

**FRAMEWORK SCHEDULE 4**  
**SPECIALIST ADVICE CALL OFF TERMS**

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## PART 2 – CALL OFF TERMS

### TERMS AND CONDITIONS

#### A. PRELIMINARIES

##### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Call Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions) or the relevant Call Off Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Call Off Schedule 1 (Definitions) or relevant Call Off Schedule, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Call Off Contract, unless the context otherwise requires:
- 1.3.1 the singular includes the plural and vice versa;
  - 1.3.2 reference to a gender includes the other gender and the neuter;
  - 1.3.3 references to a person include an individual, company, Authority corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Authority;
  - 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 Contracting Authority 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 Contracting Authority in relation to this Call Off Contract, such provisions of the Tender shall prevail. The Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 warrants 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 Authority 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 Contracting Authority 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 Contracting Authority which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Services by the Customer;
  - 3.2.7 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Contracting Authority 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 Contracting Authority which have been associated with the provision of the Services without approval or the prior written consent of the Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority, the Supplier shall deliver to the Contracting Authority
  - 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 Contracting Authority 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. IMPLEMENTATION PLAN**

#### **6.1 Formation of Implementation Plan**

- 6.1.1 Where the Parties agreed in the Order Form (or elsewhere in this Call Off Contract) that an Implementation Plan (or parts thereof) shall be provided in draft by the Supplier prior to the commencement of the provision of the Services, the Supplier's draft must contain information at the level of detail necessary to manage the implementation stage effectively and as the Contracting Authority may require. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 6.1.2 The Supplier shall submit the draft Implementation Plan to the Contracting Authority for Approval (such decision of the Contracting Authority to Approve or not shall not be unreasonably delayed or withheld) within such period as specified by the Contracting Authority in the Order Form (or elsewhere in this Call Off Contract).
- 6.1.3 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is achieved on or before its Milestone Date.
- 6.1.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Contracting Authority as set out in this Call Off Contract and report to the Contracting Authority on such performance.

#### **6.2 Control of Implementation Plan**

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

### 6.3 Rectification of Delay in Implementation

6.3.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Call Off Contract:

- (a) it shall:
  - (i) notify the Contracting Authority as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and
  - (ii) include in its notification an explanation of the actual or anticipated impact of the Delay; and
  - (iii) comply with the Contracting Authority instructions in order to address the impact of the Delay or anticipated Delay; and
  - (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- (b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Implementation Plan, Clause 6.4 (Delay Payments) shall apply.

### 6.4 Delay Payments

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

- (a) the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Contracting Authority as a result of the Supplier's failure to Achieve the corresponding Milestone;
- (b) Delay Payments shall be the Contracting Authority exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
  - (i) the Contracting Authority is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 41 (Contracting Authority Termination Rights) except Clause 41.6 (Termination Without Cause); or
  - (ii) the delay exceeds the number of days (the "Delay Period Limit") specified in Part A of Call Off Schedule 4: (Implementation Plan, Contracting Authority Responsibilities and Key Personnel) for the purposes of this sub-Clause, commencing on the relevant Milestone Date;
- (c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified by the Contracting Authority in the Implementation Plan);

- (d) no payment or concession to the Supplier by the Contracting Authority or other act or omission of the Contracting Authority shall in any way affect the rights of the Contracting Authority to recover the Delay Payments or be deemed to be a waiver of the right of the Contracting Authority to recover any such damages unless such waiver complies with Clause (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Contracting Authority rights to claim Delay Payments; and
- (e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 6.4.1 and Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause (Liability).

## **7. PROVISION OF THE SERVICES**

### **7.1 Provision of the Services**

- 7.1.1 The Supplier acknowledges and agrees that the Contracting Authority relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Call Off Contract.
- 7.1.2 The Supplier shall ensure that the Services:
  - (a) comply in all respects with any description of the Services in Call Off Schedule 2 (Services) or elsewhere in this Call Off Contract; and
  - (b) are supplied in accordance with the provisions of this Call Off Contract or the Tender.
- 7.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:
  - (a) all applicable Law;
  - (b) Good Industry Practice;
  - (c) the Standards;
  - (d) the Security Policy;
  - (e) the ICT Policy (if so required by the Contracting Authority); 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).
  - (g) the provisions of;  
<https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>, or equivalent.
- 7.1.4 The Supplier shall:
  - (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Call Off Contract;
  - (b) subject to Clause 22.1 (Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory,

regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;

- (c) ensure that any products or services recommended or otherwise specified by the Supplier for use by the Contracting Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or the Services to meet the requirements of the Customer;
- (d) ensure that the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer); and
- (e) ensure that the Services are fully compatible with any Contracting Authority Property or Contracting Authority Assets described in Part B of Call Off Schedule 4 (Implementation Plan, Contracting Authority Responsibilities and Key Personnel) (or elsewhere in this Call Off Contract) or otherwise used by the Supplier in connection with this Call Off Contract;
- (f) minimise any disruption to the Sites and/or the Contracting Authority operations when providing the Services;
- (g) ensure that any Documentation and training provided by the Supplier to the Contracting Authority 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 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 Services (or any of them) to the Contracting Authority and/or to any Replacement Supplier;
- (i) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Contracting Authority may notify from time to time to the Supplier;
- (j) provide the Contracting Authority with such assistance as the Contracting Authority may reasonably require during the Call Off Contract Period in respect of the supply of the Services;
- (k) deliver the Services in a proportionate and efficient manner;
- (l) ensure that neither it, nor any of its Affiliates, embarrasses the Contracting Authority or otherwise brings the Contracting Authority 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 Contracting Authority may reasonably request for the

purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.

