

- (b) in respect of all other Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:
  - (i) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year a sum equal to one hundred and twenty-five per cent (125%) of the Estimated Year 1 Call Off Contract Charges;
  - (ii) in relation to any Defaults occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, the sum equal to one hundred and twenty-five per cent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
  - (iii) in relation to any Defaults occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, the sum equal to one hundred and twenty-five per cent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period;

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

37.2.2 Subject to Clauses 37.1 (Unlimited Liability) and 37.2 (Financial Limits) and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:

- (a) in relation to any Customer Causes occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, a sum equal to the Estimated Year 1 Call Off Contract Charges;
- (b) in relation to any Customer Causes occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
- (c) in relation to any Customer Causes occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.

### 37.3 Non-recoverable Losses

37.3.1 Subject to Clause 37.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:

- (a) indirect, special or consequential Loss;

- (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

#### 37.4 Recoverable Losses

37.4.1 Subject to Clause 37.2 (Financial Limits), and notwithstanding Clause 37.3 (Non-recoverable Losses), the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

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

#### 37.5 Miscellaneous

37.5.1 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call Off Contract.

37.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 37.2 (Financial Limits).

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

### 38. INSURANCE

38.1 This Clause 38 will only apply where specified in the Call Off Order Form or elsewhere in this Call Off Contract.

38.2 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 31 (Insurance) of the Framework Agreement, the Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Framework Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract.

38.3 Without limitation to the generality of Clause 38.2 the Supplier shall ensure that it maintains the policy or policies of insurance as stipulated in the Call Off Order Form.

- 38.4 The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause 38 for six (6) years after the Call Off Expiry Date.
- 38.5 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause 38 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 38.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause 38 the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 38.7 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 38.8 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

## **J. REMEDIES AND RELIEF**

### **39. CUSTOMER REMEDIES FOR DEFAULT**

#### **39.1 Remedies**

39.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising and subject to the exclusive financial remedy provisions in Clause 6.4.1(b) (Delay Payments), if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:

- (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Customer's instructions;
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Call Off Contract;
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):

- (i) instruct the Supplier to comply with the Rectification Plan Process;
- (ii) suspend this Call Off Contract (whereupon the relevant provisions of Clause 45 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
- (iii) without terminating or suspending the whole of this Call Off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 45 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Good and/or Services;

39.1.2 Where the Customer exercises any of its step-in rights under Clauses 39.1.1(c)(ii) or 39.1.1(c)(iii), the Customer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Services.

## 39.2 Rectification Plan Process

39.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 39.1.1(c)(i):

- (a) the Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within 10 (ten) Working Days (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.
- (b) the draft Rectification Plan shall set out:
  - (i) full details of the Default that has occurred, including a cause analysis;
  - (ii) the actual or anticipated effect of the Default; and
  - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

39.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of this Call Off Schedule 11 (Dispute Resolution Procedure).

- 39.2.3 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
  - (b) will take too long to complete;
  - (c) will not prevent reoccurrence of the Default; and/or
  - (d) will rectify the Default but in a manner which is unacceptable to the Customer.
- 39.2.4 The Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.
- 39.2.5 If the Customer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

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

40.1 If the Supplier has failed to:

- 40.1.1 Achieve a Milestone by its Milestone Date;
- 40.1.2 Not Used;
- 40.1.3 comply with its obligations under this Call Off Contract,  
(each a "Supplier Non-Performance"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 18 (Supplier Notification of Customer Cause)):

- (a) the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (b) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 42 (Customer Termination Rights) except Clause 42.7 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
  - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
  - (ii) if the Customer, acting reasonably, considers it appropriate, the Project Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;

(iii) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and/or

(d) Not used.

40.2 In order to claim any of the rights and/or relief referred to in Clause 40.1, the Supplier shall:

40.2.1 comply with its obligations under Clause 18 (Notification of Customer Cause); and

40.2.2 within ten (10) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer notice (a "Relief Notice") setting out details of:

(a) the Supplier Non-Performance;

(b) the Customer Cause and its effect on the Supplier's ability to meet its obligations under this Call Off Contract; and

(c) the relief claimed by the Supplier.

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

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

40.4.1 whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or

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

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

40.5 Any Variation that is required to the Project Plan or to the Call Off Contract Charges pursuant to Clause 40 shall be implemented in accordance with the Variation Procedure.

