payable Call Off Contract Charges; and
- 6.2.2 shows separately the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 18.2.1 of this Call Off Contract (VAT) and the tax point date relating to the rate of VAT shown; and
- 6.2.3 is exclusive of any Management Charge (and the Supplier shall not attempt to increase the Call Off Contract Charges or otherwise recover from the Customer as a surcharge the Management Charge levied on it by the Authority); and
- 6.2.4 it is supported by any other documentation reasonably required by the Customer to substantiate that the invoice is a Valid Invoice.
- 6.3 The Supplier shall accept the Government Procurement Card as a means of payment for the Goods and/or Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.
- 6.4 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Call Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- 6.5 The Supplier shall submit invoices electronically to:
- Ministry of Defence
DBS Finance
Walker House
Exchange Flags
Liverpool
L2 3 YL
- 6.6 The Supplier shall submit invoices to the Customer upon Delivery of each vehicle.

7. ADJUSTMENT OF CALL OFF CONTRACT CHARGES

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

- 7.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Call Off Contract Charges in accordance with Clause 17.2 of this Call Off Contract (Legislative Change);
- 7.1.2 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 13 of this Call Off Contract (Continuous Improvement);
- 7.1.3 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 20 of this Call Off Contract (Benchmarking);
- 7.1.4 where all or part of the Call Off Contract Charges are reviewed and reduced in accordance with paragraph 8 of this Call Off Schedule;
- 7.2 Subject to paragraphs 7.1.1 to 7.1.4 of this Call Off Schedule, the Call Off Contract Charges will remain fixed for the first two (2) Contract Years.

8. SUPPLIER PERIODIC ASSESSMENT OF CALL OFF CONTRACT CHARGES

- 8.1 Every six (6) Months during the Call Off Contract Period, the Supplier shall assess the level of the Call Off Contract Charges to consider whether it is able to reduce them.
- 8.2 Such assessments by the Supplier under paragraph 8 of this Call Off Schedule shall be carried out on 1 May and 1 December in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Call Off Contract Charges it shall promptly notify the Customer in writing and such reduction shall be implemented in accordance with paragraph 10.1.4 of this Call Off Schedule below.

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

Not applicable

10. IMPLEMENTATION OF ADJUSTED CALL OFF CONTRACT CHARGES

- 10.1 Variations in accordance with the provisions of this Call Off Schedule to all or part the Call Off Contract Charges (as the case may be) shall be made by the Customer to take effect:
 - 10.1.1 in accordance with Clause 17.2 of this Call Off Contract (Legislative Change) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 7.1.1 of this Call Off Schedule;
 - 10.1.2 in accordance with Clause 13 of this Call Off Contract (Continuous Improvement) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 7.1.2 of this Call Off Schedule;
 - 10.1.3 in accordance with Clause 20 of this Call Off Contract (Benchmarking) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 7.1.3 of this Call Off Schedule or
 - 10.1.4 on 1 June for assessments made on 1 May and on 1 January for assessments made on 1 December where an adjustment to the Call

Off Contract Charges is made in accordance with paragraph 7.1.4 of this Call Off Schedule unless an earlier date is agreed between the Parties;

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

ANNEX 2: PAYMENT TERMS/PROFILE

Payment shall be due upon delivery of each individual vehicle.

CALL OFF SCHEDULE 4: NOT USED

CALL OFF SCHEDULE 5: NOT USED

CALL OFF SCHEDULE 6: NOT USED

CALL OFF SCHEDULE 7: NOT USED

CALL OFF SCHEDULE 8: SECURITY

1. DEFINITIONS

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

"Breach of Security"

means the occurrence of:

- a) any unauthorised access to or use of the Goods and/or Services, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Call Off Contract; and/or
- b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Call Off Contract,

in either case as more particularly set out in the Security Policy.