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

## **8. TIME OF DELIVERY OF THE SERVICES**

### **8.1 Time of Delivery of the Services**

- 8.1.1 The Supplier shall provide the Services on the date(s) specified in the Order Form (or elsewhere in this Call Off Contract) and the Milestone Dates (if any). Such provision shall include compliance with the obligation on the Supplier set out in Clause 6 (Implementation Plan).

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

- 8.2.1 Except where otherwise provided in this Call Off Contract, the Supplier shall provide the Services to the Contracting Authority through the Supplier Personnel at the Sites.
- 8.2.2 The Contracting Authority may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Contracting Authority Premises, the Contracting Authority may carry out such inspection and examination during normal business hours and on reasonable notice.

### **8.3 Undelivered Services**

- 8.3.1 In the event that any of the Services are not Delivered in accordance with Clauses 7.1 (Provision of the Services), 8.1 (Time of Delivery of the Services) and 8.2 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Customer, without prejudice to any other rights and remedies of the Contracting Authority howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.
- 8.3.2 The Contracting Authority may, at its discretion and without prejudice to any other rights and remedies of the Contracting Authority howsoever arising, deem the failure to comply with Clauses 7.1, (Provision of the Services), 8.1 (Time of Delivery of the Services) and 8.2 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

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

- 8.4.1 Subject to Clauses (IPR Indemnity) and without prejudice to any other rights and remedies of the Contracting Authority howsoever arising (including under Clauses 8.3.2 (Undelivered Services) and 38 (Contracting Authority Remedies for Default)), the Supplier shall, where practicable, within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Contracting Authority or within such other time period as may be agreed with the Contracting Authority (taking into account the nature of the breach that has occurred):

- (a) meet all the costs of, and incidental to, the performance of such remedial work.

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

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

- (a) any withholding or deduction by the Contracting Authority of any sum due to the Supplier pursuant to the exercise of a right of the Contracting Authority to such withholding or deduction under this Call Off Contract;
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Contracting Authority to pay any Call Off Contract Charges,
- (d) unless the Supplier is entitled to terminate this Call Off Contract under Clause 42.1 (Termination on Contracting Authority Cause for Failure to Pay) for failure by the Contracting Authority to pay undisputed Call Off Contract Charges.

**9. NOT USED**

**10. NOT USED**

## **11. STANDARDS AND QUALITY**

- 11.1 The Supplier shall at all times during the Call Off Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation Authority.
- 11.2 Throughout the Call Off Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the, of the 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 (Services and Key Performance Indicators) shall, in addition, require the written consent of the Authority.
- 11.3 Where a new or emergent standard is to be developed or introduced by the, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Contracting Authority receipt of the Services is explained to the Contracting Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 11.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Call Off Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard or Standards shall require Approval (and the written consent of the Authority where the relevant Standard or Standards is/are included in Framework Schedule 2 (Services and Key Performance Indicators) and shall be implemented within an agreed timescale.
- 11.5 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:

- 11.5.1 be appropriately experienced, qualified and trained to supply the Services in accordance with this Call Off Contract;
- 11.5.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Services; and
- 11.6 obey all lawful instructions and reasonable directions of the Contracting Authority (including, if so required by the, the ICT Policy) and provide the Services to the reasonable satisfaction of the Customer.
- 11.7 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 Contracting Authority and the Parties shall agree the impact of such change.

## **12. TESTING**

- 12.1 This Clause shall apply if so specified by the Contracting Authority in the Order Form or elsewhere in this Call Off Contract.
- 12.2 The Parties shall comply with any provisions set out in Call Off Schedule 5 (Testing).

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

- 13.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).
- 13.2 The Supplier shall at all times during the Call Off Contract Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
- 13.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Contracting Authority and that it shall entitle the Contracting Authority to the rights set out in the provisions of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.
- 13.4 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Contracting Authority as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 13.5 A Service Credit shall be the Contracting Authority exclusive financial remedy for a Service Level Failure except where:
  - 13.5.1 the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;
  - 13.5.2 the Service Level Failure:
    - (a) exceeds the relevant Service Level Threshold;
    - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and
    - (c) results in:

- (i) the corruption or loss of any Contracting Authority Data (in which case the remedies under Clause 34.2.8 (Protection of Contracting Authority Data) shall also be available); and/or
- (ii) the Contracting Authority being required to make a compensation payment to one or more third parties; and/or

13.5.3 the Contracting Authority is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 41 (Contracting Authority Termination Rights) except Clause 41.6 (Termination Without Cause).

13.6 Not more than once in each Contract Year the Contracting Authority may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Level Performance Criteria and the Supplier shall not be entitled to object to, or increase the Call Off Contract Charges as a result of such changes, provided that:

13.6.1 the total number of Service Level Performance Criteria for which the weighting is to be changed does not exceed the number set out, for the purposes of this clause, in Annex 2 to Part A of Call Off Schedule 6: Service Levels, Service Credits and Performance Monitoring;

13.6.2 the principal purpose of the change is to reflect changes in the Contracting Authority business requirements and/or priorities or to reflect changing industry standards; and

13.6.3 there is no change to the Service Credit Cap.

