

ANNEX F

ORDER FORM AND CALL OFF TERMS

LOT 2 INSURANCE BROKERAGE AND ASSOCIATED SUPPORT SERVICES

Part 1: Letter of Appointment



**Department for
International Trade**

Willis Ltd
51 Lime Street,
London
EC3M 7DQ

24/09/2019

Ref: DN437427

Dear Sirs,

Contract for the provision of insurance brokerage and associated support services by Willis Ltd as the Supplier to the Department for International Trade as Contracting Authority pursuant to the Insurance Services II Framework Agreement (RM3731) between the Minister for the Cabinet Office acting through Crown Commercial Service as the Authority (1) and the Supplier (2).

1. We refer to the above Insurance Services II Framework Agreement (the "Framework Agreement"). For the purposes of this Letter of Appointment:
 - capitalised terms and expressions used in this Letter of Appointment have the same meanings given to them in or pursuant to Clause 1.1 of the Call Off Terms attached to this Letter of Appointment unless the context otherwise requires;
 - where capitalised terms and expressions used in this Letter of Appointment or the Call Off Terms are not defined in the Call Off Terms attached to this Letter of Appointment then they shall have the same meanings given to them in or pursuant to the Framework Agreement;
 - references to Appendix 1 are references to the appendices to this Letter of Appointment; and
 - the Appendix 1 shall form part of this Letter of Appointment.
2. This Letter of Appointment constitutes an Order issued in accordance with paragraph 7 of Schedule 5 (Call Off Procedure) Framework Agreement. The Supplier in their capacity as a Broker agrees to supply the Contract Services specified in Appendix 1 in accordance with the terms of this Order and the Call Off Terms annexed hereto for the Call Off Contract Period.
3. The Call Off Commencement Date shall be 24/09/2019.
4. The Call Off Expiry Date shall be 31/01/2021.

5. The Supplier's Representative with overall responsibility for the supply of the Contract Services and for the purposes of this Call Off Contract is [REDACTED]
6. The Contracting Authority's Representative for the purpose of this Call Off Contract is [REDACTED] and any Disputes shall be escalated in accordance with Clause 23.2 of the Call Off Terms.
7. The Client confirms that the applicable law for this contract shall be the law of England & Wales. Further, this Letter of Appointment and the attached Call Off Terms shall be construed as closely to the intention of the original wording as the chosen law so permits.
8. The Supplier shall:
 - i. supply the Contract Services to the Contracting Authority in accordance with the provisions of the Call Off Contract;
 - ii. comply with all reasonable instructions given to the Supplier and its Staff by the Contracting Authority in relation to the provision of the Contract Services;
 - iii. immediately report to the Contracting Authority's Representative any matters which involve or could potentially involve a conflict of interest;
 - iv. 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 Contracting Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract;
 - v. co-operate with the Contracting Authority and the Contracting Authority's other professional advisers in relation to the Contract Services as required by the Contracting Authority; and
 - vi. comply with the Contracting Authority's internal policies in each case as notified to the Supplier in writing by the Contracting Authority and procedures and Government and FCA codes and practices in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) and in each case notified to the Supplier in writing by the Contracting Authority. Notwithstanding the above, the Supplier shall comply with the relevant principles of any Contracting Authority policy requirements which are notified to the Supplier by the Contracting Authority (a) to the extent that these requirements are reasonable, proportionate and relevant to the performance of this Call Off Contract and (b) in accordance with and subject to the Supplier's duty to exercise reasonable skill and care in the performance of this Call Off Contract.
9. The Supplier shall not:
 - i. knowingly act at any time during the term of this Call Off Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Contracting Authority shall thereby exist in relation to the Contract Services;
 - ii. incur any expenditure which would result in any estimated figure for any element of the Contract Services being exceeded without approval in writing by the Contracting Authority; and
 - iii. engage in any conduct which in the reasonable opinion of the Contracting Authority is prejudicial to the Contracting Authority.
10. Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises.

11. No variation of this Call Off Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
12. The Supplier shall not do anything or permit to cause anything to be done, which may embarrass the Contracting Authority, damage the reputation of the Contracting Authority or bring the Contracting Authority into disrepute.
13. For the purposes of the definition of Restricted Countries in Clause 1 of this Call Off Contract, the Contracting Authority confirms that:

- i. any country which is inside the European Economic Area;

- ii. any country which is determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;

- iii. United States of America or India

are not Restricted Countries.