#### **41. FORCE MAJEURE**

41.1 Subject to the remainder of Clause 41 (and, in relation to the Supplier, subject to its compliance with any obligations in Clause 16 (Business Continuity and Disaster Recovery)), a Party may claim relief under Clause 41 from liability for failure to meet its obligations under this Call Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

41.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the

obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

41.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under Clause 41 to the extent that consequences of the relevant Force Majeure Event:

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

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

41.4 Subject to Clause 41.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

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

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

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

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

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

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

(a) the Customer shall not be entitled:

(i) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 39.1.1(b) and 39.1.1(c) (Customer Remedies for Default) as a result of such failure;

(ii) to receive Delay Payments pursuant to Clause 6.4 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and

(iii) Not used;

(b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services)

continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.

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

41.8 Relief from liability for the Affected Party under Clause 41 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract and shall not be dependent on the serving of notice under Clause 41.7.

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

### **42. CUSTOMER TERMINATION RIGHTS**

#### **42.1 Termination in Relation to Call Off Guarantee**

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

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

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

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

#### **42.2 Termination on Material Default**

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

- (a) Not used;
- (b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable;
- (c) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed 80% (unless stated differently in the Call Off Order Form) of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clause 37.2.1(b) (Liability);

- (d) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: 6.2.3 (Project Plan), 8.4.2 (Services), 17.4 (Disruption), 22.5 (Records, Audit Access and Open Book Data), 25 (Promoting Tax Compliance), 35.3.9 (Confidentiality), 51.6.2 (Prevention of Fraud and Bribery), Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Call Off Schedule 10 (Staff Transfer);
- (e) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Customer, capable of remedy;
- (f) the Supplier commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer in accordance with the Rectification Plan Process; and/or
- (g) the Supplier fails to comply with any of Clause 36.3 (Publicity and Branding).

42.2.2 For the purpose of Clause 42.2.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

#### 42.3 Termination in Relation to Financial Standing

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

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

#### 42.4 Termination on Insolvency

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

#### 42.5 Termination on Change of Control

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

42.5.2 The Supplier shall ensure that any notification made pursuant to Clause 42.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

42.5.3 The Customer may terminate this Call Off Contract by issuing a Termination Notice under Clause 42.5 to the Supplier within six (6) Months of:

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

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

#### 42.6 Termination for breach of Regulations

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

#### 42.7 Termination Without Cause

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

#### 42.8 Termination in Relation to Framework Agreement

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

#### 42.9 Termination In Relation to Benchmarking

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

#### 42.10 Termination in Relation to Variation

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

### 43. SUPPLIER TERMINATION RIGHTS

#### 43.1 Termination on Customer Cause for Failure to Pay

43.1.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call Off Contract if the Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract which in aggregate exceeds an amount equal to one month's average Call Off Contract Charges (unless a different amount has been specified in the Call Off Order Form), for the purposes of this Clause 43.1.1 (the "**Undisputed Sums Limit**"), and the said undisputed sum due remains outstanding for forty (40) Working Days (the "**Undisputed Sums Time Period**") after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

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

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 24.3 (Retention and Set off).

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

#### **44. TERMINATION BY EITHER PARTY**

##### **44.1 Termination for continuing Force Majeure Event**

- 44.1.1 Either Party may, by issuing a Termination Notice to the other Party, terminate this Call Off Contract in accordance with Clause 41.6.1(a) (Force Majeure).

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

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

- 45.2 Any suspension of this Call Off Contract under Clause 45.1 shall be for such period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

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

- 45.3.1 an increase in the Call Off Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 42 (Customer Termination Rights) except Clause 42.7 (Termination Without Cause); and

- 45.3.2 reject the Variation.

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

- 46.1 Consequences of termination under Clauses 42.1 (Termination in Relation to Guarantee), 42.2 (Termination on Material Default), 42.3 (Termination in Relation to Financial Standing), 42.8 (Termination in Relation to Framework Agreement),

42.9 (Termination in Relation to Benchmarking) and 42.10 (Termination in Relation to Variation)

46.1.1 Where the Customer:

- (a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 46.1; and
- (b) then makes other arrangements for the supply of the Services,

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

46.2 Consequences of termination under Clauses 42.7 (Termination without Cause) and 43.1 (Termination on Customer Cause for Failure to Pay)

46.2.1 Where:

- (a) the Customer terminates (in whole or in part) this Call Off Contract under Clause 42.7 (Termination without Cause); or
- (b) the Supplier terminates this Call Off Contract pursuant to Clause 43.1 (Termination on Customer Cause for Failure to Pay),

the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 42.7 (Termination without Cause).