#### 14. CRITICAL SERVICE LEVEL FAILURE

14.1 On the occurrence of a Critical Service Level Failure:

14.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

14.1.2 the Contracting Authority shall (subject to the Service Credit Cap set out in Clause (Financial Limits)) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Call Off Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

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

14.2 The Supplier:

14.2.1 agrees that the application of Clause is commercially justifiable where a Critical Service Level Failure occurs; and

14.2.2 acknowledges that it has taken legal advice on the application of Clause 14.1 and has had the opportunity to price for that risk when calculating the Call Off Contract Charges.

#### 15. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 15.1 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).

## **16. DISRUPTION**

- 16.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call Off Contract it does not disrupt the operations of the Contracting Authority, its employees or any other contractor employed by the Contracting Authority
- 16.2 The Supplier shall immediately inform the Contracting Authority of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.
- 16.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Call Off Contract.
- 16.4 If the Supplier's proposals referred to in Clause are considered insufficient or unacceptable by the Contracting Authority acting reasonably then the Contracting Authority may terminate this Call Off Contract for material Default.
- 16.5 If the Supplier is temporarily unable to fulfil the requirements of this Call Off Contract owing to disruption of normal business solely caused by the Customer, an appropriate allowance by way of an extension of time will be Approved by the Customer. In addition, the Contracting Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **17. SUPPLIER NOTIFICATION OF CONTRACTING AUTHORITY CAUSE**

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

## **18. CONTINUOUS IMPROVEMENT**

- 18.1 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Services

in accordance with this Clause 18 with a view to reducing the Contracting Authority costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Customer. As part of this obligation the Supplier shall identify and report to the Contracting Authority once every twelve (12) months:

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

#### **D. CALL OFF CONTRACT GOVERNANCE**

#### **19. PERFORMANCE MONITORING**

- 19.1 Unless otherwise Approved or notified by the, the Supplier shall comply with the monitoring requirements set out in Annex 1 Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).
- 19.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels. Unless the Contracting Authority specifies otherwise, the Supplier shall obtain Approval of the relevant measuring and monitoring tools and procedures prior to using the same.
- 19.3 In the case of any additional or alternative monitoring requirements of the Customer, the provisions relating to performance monitoring of this Call Off Contract shall apply as set out in (Service Levels, Service Credits and Annex 1 to Part B of Call Off Schedule 6 Performance Monitoring).

#### **20. REPRESENTATIVES**

- 20.1 Each Party shall have a representative for the duration of this Call Off Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Call Off Contract.
- 20.2 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 27 (Supplier Personnel).
- 20.3 The Contracting Authority shall notify the Supplier of the identity of the initial Contracting Authority Representative within five (5) Working Days of the Call Off Commencement Date. The Contracting Authority may, by written notice to the Supplier, revoke or amend the authority of the Contracting Authority Representative or appoint a new Contracting Authority Representative.

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

- 21.1 The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Customer.
- 21.2 The Supplier shall:
  - 21.2.1 keep the records and accounts referred to in Clause 21.1 in accordance with Good Industry Practice and Law; and
  - 21.2.2 afford any Auditor access to the records and accounts referred to in Clause 21.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 21.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call Off Contract Agreement including for the following purposes to:
    - (a) verify the accuracy of the Call Off Contract Charges and any other amounts payable by the Contracting Authority 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 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 Contracting Authority 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 Services;

- (g) obtain such information as is necessary to fulfil the Contracting Authority 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 Contracting Authority internal and statutory audits and to prepare, examine and/or certify the Contracting Authority 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 Contracting Authority has used its resources;
- (k) review any Performance Monitoring Reports provided under Annex 1 Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (l) verify the accuracy and completeness of any information delivered or required by this Call Off Contract;
- (m) review the Supplier's quality management systems (including any quality manuals and procedures);
- (n) review the Supplier's compliance with the Standards;
- (o) inspect the Contracting Authority Assets, including the Contracting Authority IPRs, equipment and facilities, for the purposes of ensuring that the Contracting Authority Assets are secure and that any register of assets is up to date; and/or
- (p) review the integrity, confidentiality and security of the Contracting Authority Data.

21.3 The Contracting Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.

21.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:

- 21.4.1 all reasonable information requested by the Contracting Authority within the scope of the audit;
- 21.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
- 21.4.3 access to the Supplier Personnel.

21.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 21, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Contracting Authority for the Contracting Authority reasonable costs incurred in relation to the audit.

## 22. CHANGE

### 22.1 Variation Procedure

- 22.1.1 Subject to the provisions of this Clause 22 and 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**".
- 22.1.2 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.
- 22.1.3 The Contracting Authority may require the Supplier to carry out an impact assessment of the Variation on the Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:
- (a) details of the impact of the proposed Variation on the Services and the 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 Contracting Authority may reasonably request in (or in response to) the Variation request.
- 22.1.4 The Parties may agree to adjust the time limits specified in the Variation request to allow for the preparation of the Impact Assessment.
- 22.1.5 Subject to 22.1.4, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Contracting Authority having regard to the nature of the Order and the proposed Variation.
- 22.1.6 In the event that:
- (a) the Supplier is unable to agree to or provide the Variation; and/or

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

the Contracting Authority 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.

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

## 22.2 Legislative Change

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

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

22.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 22.2.1(b)), the Supplier shall:

- (a) notify the Contracting Authority as soon as reasonably practicable of the likely effects of that change including:
  - (i) whether any Variation is required to the provision of the Services, the Call Off Contract Charges or this Call Off Contract; and
  - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
- (b) provide to the Contracting Authority 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 Services; and
  - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 18 (Continuous

Improvement), has been taken into account in amending the Call Off Contract Charges.