14. For the purposes of this Call Off Contract (including but not limited to Clause 22 of the Call Off Terms), the address of each Party is:

- for the Contracting Authority:

Department for International Trade,
3 Whitehall Place,
London,
SW1A 2AW

For the attention of: [REDACTED]
Email: [REDACTED]

- for the Supplier:

51 Lime Street,
London
EC3M 7DQ

For the attention of: [REDACTED]
Email: [REDACTED]

BY SIGNING AND RETURNING THIS LETTER OF APPOINTMENT (which may be done by electronic means) the Supplier agrees to enter a Call Off Contract with the Contracting Authority to provide the Contract Services.

The Parties hereby acknowledge and agree that they have read the Letter of Appointment and the Call Off Terms and by signing below agree to be bound by this Call Off Contract.

Please sign and return the attached duplicate of this Letter of Appointment with the acknowledgement signed by an authorised representative of the Supplier.

Yours faithfully

For and on behalf of the Department for International Trade
as an authorised signatory of the Contracting Authority

For and on behalf of the Authority:

Name and Title	[Redacted]
Signature	[Redacted]
Date	[Redacted]

For and on behalf of the Supplier:

Name and Title	[Redacted]
Signature	[Redacted]
Date	[Redacted]

Appendix 1

The services required are detailed below. Services shall be charged on a [REDACTED] and the total contract value shall not exceed £10,000 (excl. VAT).

Activity	Timeframe
<ul style="list-style-type: none"> Gain an understanding of the project's scope through document review and discussion with the DIT project team (including relevant advisers as appropriate). Review the Insurability or otherwise of project risks and advise on application of relevant guidance on insurance matters. Identify required insurances policy scope and viability of these in prevailing insurance market conditions. Assess appropriate limits of indemnity/liability and basis of settlement relative to project insurable risk exposures. 	Prior to issue of tender (w/c 24 th September 2019)
<ul style="list-style-type: none"> Advice on available limit of indemnity/liability structures in prevailing Insurance market conditions. Assess appropriate numbers of reinstatements applicable if aggregate limits of indemnity/liability. 	Prior to issue of tender (w/c 24 th September 2019)
<ul style="list-style-type: none"> Draft responses to insurance related clarification questions at SQ & ITT Stages. 	During tender (as required)
<ul style="list-style-type: none"> Read and evaluate ITT returns for the procurement, comment on issues of compliance and non-compliance with insurance provisions / requirement. Advise DIT on the residual insurable risks and actions DIT could take to mitigate these insurable risks – note that this may include drafting clarification requests for applicants or helping DIT to prepare responses to clarification questions raised by applicants. 	Post Tender - Late 2019 [REDACTED]
<ul style="list-style-type: none"> At contract award undertake due diligence that insurance has been placed in accordance with project requirements. 	Post Tender - Early 2020 [REDACTED]

Part 2 – Call Off Terms

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Call Off Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

"Acquired Rights Directive"	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Auditor"	means: <ul style="list-style-type: none">a) the Contracting Authority's internal and external auditors;b) the Contracting Authority's statutory or regulatory auditors;c) the Comptroller and Auditor General and their staffd) HM Treasury or the Cabinet Officee) any party formally appointed by the Contracting Authority to carry out audit or similar review functions; and successors or assigns of any of the above;
"Authority"	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
"Broker Fee"	has the meaning set out in paragraph 3.7.2 of Framework Schedule 2 Services and Key Performance Indicators Part B - Services (Lot 2);
"Call Off Commencement Date"	means the date of commencement of this Call Off Contract set out in paragraph 3 of the Letter of Appointment;
"Call Off Agreement"	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Contract Services made between a Contracting Authority and a Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
"Call Off Commencement Date"	means the date of commencement of this Call Off Contract set out in paragraph 3 of the Letter of Appointment;