46.2.2 The Customer shall not be liable under Clause 46.2.1 to pay any sum which:

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

46.3 Consequences of termination under Clause 44.1 (Termination for Continuing Force Majeure Event)

46.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Call Off Contract for a continuing Force Majeure Event pursuant to Clause 44.1 (Termination for Continuing Force Majeure Event).

#### 46.4 Consequences of Termination for Any Reason

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

- (a) termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 22 (Records, Audit Access & Open Book Data), 34 (Intellectual Property Rights), 35.3 (Confidentiality), 35.4 (Transparency and Freedom of Information) 35.5 (Protection of Personal Data), 37 (Liability), 46 (Consequences of Expiry or Termination), 52 (Severance), 54 (Entire Agreement), 55 (Third Party Rights) 57 (Dispute Resolution) and 58 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), Call Off Schedule 9 (Exit Management), Call Off Schedule 10 (Staff Transfer), Call Off Schedule 11 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

#### 46.5 Exit management

46.5.1 The Parties shall comply with the exit management provisions set out in Call Off Schedule 9 (Exit Management).

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

#### **47. COMPLIANCE**

##### 47.1 Health and Safety

- 47.1.1 The Supplier shall perform its obligations under this Call Off Contract (including those in relation to the Services) in accordance with:
  - (a) all applicable Law regarding health and safety; and
  - (b) the Customer's health and safety policy (as provided to the Supplier from time to time) whilst at the Customer Premises.
- 47.1.2 Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Call Off Contract
- 47.1.3 While on the Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Personnel and other persons working there and any instructions from the Customer on any necessary associated safety measures.

## 47.2 Equality and Diversity

### 47.2.1 The Supplier shall:

- (a) perform its obligations under this Call Off Contract (including those in relation to provision of the Services) in accordance with:
  - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
  - (ii) any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

## 47.3 Official Secrets Act and Finance Act

### 47.3.1 The Supplier shall comply with the provisions of:

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

## 47.4 Environmental Requirements

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

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

## 48. ASSIGNMENT AND NOVATION

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

48.2 The Customer may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Call Off Contract or any part thereof to:

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

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 48.2.

48.3 A change in the legal status of the Customer shall not, subject to Clause 48.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.

- (a) the pricing of the Services;
- (b) details of the Supplier's IPR;
- (c) the Supplier's business and investment plans; and/or
- (d) the Supplier's trade secrets;

which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;

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| <b>"Comparable Supply"</b>           | means the supply of Services to another customer of the Supplier that are the same or similar to the Services;   |
| <b>"Confidential Information"</b>    | means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;  |
| <b>"Continuous Improvement Plan"</b> | means a plan for improving the provision of the Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);   |
| <b>"Contracting Authority"</b>       | means the Authority, the Customer and any other bodies listed in the OJEU Notice;  |
| <b>"Control"</b>                     | means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;  |
| <b>"Conviction"</b>                  | means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;  |
| <b>"Costs"</b>                       | <p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <ul style="list-style-type: none"> <li>a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including: <ul style="list-style-type: none"> <li>i) base salary paid to the Supplier Personnel;</li> <li>ii) employer's national insurance contributions;</li> <li>iii) pension contributions;</li> <li>iv) car allowances;</li> <li>v) any other contractual employment benefits;</li> <li>vi) staff training;</li> </ul> </li> </ul> |

vii) work place accommodation;

viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and

ix) reasonable recruitment costs, as agreed with the Customer;

b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Customer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;

c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services;

d) Reimbursable Expenses to the extent these have been specified as allowable in the Call Off Order Form and are incurred in delivering any Services where the Call Off Contract Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism (as set out in Framework Schedule 3 (Framework Prices and Charging Structure));

but excluding:

a) Overhead;

b) financing or similar costs;

c) maintenance and support costs to the extent that these relate to maintenance and/or support Services provided beyond the Call Off Contract Period whether in relation to Supplier Assets or otherwise;

d) taxation;

e) fines and penalties;