- 22.2.3 Any change in the Call Off Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 22.2.1(b)) shall be implemented in accordance with the Variation Procedure.

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

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

#### **23.1 Call Off Contract Charges**

- 23.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Services, the Contracting Authority shall pay the undisputed Call Off Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).
- 23.1.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 12 (Testing), 21 (Records, Audit Access and Open Book Data), 34.5 (Freedom of Information), 34.6 (Protection of Personal Data).
- 23.1.3 If the Contracting Authority fails to pay any undisputed Call Off Contract Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 23.1.4 If at any time during this Call Off Contract Period the Supplier reduces its Framework Prices for any Services which are provided under the Framework Agreement (whether or not such Services are offered in a catalogue, if any, which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Call Off Contract Charges for such Services under this Call Off Contract by the same amount.

#### **23.2 VAT**

- 23.2.1 The Call Off Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Contracting Authority following delivery of a Valid Invoice.
- 23.2.2 The Supplier shall indemnify the Contracting Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Contracting Authority 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 (VAT) shall be paid in cleared funds by the Supplier to the Contracting Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Retention and Set Off

- 23.2.3 The Contracting Authority 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
- 23.2.4 If the Contracting Authority wishes to exercise its right pursuant to Clause 23.2.3 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Contracting Authority reasons for retaining or setting off the relevant Call Off Contract Charges.
- 23.2.5 The Supplier shall make any payments due to the Contracting Authority 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 Contracting Authority to the Supplier.

### **23.3 Foreign Currency**

- 23.3.1 Any requirement of Law to account for the Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the
- 23.3.2 The Contracting Authority shall provide all reasonable assistance to facilitate compliance with Clause 23.3.1 by the Supplier.

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

- 23.4.1 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 Contracting Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Personnel.
- 23.4.2 In the event that any one of the Supplier Personnel is a Worker as defined in Call Off Schedule 1 (Definitions), and that particular Worker is liable to be taxed in the UK in respect of any consideration it receives relating to the Services, then the Supplier shall ensure that its contract with the Worker includes the following requirements:
- (a) that the Worker must comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration;
  - (b) that the Worker must comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other

statutes and regulations relating to national insurance contributions in respect of that consideration;

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

## **24. PROMOTING TAX COMPLIANCE**

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

24.1.1 notify the Contracting Authority in writing of such fact within five (5) Working Days of its occurrence; and

24.1.2 promptly provide to the

- (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 Contracting Authority may reasonably require.

24.2 In the event that the Supplier fails to comply with this Clause 24 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Contracting Authority are acceptable, then the Contracting Authority reserves the right to terminate this Call Off Contract for material Default.

## **25. BENCHMARKING**

25.1 Notwithstanding the Supplier's obligations under Clause 18 (Continuous Improvement), the Contracting Authority shall be entitled to regularly benchmark the Call Off Contract Charges and level of performance by the Supplier of the supply of the Services, against other suppliers providing Services substantially the same as the Services during the Call Off Contract Period.

- 25.2 The 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 above.
- 25.3 The Contracting Authority shall be entitled to disclose the results of any benchmarking of the Call Off Contract Charges and provision of the Services to the Authority and any Contracting Authority (subject to the Contracting Authority entering into reasonable confidentiality undertakings).
- 25.4 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Contracting Authority in order to undertake the benchmarking and such information requirements shall be at the discretion of the Customer.
- 25.5 Where, as a consequence of any benchmarking carried out by the Customer, the Contracting Authority decides improvements to the Services should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Customer.
- 25.6 The benefit of any work carried out by the Supplier at any time during the Call Off Contract Period to update, improve or provide the Services, facilitate their delivery to any other Contracting Authority and/or any alterations or variations to the Charges or the provision of the Services, which are identified in the Continuous Improvement Plan produced by the 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

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

### **26. KEY PERSONNEL**

- 26.1 This Clause shall apply if so specified in the Order Form, or elsewhere in this Call Off Contract. Part C of Call Off Schedule 4 (Implementation Plan), Contracting Authority Responsibilities and Key Personnel) lists the key roles ("Key Roles") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Call Off Commencement Date.
- 26.2 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Call Off Contract Period.
- 26.3 The Contracting Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 26.4 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Call Off Schedule 10 (Exit Management)) unless:
- 26.4.1 requested to do so by the Customer;
  - 26.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - 26.4.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or

26.4.4 the Supplier obtains the Contracting Authority prior written consent (such consent not to be unreasonably withheld or delayed).

26.5 The Supplier shall:

26.5.1 notify the Contracting Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);

26.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;

26.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;

26.5.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and

26.5.5 ensure that any replacement for a Key Role:

(a) has a level of qualifications and experience appropriate to the relevant Key Role; and

(b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

26.5.6 shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.

26.6 The Contracting Authority may require the Supplier to remove any Key Personnel that the Contracting Authority considers in any respect unsatisfactory. The Contracting Authority shall not be liable for the cost of replacing any Key Personnel.

## **27. SUPPLIER PERSONNEL**

### **27.1 Supplier Personnel**

27.1.1 The Supplier shall:

(a) provide a list of the names of all Supplier Personnel requiring admission to Contracting Authority Premises, specifying the capacity in which they require admission and giving such other particulars as the Contracting Authority may reasonably require;

(b) ensure that all Supplier Personnel:

(i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

(ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards; and

- (iii) comply with all reasonable requirements of the Contracting Authority concerning conduct at the Contracting Authority Premises, including the security requirements set out in Call Off Schedule 8 (Security);
- (c) the Supplier agrees that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

Note: The Authority is currently considering whether it requires any additional obligations to be flowed down the supply chain to ensure that end user customers are protected and will revert with its views in the next iteration.