2. INTRODUCTION

- 2.1 The purpose of this Call Off Schedule 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 covers:
 - 2.2.1 principles of protective security to be applied in delivering the Goods and/or Services; and,
 - 2.2.2 obligations in the event of actual or attempted Breaches of Security.

3. PRINCIPLES OF SECURITY

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

- 3.3 Subject to Clause 27 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 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Customer's Representative of such inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

4. SECURITY MANAGEMENT PLAN

Not required.

5. BREACH OF SECURITY

- 5.1 Either party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan if one exists) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 5.1, the Supplier shall:
- 5.2.1 immediately take all reasonable steps(which shall include any action or changes reasonably required by the Customer) necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Customer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - (c) prevent an equivalent breach in the future exploiting the same root cause failure; and
 - (d) as soon as reasonably practicable provide to the Customer, where the Customer so requests, full details (using the reporting mechanism defined by the Security Management Plan if one exists) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Customer.
- 5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security policy or the requirements of this Call Off Schedule, then any required change to the Security Management Plan shall be at no cost to the Customer.

CALL OFF SCHEDULE 9: NOT USED

CALL OFF SCHEDULE 10: NOT USED

CALL OFF SCHEDULE 11: NOT USED

CALL OFF SCHEDULE 12: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

- 1.1 In this Call Off Schedule 12, 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; |
| "Exception" | a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Goods and/or Services; |
| "Expert" | the person appointed by the Parties in accordance with paragraph 5.2 of this Call Off Schedule 12; and |
| "Mediation Notice" | has the meaning given to it in paragraph 3.2 of this Call Off Schedule; |
| "Mediator" | the independent third party appointed in accordance with paragraph 4.2 of this Call Off Schedule 12. |

2. INTRODUCTION

- 2.1 If a Dispute arises then:
- 2.1.1 the representative of the Customer and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
 - 2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.
- 2.2 The Dispute Notice shall set out:
- 2.2.1 the material particulars of the Dispute;
 - 2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - 2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this Call Off Schedule, the reason why.
- 2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Call Off Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

- 2.4 Subject to paragraph 3.2 of this Call Off Schedule, the Parties shall seek to resolve Disputes:
- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Call Off Schedule);
 - 2.4.2 then by mediation (as prescribed in paragraph 4 of this Call Off Schedule); and
 - 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Call Off Schedule) or litigation (in accordance with Clause 50 of this Call Off Contract (Governing Law and Jurisdiction)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Call Off Schedule) where specified under the provisions of this Call Off Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Call Off Schedule.
- 2.6 In exceptional circumstances where the use of the times in this Call Off Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- 2.7.1 in paragraph 3.2.3, ten (10) Working Days;
 - 2.7.2 in paragraph 4.2, ten (10) Working Days;
 - 2.7.3 in paragraph 5.2, five (5) Working Days; and
 - 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

- 3.1 Following the service of a Dispute Notice, the Customer and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Customer's Commercial Officer and the Supplier's Framework Manager.
- 3.2 If:
- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
 - 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the

conduct of commercial negotiations in accordance with this paragraph 3 of this Call Off Schedule; or

3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Call Off Schedule within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with paragraph 4 of this Call Off Schedule.

4. MEDIATION

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Call Off Contract.
- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

5. EXPERT DETERMINATION

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

- 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
- 5.3.5 the process shall be conducted in private and shall be confidential; and
- 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6. ARBITRATION

- 6.1 The Customer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Call Off Schedule.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 50 of this Call Off Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
 - 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Call Off Schedule shall apply;
 - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 61 of this Call Off Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
 - 6.3.3 the 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, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Call Off Schedule or commence court proceedings in the courts in accordance with Clause 50 of this Call Off Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Call Off Schedule, the Parties hereby confirm that:
 - 6.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to paragraphs 6.4.5 to 6.4.7 of this Call Off Schedule);
 - 6.4.2 the arbitration shall be administered by the LCIA;

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

7. URGENT RELIEF

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

CALL OFF SCHEDULE 13: VARIATION FORM

No of Order Form being varied:

.....