f) amounts payable under Clause 26 (Benchmarking); and

g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

**"Crown"**

means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies,

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|                                  | persons, commissions or agencies from time to time carrying out functions on its behalf;  |
| <b>"Crown Body"</b>              | means any department, office or executive agency of the Crown;  |
| <b>"CRTPA"</b>                   | means the Contracts (Rights of Third Parties) Act 1999;   |
| <b>"Customer"</b>                | means the customer(s) identified in the Call Off Order Form;  |
| <b>"Customer Assets"</b>         | means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Services;  |
| <b>"Customer Background IPR"</b> | means: <ul style="list-style-type: none"> <li>a) IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, software, processes and procedures;</li> <li>b) IPRs created by the Customer independently of this Call Off Contract; and/or</li> <li>c) Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract;</li> </ul>   |
| <b>"Customer Cause"</b>          | means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Customer is liable to the Supplier;  |
| <b>"Customer Data"</b>           | means: <ul style="list-style-type: none"> <li>a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which: <ul style="list-style-type: none"> <li>i) are supplied to the Supplier by or on behalf of the Customer; or</li> <li>ii) the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or</li> </ul> </li> <li>b) any Personal Data for which the Customer is the Data Controller;</li> </ul> |
| <b>"Customer Premises"</b>       | means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for the provision of the Services (or any of them);  |
| <b>"Customer Property"</b>       | means the property, other than real property and IPR, including any equipment issued or made available to the   |

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|   | Supplier by the Customer in connection with this Call Off Contract;   |
| <b>"Customer Representative"</b>              | means the representative appointed by the Customer from time to time in relation to this Call Off Contract;   |
| <b>"Customer Responsibilities"</b>            | means the responsibilities of the Customer set out in Call Off Schedule 4 (Project Plan) and any other responsibilities of the Customer in the Call Off Order Form or agreed in writing between the Parties from time to time in connection with this Call Off Contract;  |
| <b>"Customer's Confidential Information"</b>  | means: <ul style="list-style-type: none"> <li>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Customer (including all Customer Background IPR and Project Specific IPR);</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Customer's attention or into the Customer's possession in connection with this Call Off Contract; and</li> <li>c) information derived from any of the above;</li> </ul> |
| <b>"Data Controller"</b>                      | has the meaning given to it in the Data Protection Act 1998, as amended from time to time;  |
| <b>"Data Processor"</b>                       | has the meaning given to it in the Data Protection Act 1998, as amended from time to time;  |
| <b>"Data Protection Legislation" or "DPA"</b> | means the Data Protection Act 1998, as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;   |
| <b>"Data Subject"</b>                         | has the meaning given to it in the Data Protection Act 1998, as amended from time to time;  |
| <b>"Data Subject Access Request"</b>          | means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;  |
| <b>"Deductions"</b>                           | means all Delay Payments or any other deduction which the Customer is paid or is payable under this Call Off Contract;  |
| <b>"Default"</b>                              | means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of its Sub-  |

Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;

- "Delay"** means:
- a) a delay in the Achievement of a Milestone by its Milestone Date; or
  - b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Project Plan;
- "Delay Payments"** means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified in the Project Plan;
- "Delay Period Limit"** shall be the number of days specified in Call Off Schedule 4 (Project Plan) for the purposes of Clause 6.4.1(b)(ii);
- "Deliverable"** means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Project Plan (if any) or at any other stage during the performance of this Call Off Contract;
- "Delivery"** means delivery in accordance with the terms of and accepted by the Customer and "Deliver" and "Delivered" shall be construed accordingly;
- "Disaster"** means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Call Off Order Form (for the purposes of this definition the "Disaster Period");
- "Disaster Recovery Services"** means the Services embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster, as detailed further in Call Off Schedule 8 (Business Continuity and Disaster Recovery);
- "Disclosing Party"** means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient;
- "Dispute"** means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
- "Dispute Notice"** means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

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| <b>"Dispute Resolution Procedure"</b> | means the dispute resolution procedure set out in Call Off Schedule 11 (Dispute Resolution Procedure);  |
| <b>"Documentation"</b>                | <p>means descriptions of the Services, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) as:</p> <ul style="list-style-type: none"> <li>a) is required to be supplied by the Supplier to the Customer under this Call Off Contract;</li> <li>b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services;</li> <li>c) is required by the Supplier in order to provide the Services</li> <li>d) has been or shall be generated for the purpose of providing the Services;</li> </ul> |
| <b>"DOTAS"</b>                        | means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;   |
| <b>"Due Diligence Information"</b>    | means any information supplied to the Supplier by or on behalf of the Customer prior to the Call Off Commencement Date;   |
| <b>"Employee Liabilities"</b>         | <p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"> <li>a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li> <li>b) unfair, wrongful or constructive dismissal compensation;</li> <li>c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender</li> </ul>                                    |

reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;

- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- f) claims whether in tort, contract or statute or otherwise;
- g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**"Employment Regulations"**

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

**"Environmental Policy"**

means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Customer;