"Call Off Contract"		means this contract between the Contracting Authority and the Supplier (entered into pursuant to the provisions of the Framework Agreement) and consisting of the Letter of Appointment, these Call Off Terms (save to the extent varied by the Letter of Appointment) and any other documents referred to in either of them;
"Call Off Contract Charge"		means the Broker Fee payable to the Supplier by the Contracting Authority under the terms of this Call Off Contract for the full and proper performance by the Supplier of the Contract Services;
"Call Off Contract Period"		means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date;
"Call Off Expiry Date"		means the date set out in paragraph 4 of the Letter of Appointment or if the Call Off Contract is terminated before this date, the earlier date of termination of this Call Off Contract;
"Call Off Terms"		means these terms and conditions entered into (excluding the Letter of Appointment) in respect of the provision of the Contract Services;
"Change of Control"		means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Confidential Information"		means the Contracting Authority's Confidential Information and/or the Supplier's Confidential Information as the context specifies;
"Contingent Commissions"		means insurer payments to a Broker that are based on volume, profitability or value of business placed with the insurer. This also includes overrides and incentives;
"Contracting Authority"		means the Contracting Authority that issues the Letter of Appointment;
"Contracting Authority's Confidential Information"		means all Contracting Authority's Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Contracting Authority, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
"Contracting Authority's Personal Data"		means the Personal Data supplied by the Contracting Authority to the Supplier and, for the purposes of or in connection with this Call Off Contract;
"Contracting Authority's Premises"		means premises owned, controlled or occupied by the Contracting Authority which are made available for use by the Supplier or its Sub-Contractors for provision of the Contract Services (or any of them);
"Contracting Authority's Representative"		means the representative of the Contracting Authority appointed by the Contracting Authority from time to time in relation to this Call Off Contract and notified to the

		Supplier;
"Contract Services"		means the services to be supplied by the Supplier to the Contracting Authority as set out in Appendix 1 to the Letter of Appointment;
"Control"		means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
"Data Subject"		shall have the same meaning as set out in the Data Protection Act 1998;
"Data Protection Legislation" or "DPA"		means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any relevant Government department in relation to such legislation;
"Default"		means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default), 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 Contracting Authority;
"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 Contract Services, or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Procedure"	Resolution	means the dispute resolution procedure set out in Call Off Schedule 1 (Dispute Resolution Procedure);
"EIR"		means the Environmental Information Regulations 2004;
"Employee Liabilities"		means all claims actions, proceedings, orders, demands, complains, investigations 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: <ul style="list-style-type: none"> (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments, (b) unlawful deduction of wages; (c) unfair, wrongful or constructive dismissal compensation;

(d) compensation claims for sex, race or disability discrimination or discrimination on the grounds of religion, belief or sexual orientation or claims for equal pay;

(e) compensation for less favourable treatment of part-time workers;

(f) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Contracting Authority 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;

(g) claims whether in tort, contract or statute or otherwise;

(h) any investigation by the Equalities and Human Rights Commission, or the Commission for Racial Equality 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;
"Financial Conduct Authority or "FCA)"	means the Financial Conduct Authority an independent body corporate with statutory powers derived from the Financial Services and Markets Act 2000, and its successors in title;
"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;
"Framework Agreement"	means the Framework Agreement between the Authority and the Supplier referred to in the Letter of Appointment;
"Framework Prices"	means the prices contained in Framework Schedule 3 (Framework Prices and Charging Structure);
"Framework Supplier"	means a supplier (including the Supplier) appointed under the Framework Agreement;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

"Insurance Policy"	means a policy of insurance arising in connection with the provision of the Contract Services;
"Key Sub-Contract"	means each Sub-Contract with a Key Sub-Contractor;
"Key Sub-Contractor"	means any Sub-Contractor: <ul style="list-style-type: none"> a) listed in Framework Schedule 7 (Key Sub-Contractors); and b) which, in the opinion of the Authority and the Contracting Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Contract Services; and/or c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
"Letter of Appointment"	means the letter from the Contracting Authority to the Supplier dated 22/07/2019 which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Contract Services to be supplied;
"Lot 1 Charges"	means any of the following charges payable in respect of an Insurance Policy: <ul style="list-style-type: none"> a) Premium; b) IPT; c) Insurance Services Brokerage (if applicable); and d) the Management Charge.
"Order"	means the order for the provision of the Contract Services placed by the Contracting Authority with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;
"Party"	means the Supplier or the Contracting Authority 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;