Variation Form No:

.....

BETWEEN:

**Ministry of Defence
Army Commercial BFG Procurement Team
Catterick Barracks
Bielefeld
BFPO 39**

("the Customer")

and

[insert Supplier details]

("the Supplier")

1. This Call Off Contract is varied as follows and shall take effect on the date signed by both Parties:

[detail of variation to be inserted here as and when applicable]

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 Supplier

Signature

Date

Name (in
Capitals)

Address

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 Order Form and, if requested in the Order Form, shall apply to this Call Off Contract.

2. CLAUSES SELECTED

- 2.1 The Customer may, in the Order Form, request the following Alternative Clauses:
- 2.1.1 Scots Law (see paragraph 4.1 of this Call Off Schedule);
 - 2.1.2 Northern Ireland Law (see paragraph 4.2 of this Call Off Schedule);
 - 2.1.3 Non-Crown Bodies (see paragraph 4.3 of this Call Off Schedule);
 - 2.1.4 Non-FOIA Public Bodies (see paragraph 4.4 of this Call Off Schedule);
 - 2.1.5 Financial Limits (see paragraph 4.5 of this Call Off Schedule).
- 2.2 The Customer may, in the Order Form, request the following Additional Clauses should apply:
- 2.2.1 Security Measures (see paragraph 5.1 of this Call Off Schedule);
 - 2.2.2 NHS Additional Clauses (see paragraph **Error! Reference source not found.** of this Call Off Schedule)
 - 2.2.3 MOD (“Ministry of Defence”) Additional or Alternative Clauses (see paragraph 7 of this Call Off Schedule)

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 and the Additional Clauses specified in paragraphs 2.2 and 2.2.1 of this Call Off Schedule 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 50)
- (a) References to “England and Wales” in the original Clause 50 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 50)

- (a) References to "England and Wales" in the original Clause 50 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 39.3.1(a) of this Call Off Contract (Official Secrets Act and Finance Act) shall be deleted.

4.4 NON-FOIA PUBLIC BODIES

Replace Clause 27.5 of this Call Off Contract (Freedom of Information) with "The Customer has notified the Supplier that the Customer is exempt from the provisions of FOIA and EIR."

4.5 FINANCIAL LIMITS

In Clause **Error! Reference source not found.** 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 **Error! Reference source not found.** 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 **Error! Reference source not found.** 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 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 Supplier be designated 'top secret', 'secret', or 'confidential';

"Servant" where the Supplier 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.

5.1.2 The following new Clause [51] shall apply:

51. [SECURITY MEASURES]

51.1. The Supplier 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:

51.1.1. 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;

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

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

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

51.2. Without prejudice to the provisions of Clause 51.1, the Supplier shall, both before and after the completion or termination of this Call Off Contract, take all reasonable steps to ensure:

51.2.1. no such person as is mentioned in Clauses 51.1, 51.1.1 or 51.1.2 hereof shall have access to any item or document under the control of the Supplier containing information about a secret matter except with the prior consent in writing of the Customer;

51.2.2. that no visitor to any premises in which there is any item to be supplied under this Call Off Contract or where Goods and/or Services are being supplied shall see or discuss with the Supplier or any person employed by him any secret matter unless the visitor is authorised in writing by the Customer so to do;

51.2.3. that no photograph of any item to be supplied under this Call Off Contract or any portions of the Goods and/or 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;

- 51.2.4. 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
- 51.2.5. that if the Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such document, model or item as is mentioned in Clause 51.2.3, 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.
- 51.3. The decision of the Customer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 51 shall be final and conclusive.
- 51.4. If and when directed by the Customer, the Supplier shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 51.5. If and when directed by the Customer, the Supplier 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.
- 51.6. If, at any time either before or after the expiry or termination of this Call Off Contract, it comes to the notice of the Supplier 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 Supplier 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 Supplier 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 Supplier with a statement of the facts as aforesaid.