- (d) subject to Call Off Schedule 11 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Contracting Authority
- (e) 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;
- (f) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (g) 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;
- (h) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (i) procure that the Supplier Personnel shall vacate the Contracting Authority Premises immediately upon the Call Off Expiry Date.

27.1.2 If the Contracting Authority 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 Contracting Authority Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

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

## 27.2 Relevant Convictions

27.2.1 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 Services without Approval.

27.2.2 Notwithstanding clause for each member of Supplier Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Contracting Authority 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 Services any person who has a Relevant Conviction or an inappropriate record.

## **28. STAFF TRANSFER**

28.1 The Parties agree that:

28.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Call Off Schedule 11 (Staff Transfer) shall apply as follows:

- (a) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Call Off Schedule 11 (Staff Transfer) shall apply;
- (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Call Off Schedule 11 (Staff Transfer) shall apply;
- (c) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B of Call Off Schedule 11 (Staff Transfer) shall apply; and
- (d) Part C of Call Off Schedule 11 (Staff Transfer) shall not apply;

28.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Call Off Schedule 11 (Staff Transfer) shall apply and Parts A and B of Call Off Schedule 11 (Staff Transfer) shall not apply; and

28.1.3 Part D of Call Off Schedule 11 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;

28.2 The Supplier shall both during and after the Call Off Contract Period indemnify the Contracting Authority against all Employee Liabilities that may arise as a result of any claims brought against the Contracting Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

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

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

- 29.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
  - (b) comply with its obligations under this Call Off Contract in the delivery of the Services; and
  - (c) assign, novate or otherwise transfer to the Contracting Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Call Off Contract.
- 29.1.2 Prior to sub-contacting any of its obligations under this Call Off Contract, the Supplier shall provide the Contracting Authority with:
- (a) the proposed Sub-Contractor's name, registered office and company registration number;
  - (b) the scope of any Services to be provided by the proposed Sub-Contractor; and
  - (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Contracting Authority that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 29.1.3 If requested by the Contracting Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause the Supplier shall also provide:
- (a) a copy of the proposed Sub-Contract; and
  - (b) any further information reasonably requested by the Customer.
- 29.1.4 The Contracting Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause (or, if later, receipt of any further information requested pursuant to Clause 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 Services or may be contrary to the interests respectively of the Contracting Authority 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.
- 29.1.5 If:
- (a) the Contracting Authority 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 and
  - (ii) any further information requested by the Contracting Authority pursuant to Clause; and
- (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority and the Contracting Authority in accordance with Clause (Appointment of Key Sub-Contractors).

the Supplier may proceed with the proposed appointment.

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

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

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

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

29.2.3 Except where the Authority and the Contracting Authority have given their prior written consent under Clause, 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 Contracting Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
- (c) a provision enabling the Contracting Authority 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 Contracting Authority 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 (Security Requirements), (Protection of Contracting Authority Data) and (Protection of Personal Data);

- (ii) FOIA requirements set out in Clause (Freedom of Information);
  - (iii) the obligation not to embarrass the Contracting Authority or otherwise bring the Contracting Authority into disrepute set out in Clause 7.1.4(l) (Provision of Services);
  - (iv) the keeping of records in respect of the 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 (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 Contracting Authority under Clauses (Contracting Authority Termination Rights), 43 (Termination by Either Party) and (Consequences of Expiry or Termination) of this Call Off Contract;
  - (g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;
  - (h) a provision, where a provision in Call Off Schedule 11 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be.

### **29.3 Supply Chain Protection**

- 29.3.1 The Supplier shall ensure that all Sub-Contracts contain a provision:
  - (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice; and
  - (b) a right for the Contracting Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 29.3.2 The Supplier shall:
  - (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
  - (b) include within the Performance Monitoring Reports required under Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) a summary of its compliance with this Clause 29.3.2, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.
- 29.3.3 Notwithstanding any provision of Clauses 34.3 (Confidentiality) and 35 (Publicity and Branding) if the Supplier notifies the Contracting Authority that the Supplier has failed to pay an undisputed Sub-

Contractor's invoice within thirty (30) days of receipt, or the Contracting Authority otherwise discovers the same, the Contracting Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

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

29.4.1 The Contracting Authority 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 Contracting Authority right of termination pursuant any of the termination events in Clause 41 (Contracting Authority Termination Rights) except Clause 41.6 (Termination Without Cause); and/or
  - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Contracting Authority or otherwise brought the Contracting Authority 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 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 Contracting Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - (ii) the Contracting Authority 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 Contracting Authority was given notice of the Change of Control.

#### **29.5 Competitive Terms**

29.5.1 If the Contracting Authority 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 Services, then the Contracting Authority may:

- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Contracting Authority in respect of the relevant item; or
- (b) subject to Clause 29.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

29.5.2 If the Contracting Authority exercises the option pursuant to Clause 29.5.1, then the Call Off Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.