**"Environmental Information Regulations or EIRs"**

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

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

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

**"Exit Plan"**

means the exit plan described in paragraph 5 of Call Off Schedule 9 (Exit Management);

**"Expedited Dispute Timetable"**

means the timetable set out in paragraph 5 of Call Off Schedule 11 (Dispute Resolution Procedure);

**"FOIA"**

means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the

Information Commissioner or relevant Government department in relation to such legislation;

**"Force Majeure"**

means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:

- a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Call Off Contract;
- b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- c) acts of the Crown, local government or Regulatory Bodies;
- d) fire, flood or any disaster; and
- e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
  - i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and
  - ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and
  - iii) any failure of delay caused by a lack of funds;

**"Force Majeure Notice"**

means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

**"Former Supplier"**

means a supplier supplying the Services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

**"Framework Agreement"**

means the framework agreement between the Authority and the Supplier referred to in the Call Off Order Form;

**"Framework Commencement Date"**

means 04/09/2017

**"Framework Period"**

means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;

**"Framework Price(s)"**

means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);

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| <b>"Framework Schedule"</b>            | means a schedule to the Framework Agreement;   |
| <b>"Fraud"</b>                         | means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;  |
| <b>"Further Competition Procedure"</b> | means the further competition procedure described in paragraph 3 of Framework Schedule 5 (Call Off Procedure);   |
| <b>"General Anti-Abuse Rule"</b>       | means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;   |
| <b>"General Change in Law"</b>         | means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;  |
| <b>"Good Industry Practice"</b>        | means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;                          |
| <b>"Government"</b>                    | means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| <b>"Government Procurement Card"</b>   | means the Government's preferred method of purchasing and payment for low value goods or services <a href="https://www.gov.uk/government/publications/government-procurement-card--2">https://www.gov.uk/government/publications/government-procurement-card--2</a> ;  |
| <b>"Halifax Abuse Principle"</b>       | means the principle explained in the CJEU Case C-255/02 Halifax and others;  |
| <b>"HMRC"</b>                          | means Her Majesty's Revenue and Customs;   |
| <b>"Holding Company"</b>               | has the meaning given to it in section 1159 of the Companies Act 2006;   |
| <b>"ICT Policy"</b>                    | means the Customer's policy in respect of information and communications technology, referred to in the Call Off Order Form, which is in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;                              |
| <b>"Impact Assessment"</b>             | has the meaning given to it in Clause 23.1.3 (Variation Procedure);  |

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| <b>"Project Plan"</b>                          | means the plan set out in the Call Off Schedule 4 (Project Plan);  |
| <b>"Information"</b>                           | has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;  |
| <b>"Insolvency Event"</b>                      | <p>means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable):</p> <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</li> <li>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</li> <li>h) where the Supplier or Framework Guarantor or Call Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</li> <li>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</li> </ul> |
| <b>"Intellectual Property Rights" or "IPR"</b> | <p>means</p> <ul style="list-style-type: none"> <li>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names</li> </ul>   |

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|   | <p>and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>   |
| <b>"IPR Claim"</b>                            | means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer (including any claims arising from the publication of the Project Specific IPRs as Open Source) in the fulfilment of its obligations under this Call Off Contract;   |
| <b>"Key Performance Indicators" or "KPIs"</b> | means the performance measurements and targets in respect of the Supplier's performance of the Framework Agreement set out in Part B of Framework Schedule 2 (Services and Key Performance Indicators);  |
| <b>"Key Personnel"</b>                        | means the individuals (if any) identified as such in the Call Off Order Form;  |
| <b>"Key Role(s) "</b>                         | has the meaning given to it in Clause 27.1 (Key Personnel);  |
| <b>"Key Sub-Contract"</b>                     | means each Sub-Contract with a Key Sub-Contractor;   |
| <b>"Key Sub-Contractor"</b>                   | means any Sub-Contractor: <ul style="list-style-type: none"> <li>a) listed in Framework Schedule 7 (Key Sub-Contractors);</li> <li>b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or</li> <li>c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;</li> </ul> |
| <b>"Know-How"</b>                             | means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;  |
| <b>"Law"</b>                                  | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order,   |