- 51.7. The Supplier 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 Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by Clauses 51.1 and 51.2 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 this Clause 58 observes the said obligations, and the Supplier 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 Supplier with all necessary particulars.
- 51.8. The Supplier 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 Supplier by this Clause 51, but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:
- 51.8.1. 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 this Clause 58 into operation in such cases and to such extent as the Customer may direct;
 - 51.8.2. 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 this Clause 51, notify such breach forthwith to the Customer; and
 - 51.8.3. 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 51.11.
- 51.9. The Supplier 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 this Clause 58 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier 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.

51.10. Nothing in this Clause 51 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.

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

51.11.1. that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause 58; or

51.11.2. that the Supplier 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

51.11.3. that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in 51.11.2, 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.

51.12. A decision of the Customer to terminate this Call Off Contract in accordance with the provisions of Clause 51.11 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.

51.13. Supplier's notice

51.13.1. The Supplier may within five (5) Working Days of the termination of this Call Off Contract in accordance with the provisions of Clause 51.11, 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 51.11, 51.11.1 or 51.11.2 and to give particulars of that event; and

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

51.14. Matters pursuant to termination

51.14.1. The termination of this Call Off Contract pursuant to Clause 51.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;

51.14.2. The Supplier 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;

51.14.3. 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 Supplier given within thirty (30) Working Days from the time when the provisions of this Clause 58 shall have effect, elect to take over, and the Supplier 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 Supplier 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

51.14.4. Save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination of this Call Off Contract

51.15. If, after notice of termination of this Call Off Contract pursuant to the provisions of 51.11:

51.15.1. the Customer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in Clause 51.13.1; or

51.15.2. the Customer shall state in the statement and particulars detailed in Clause 51.13.2 that the event upon which the Customer's decision to terminate this Call Off Contract was based is an event mentioned in Clause 51.11.3,

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

51.15.3. the Customer shall take over from the Supplier 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 Supplier upon the termination of this Call Off Contract under the provisions of Clause 58.11 and properly provided by or supplied to the Supplier for the performance of this Call Off Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Customer, elect to retain;

51.15.4. the Supplier 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 Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;

51.15.5. the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier 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 Supplier by reason of the termination of this Call Off Contract;

51.15.6. if hardship to the Supplier should arise from the operation of this Clause 58.15 it shall be open to the Supplier 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 shall be final and conclusive; and

subject to the operation of Clauses 51.15.3, 51.15.4, 51.15.5 and 51.15.6, 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 Call Off 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 Supplier consisting of the Order Form and the Call Off Terms and the MoD Terms and Conditions.
- 7.2 The following definitions shall be inserted into in Call Off 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 Supplier 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 Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Supplier.
- 7.6 The following new Clause [53] shall apply:

53. ACCESS TO MOD SITES

53.1. In this Clause 53:

53.1.1. The Customer shall issue passes for those representatives of the Supplier 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 Goods and/or Services.

53.1.2. The Supplier'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.

53.1.3. The Supplier 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 Supplier'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 Supplier. 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 Supplier 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.

53.1.4. Where the Supplier'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 Supplier 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 Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Customer shall reimburse the Supplier'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 Supplier'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.

53.1.5. Out-patient medical treatment given to the Supplier'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 Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.

53.1.6. Accidents to the Supplier'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.

53.1.7. 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 Supplier'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.

53.1.8. The Supplier 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 Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Customer shall be recovered from the Supplier.

7.7 The following new Call Off Schedule 15 shall apply:

CALL OFF SCHEDULE 15: MOD DEFCONS AND DEFFORMS

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

DEFCONS

DEFCON No	Version	Description
522	Edn 11/17	Payment and Recovery of Sums Due
658	Edn 10/17	Cyber

DEFFORMs (Ministry of Defence Forms)

DEFFORM No	Version	Description