29.5.3 The Contracting Authority right to enter into a direct agreement for the supply of the relevant items is subject to:

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

#### **29.6 Retention of Legal Obligations**

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

### **G. PROPERTY MATTERS**

#### **30. CONTRACTING AUTHORITY PREMISES**

##### **30.1 Licence to occupy Contracting Authority Premises**

- 30.1.1 Any Contracting Authority 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 Contracting Authority 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).
- 30.1.2 The Supplier shall limit access to the Contracting Authority 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 Contracting Authority Premises as the Contracting Authority may reasonably request.
- 30.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause Due Diligence) and set out in the Order Form (or elsewhere in this Call Off Contract), should the Supplier require modifications to the Contracting Authority Premises, such modifications shall be subject to Approval and shall be carried out by the Contracting Authority at the Supplier's expense. The Contracting Authority shall undertake any modification work which it approves pursuant to this Clause 30.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 30.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Contracting Authority Premises and conduct of personnel at the Contracting Authority Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt,

damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

- 30.1.5 The Parties agree that there is no intention on the part of the Contracting Authority 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 Contracting Authority retains the right at any time to use any Contracting Authority Premises in any manner it sees fit.

### **30.2 Security of Contracting Authority Contracting Authority Premises**

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

## **31. CONTRACTING AUTHORITY PROPERTY**

- 31.1 Where the Contracting Authority issues Contracting Authority Property free of charge to the Supplier such Contracting Authority Property shall be and remain the property of the Contracting Authority and the Supplier irrevocably licences the Contracting Authority and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Contracting Authority Property.
- 31.2 The Supplier shall not in any circumstances have a lien or any other interest on the Contracting Authority Property and at all times the Supplier shall possess the Contracting Authority Property as fiduciary agent and bailee of the Customer.
- 31.3 The Supplier shall take all reasonable steps to ensure that the title of the Contracting Authority to the Contracting Authority 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 Contracting Authority request, store the Contracting Authority Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.
- 31.4 The Contracting Authority Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Contracting Authority otherwise within five (5) Working Days of receipt.
- 31.5 The Supplier shall maintain the Contracting Authority Property in good order and condition (excluding fair wear and tear) and shall use the Contracting Authority Property solely in connection with this Call Off Contract and for no other purpose without Approval.
- 31.6 The Supplier shall ensure the security of all the Contracting Authority Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with the Security Policy and the Contracting Authority reasonable security requirements from time to time.
- 31.7 The Supplier shall be liable for all loss of, or damage to the Contracting Authority Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Contracting Authority Cause. The Supplier shall inform the

Contracting Authority immediately of becoming aware of any defects appearing in or losses or damage occurring to the Contracting Authority Property.

## **32. SUPPLIER EQUIPMENT**

- 32.1 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 Services.
- 32.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Contracting Authority Premises without obtaining Approval.
- 32.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Contracting Authority 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 Contracting Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Contracting Authority Premises following removal.
- 32.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Contracting Authority shall be liable for loss of or damage to any of the Supplier's property located on Contracting Authority Premises which is due to the negligent act or omission of the Customer.
- 32.5 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Call Off Contract, including the Service Level Performance Measures.
- 32.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Contracting Authority Premises in a safe, serviceable and clean condition.
- 32.7 The Supplier shall, at the Contracting Authority written request, at its own expense and as soon as reasonably practicable:
- 32.7.1 remove from the Contracting Authority Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Contracting Authority is either hazardous, noxious or not in accordance with this Call Off Contract; and
  - 32.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.
- 32.8 For the purposes of this Clause 32.8, 'X' shall be the number of Service Failures, and 'Y' shall be the period in months, as respectively specified for 'X' and 'Y' in the 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 Contracting Authority in writing and shall, at the Contracting Authority request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced).

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

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

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

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

- (a) the Contracting Authority 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 Contracting Authority or its licensors, including the:
  - (i) Contracting Authority Background IPR; and
  - (ii) Contracting Authority Data.

33.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

33.1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

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

33.2.1 The Supplier hereby grants to the Customer, or shall procure the direct grant to the Contracting Authority 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.

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

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

33.3.2 At any time during the Call Off Contract Period or following the Call Off Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Background IPR under Clause by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Contracting Authority Cause which constitutes a material breach of the terms of which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the

Contracting Authority written notice specifying the breach and requiring its remedy.

33.3.3 In the event the licence of the Supplier Background IPR is terminated pursuant to Clause, the Contracting Authority shall:

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

#### **33.4 Contracting Authority right to sub-license**

33.4.1 The Contracting Authority shall be freely entitled to sub-license the rights granted to it pursuant to Clause 33.2.1 (Licence granted by the Supplier: Project Specific IPR).

33.4.2 The Contracting Authority may sub-license:

- (a) the rights granted under Clause (Licence granted by the Supplier: Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
  - (i) the sub-license is on terms no broader than those granted to the; and
  - (ii) the sub-license only authorises the third party to use the rights licensed in Clause (Licence granted by the Supplier: Supplier Background IPR) for purposes relating to the Services (or substantially equivalent Services) or for any purpose relating to the exercise of the Contracting Authority (or, if the Contracting Authority is a Central Government Authority, any other Central Government Authority's) business or function; and
- (b) the rights granted under Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR provided that the sub-license is on terms no broader than those granted to the Contracting Authority.