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|   | regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;  |
| <b>"Losses"</b>                         | means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;  |
| <b>"Man Day"</b>                        | means 8 Man Hours;   |
| <b>"Man Hours"</b>                      | means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;  |
| <b>"Milestone"</b>                      | means an event or task described in the Project Plan which, if applicable, must be completed by the relevant Milestone Date;   |
| <b>"Milestone Date"</b>                 | means the target date set out against the relevant Milestone in the Project Plan by which the Milestone must be Achieved;  |
| <b>"Milestone Payment"</b>              | means a payment identified in the Project Plan to be made in respect of Achievement of the relevant Milestone;   |
| <b>"Month"</b>                          | means a calendar month and "Monthly" shall be interpreted accordingly;   |
| <b>"Occasion of Tax Non-Compliance"</b> | means: <ul style="list-style-type: none"> <li>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> <li>b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Call Off</li> </ul> |

Commencement Date or to a civil penalty for fraud or evasion;

**"Open Book Data "**

means complete and accurate financial and non-financial information which is sufficient to enable the Customer to verify the Call Off Contract Charges already paid or payable and Call Off Contract Charges forecast to be paid during the remainder of this Call Off Contract, including details and all assumptions relating to:

- a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Services;
- b) operating expenditure relating to the provision of the Services including an analysis showing:
  - i) consumables and bought-in Services;
  - ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
  - iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and
  - iv) Reimbursable Expenses, if allowed under the Call Off Order Form;
- c) Overheads;
- d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- e) the Supplier Profit achieved over the Call Off Contract Period and on an annual basis;
- f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- h) the actual Costs profile for each Service Period.

**"Open Source"**

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

**"Open Standards"**

means the open standards principles as described by Government and further detailed at <https://www.gov.uk/government/publications/open->

standards-principles/open-standards-principles (as may be updated from time to time);

- "Order"** means the order for the provision of the Services placed by the Customer with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;
- "Other Supplier"** means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
- "Overhead"** means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
- "Parent Company"** means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
- "Party"** means the Customer or the Supplier and "Parties" shall mean both of them;
- "Personal Data"** has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
- "Processing"** has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
- "Prohibited Act"** means any of the following:
- a) to directly or indirectly offer, promise or give any person working for or engaged by a Contracting Authority or any other public body a financial or other advantage to:
    - i) induce that person to perform improperly a relevant function or activity; or
    - ii) reward that person for improper performance of a relevant function or activity;
  - b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of

a relevant function or activity in connection with this Agreement;

- c) committing any offence:
  - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
  - ii) under legislation or common law concerning fraudulent acts; or
  - iii) defrauding, attempting to defraud or conspiring to defraud a Contracting Authority or other public body; or
  - iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

**"Project Specific IPR"**

means:

- a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- b) IPR in or arising as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same;

but shall not include the Supplier Background IPR;

**"Project Specific IPR Items"**

means the items in which the Project Specific IPRs subsist;

**"Recipient"**

mean the Party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party;);

**"Rectification Plan"**

means the rectification plan pursuant to the Rectification Plan Process;

**"Rectification Plan Process"**

means the process set out in Clause 39.2 (Rectification Plan Process);

**"Registers"**

has the meaning given to in Call Off Schedule 9 (Exit Management);

**"Regulations"**

means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;

**"Reimbursable Expenses"**

has the meaning given to it in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);

**"Related Supplier"**

means any person who provides Services to the Customer which are related to the Services from time to time;

|                                     |  |
|-------------------------------------|--|
| <b>"Relevant Conviction"</b>        | means a Conviction that is relevant to the nature of the Services to be provided or as specified in the Call Off Order Form;   |
| <b>"Relevant Requirements"</b>      | means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;  |
| <b>"Relevant Tax Authority"</b>     | means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;   |
| <b>"Relevant Transfer"</b>          | means a transfer of employment to which the Employment Regulations applies;  |
| <b>"Relevant Transfer Date"</b>     | means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;  |
| <b>"Relief Notice"</b>              | has the meaning given to it in Clause 40.2.2 (Supplier Relief Due to Customer Cause);  |
| <b>"Replacement Services"</b>       | means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the Call Off Expiry Date, whether those services are provided by the Customer internally and/or by any third party;        |
| <b>"Replacement Sub-Contractor"</b> | means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);  |
| <b>"Replacement Supplier"</b>       | means any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;  |
| <b>"Request for Information"</b>    | means a request for information or an apparent request relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;   |
| <b>"Restricted Countries"</b>       | means a country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;   |
| <b>"Security Management Plan"</b>   | means the Supplier's security management plan prepared pursuant to paragraph 4 of Call Off Schedule 7 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 4 of Call Off Schedule 7 (Security) and as updated from time to time; |
| <b>"Security Policy"</b>            | means the Customer's security policy, referred to in the Call Off Order Form, in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;  |