#### **33.5 Contracting Authority right to assign/novate licences**

33.5.1 The Contracting Authority shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause (Licence granted by the Supplier: Project Specific IPR); and

- 33.5.2 The Contracting Authority may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause (Licence granted by the Supplier: Supplier Background IPR) to:
- (a) a Central Government Authority; or
  - (b) to any Authority (including any private sector Authority) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.
- 33.5.3 Where the Contracting Authority is a Central Government Authority, any change in the legal status of the Contracting Authority which means that it ceases to be a Central Government Authority shall not affect the validity of any licence granted in Clause 33.2 (Licence granted by the Supplier: Project Specific IPR) and/or Clause 33.3 (Licences granted by the Supplier: Supplier Background IPR). If the Contracting Authority ceases to be a Central Government Authority, the successor Authority to the Contracting Authority shall still be entitled to the benefit of the licences granted in Clause 33.2 (Licence granted by the Supplier: Project Specific IPR) and Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR).
- 33.5.4 If a licence granted in Clause 33.2 (Licence granted by the Supplier: Project Specific IPR) and/or Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR) is novated under Clauses 33.5 or there is a change of the Contracting Authority status pursuant to Clause 33.4 (both such bodies being referred to as the "Transferee"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Contracting Authority.

### **33.6 Third Party IPR**

- 33.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Contracting Authority on terms at least equivalent to those set out in Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR) and Clause 33.5.2 (Contracting Authority right to assign/novate licences). If the Supplier cannot obtain for the Contracting Authority a licence materially in accordance with the licence terms set out in Clause (Licences granted by the Supplier: Supplier Background IPR) and Clause 33.5.2 (Contracting Authority right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:
- (a) notify the Contracting Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
  - (b) only use such Third Party IPR if the Contracting Authority Approves the terms of the licence from the relevant third party.

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

- 33.7.1 The Contracting Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call Off Contract Period to use the Contracting Authority Background IPR and the Contracting Authority Data solely to the extent necessary for providing the Services in accordance with this Call Off Contract, including (but

not limited to) the right to grant sub-licences to Sub-Contractors provided that:

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

### **33.8 Termination of licenses**

- 33.8.1 Subject to Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR), all licences granted pursuant to this Clause 33 (Intellectual Property Rights) (other than those granted pursuant to Clause 33.6 (Third Party IPR) and 33.7 (Licence granted by the Customer)) shall survive the Call Off Expiry Date.
- 33.8.2 The Supplier shall, if requested by the Contracting Authority in accordance with Call Off Schedule 10 (Exit Management), grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 33.6 (Licence granted by the Supplier: Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 33.8.3 The licence granted pursuant to Clause (Licence granted by the Contracting Authority) and any sub-licence granted by the Supplier in accordance with Clause 33.7 (Licence granted by the Customer) shall terminate automatically on the Call Off Expiry Date and the Supplier shall:
  - (a) immediately cease all use of the Contracting Authority Background IPR and the Contracting Authority Data (as the case may be);
  - (b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Contracting Authority Background IPR and the Contracting Authority Data, provided that if the Contracting Authority has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Contracting Authority Background IPR and the Contracting Authority Data (as the case may be); and
  - (c) ensure, so far as reasonably practicable, that any Contracting Authority Background IPR and Contracting Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Contracting Authority Background IPR and/or Contracting Authority Data.

### **33.9 IPR Indemnity**

- 33.9.1 The Supplier shall at during and after the Call Off Contract Period, on written demand indemnify the Contracting Authority against all Losses incurred by, awarded against or agreed to be paid by the Contracting

Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

- 33.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Contracting Authority the right to continue using the relevant item which is subject to the IPR Claim; or
  - (b) replace or modify the relevant item with non-infringing substitutes provided that:
    - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
    - (ii) the replaced or modified item does not have an adverse effect on any other Services;
    - (iii) there is no additional cost to the Customer; and
    - (iv) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Services.
- 33.9.3 If the Supplier elects to procure a licence in accordance with Clause 33.9.2(a) or to modify or replace an item pursuant to Clause 33.9.2(b), but this has not avoided or resolved the IPR Claim, then:
- (i) the Contracting Authority may terminate this Call Off Contract by written notice with immediate effect; and
  - (ii) without prejudice to the indemnity set out in Clause 33.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute Services including the additional costs of procuring, implementing and maintaining the substitute items.

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

### **34.1 Security Requirements**

- 34.1.1 The Supplier shall comply with the Security Policy and the requirements of Call Off Schedule 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.
- 34.1.2 The Contracting Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 34.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may propose a Variation to the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call Off Contract Charges shall then be subject to the Variation Procedure.
- 34.1.4 Until and/or unless a change to the Call Off Contract Charges is agreed by the Contracting Authority pursuant to the Variation

Procedure the Supplier shall continue to provide the Services in accordance with its existing obligations.

#### **34.2 Protection of Contracting Authority Data**

- 34.2.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Contracting Authority Data.
- 34.2.2 The Supplier shall not store, copy, disclose, or use the Contracting Authority Data except as necessary for the performance by the Supplier of its obligations under this Call Off Contract or as otherwise Approved by the Customer.
- 34.2.3 To the extent that the Contracting Authority Data is held and/or Processed by the Supplier, the Supplier shall supply that Contracting Authority Data to the Contracting Authority as requested by the Contracting Authority and in the format (if any) specified in this Call Off Contract and in any event as specified by the Contracting Authority from time to time in writing.
- 34.2.4 The Supplier shall take responsibility for preserving the integrity of Contracting Authority Data and preventing the corruption or loss of Contracting Authority Data.
- 34.2.5 The Supplier shall perform secure back-ups of all Contracting Authority 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 Contracting Authority (or to such other person as the Contracting Authority may direct) at all times upon request and are delivered to the Contracting Authority at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 34.2.6 The Supplier shall ensure that any system on which the Supplier holds any Contracting Authority Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 34.2.7 If at any time the Supplier suspects or has reason to believe that the Contracting Authority Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Contracting Authority immediately and inform the Contracting Authority of the remedial action the Supplier proposes to take.
- 34.2.8 If the Contracting Authority 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 Contracting Authority 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, 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 Contracting Authority notice; and/or
  - (b) itself restore or procure the restoration of Contracting Authority 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 Contracting Authority.

### **34.3 Confidentiality**

- 34.3.1 For the purposes of this Clause 34.3, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 34.3.2 Except to the extent set out in this Clause 34.3 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
  - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call Off Contract or without obtaining the owner's prior written consent;
  - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and
  - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 34.3.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 34.5 (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 Contracting Authority arising out of or in connection with this Call Off Contract;
    - (ii) the examination and certification of the Contracting Authority 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 Contracting Authority is making use of any Services provided under this Call Off Contract; or
    - (iii) the conduct of a Central Government Authority 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.

- 34.3.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory Authority requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 34.3.5 Subject to Clauses 34.3.2 and 34.3.7, the Supplier may only disclose the Confidential Information of the Contracting Authority on a confidential basis to:
- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Call Off Contract; and
  - (b) its professional advisers for the purposes of obtaining advice in relation to this Call Off Contract.
- 34.3.6 Where the Supplier discloses Confidential Information of the Contracting Authority pursuant to this Clause, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.
- 34.3.7 The Contracting Authority may disclose the Confidential Information of the Supplier:
- (a) to any Central Government Authority 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 Contracting Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 34.3.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Call Off Contract;
  - (e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or
  - (f) to a proposed transferee, assignee or novatee of, or successor in title to the Contracting Authority,
  - (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 Contracting Authority under this Clause 34.3.

34.3.8 Nothing in this Clause 34.3 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

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

#### **34.4 Transparency**

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

34.4.2 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives his consent for the Contracting Authority 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.

34.4.3 The Supplier shall assist and cooperate with the Contracting Authority to enable the Contracting Authority to publish this Call Off Contract.

#### **34.5 Freedom of Information**

34.5.1 The Supplier acknowledges that the Contracting Authority 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 Contracting Authority to enable the Contracting Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
- (b) transfer to the Contracting Authority 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 Contracting Authority with a copy of all Information belonging to the Contracting Authority requested in the Request for Information which is in its possession or control in the form that the Contracting Authority requires within five (5) Working Days (or such other period as the Contracting Authority may reasonably specify) of the Contracting Authority request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

34.5.2 The Supplier acknowledges that the Contracting Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining

consent from the Supplier. The Contracting Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Call Off Contract) the Contracting Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

#### **34.6 Protection of Personal Data**

34.6.1 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 Contracting Authority is the Data Controller and that the Supplier is the Data Processor.

34.6.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Contracting Authority 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 (Security Requirements) and (Protection of Contracting Authority Data);
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Contracting Authority (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 and Clauses (Security Requirements), (Protection of Contracting Authority Data) and (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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint, communication or request made (as referred to at Clause 34.6.2(e)), including by promptly providing:
- (i) the Contracting Authority with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by the Contracting Authority to enable the Contracting Authority 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 and provide to the Contracting Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

**34.6.3** 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 a Restricted Country, the following provisions shall apply:

- (a) the Supplier shall propose a Variation to the Contracting Authority which, if it is agreed by the Customer, shall be dealt with in accordance with the Variation Procedure and Clauses 34.6.3(b) to 34.6.3(c);
- (b) the Supplier shall set out in its proposal to the Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority deems necessary for the purpose of protecting Personal Data.

34.6.4 The Supplier shall use its reasonable endeavours to assist the Contracting Authority 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 Contracting Authority to breach any of the Contracting Authority 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.

- 34.6.5 The Supplier must comply with the requirements set out in paragraphs 10.21-10.24 of Annex A to part A of Framework Schedule 2 (Services and Key Performance Indicators) and ensure that its sub-contractors, where appropriate, comply with those requirements in order to demonstrate compliance with the technical requirements prescribed by Cyber Essentials.

## **35. PUBLICITY AND BRANDING**

35.1 The Supplier shall not:

- 35.1.1 make any press announcements or publicise this Call Off Contract in any way; or
- 35.1.2 use the Contracting Authority name or brand in any promotion or marketing or announcement of orders,
- 35.1.3 without Approval (the decision of the Contracting Authority to Approve or not shall not be unreasonably withheld or delayed).

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

## **I. LIABILITY AND INSURANCE**

### **36. LIABILITY**

#### **36.1 Unlimited Liability**

36.1.1 Neither Party excludes or limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (b) bribery or Fraud by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be excluded or limited by Law.

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

#### **36.2 Financial Limits**

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

- (a) in respect of all:
- (i) Service Credits; and

- (ii) Compensation for Critical Service Level Failure; incurred in any rolling period of 12 Months shall be subject in aggregate to the Service Credit Cap;
- (b) in respect of all other Losses incurred by the Contracting Authority under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:
  - (i) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, the higher of ten million pounds (£10,000,000) and a sum equal to one hundred and fifty per cent (150%) of the Estimated Year 1 Call Off Contract Charges;
  - (ii) in relation to any Defaults occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, the higher of ten million pounds (£10,000,000) in each such Call Off Contract Year and a sum equal to one hundred and fifty per cent (150%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
  - (iii) in relation to any Defaults occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, the higher of ten million pounds (£10,000,000) in each such Call Off Contract Year and a sum equal to one hundred and fifty per cent (150%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.

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

- (a) in relation to any Contracting Authority 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 Contracting Authority 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 Contracting Authority 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.