"Prohibited Act"	<p>means any of the following:</p> <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Authority and/or the Authority or other Contracting Body or any other public body a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; c) committing any offence: <ul style="list-style-type: none"> i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act) ii) under legislation or common law concerning fraudulent acts; or iii) defrauding, attempting to defraud or conspiring to defraud the Contracting Authority; or <p>any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
"Regulations"	<p>means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;</p>
"Relevant Requirements"	<p>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;</p>
"Relevant Transfer"	<p>means a transfer of employment to which the Employment Regulations applies;</p>
"Relevant Transfer Date"	<p>means the date upon which the Relevant Transfer takes place;</p>
"Restricted Country"	<p>means any country which:</p> <ul style="list-style-type: none"> a) is outside the European Economic Area; b) is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "Restricted Countries") including but not limited to the decisions made by the European Commission which may be accessed at http://ec.europa.eu/justice/data-protection/international-transfers/adequacy/Index_en.htm; and c) has not been confirmed by the Contracting

Authority as a non-Restricted Country either in the Letter of Appointment or in writing from time-to-time.

"Sub-Contract"		means any contract or agreement (or proposed contract or agreement), other than this Call Off Contract or the Framework Agreement, pursuant to which a third party: provides the Services (or any part of them); provides facilities or services necessary for the provision of the Services (or any part of them); and/or is responsible for the management, direction or control of the provision of the Services (or any part of them);
"Sub-Contractor"		means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Supplier's Information"	Confidential	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including all IPRs, together with information derived from the foregoing, and that in any case is clearly designated as being confidential;
"Supplier"		means the person, firm or company with whom the Contracting Authority enters into this Call Off Contract with as identified in the Letter of Appointment;
"Supplier Personnel"		means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Call Off Contract;
"Supplier's Representative"		means the representative of the Supplier appointed by the Supplier from time to time in relation to this Call Off Contract and notified to the Contracting Authority;
"Supplier's Staff"		means all persons employed by the Supplier and/or any Sub-Contractor to perform the Supplier's obligations under this Call Off Contract together with the Supplier's and/or any Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors used in the performance of the Supplier's obligations under this Call Off Contract;
"Termination Notice"		means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Call Off Contract on a specified date and setting out the grounds for termination;
"Transferring Contracting Authority Employees"		those employees of the Contracting Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
"Valid Invoice"		means an invoice issued by the Supplier to the

"Working Day"

Contracting Authority in accordance with Clause 3.2; and

means any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 Interpretation

1.2.1 The interpretation and construction of this Call Off Contract shall be subject to the following provisions:

- 1.2.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.1.2 words importing the masculine include the feminine and the neuter;
- 1.2.1.3 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.2.1.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.1.5 the Appendices form part of these Call Off Terms and shall have effect as if set out in full in the body of these Call Off Terms and any reference to these Call Off Terms includes the Appendices;
- 1.2.1.6 references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of this Call Off Contract);
- 1.2.1.7 headings are included in this Call Off Contract for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract;
- 1.2.1.8 references to "Clauses" and the "Annex" are, unless otherwise provided, references to the clauses of and the Annex to these Call Off Terms and references to "paragraphs" are, unless otherwise provided, references to paragraphs of the Annex in which the references are made;
- 1.2.1.9 terms or expressions contained in this Call Off Contract which are capitalised but which do not have an interpretation in Clause 1.1 shall be interpreted in accordance with the Framework Agreement;
- 1.2.1.10 a reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and

1.2.1.11 in the event of and only to the extent of any conflict between the Letter of Appointment, these Call Off Terms, any other document referred to in the Call Off Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Framework Agreement;
- (b) this Call Off Contract; and
- (c) any other document in this Call Off Contract (not including the Framework Agreement).

2. SUPPLY OF CONTRACT SERVICES

2.1 Variation of Contract Services

2.1.1 The Contracting Authority may request a variation to the Contract Services at any time provided that such variation does not amount to a material change to the Order.

2.1.2 Any request by the Contracting Authority for a variation to the Contract Services shall be by written notice to the Supplier:

2.1.2.1 giving sufficient information for the Supplier to assess the extent of the variation and any additional costs that may be incurred; and

2.1.2.2 specifying the timeframe within which the Supplier must respond to the request, which shall be reasonable,

and the Supplier shall respond to such request within such timeframe.

2.1.3 If the Contracting Authority and the Supplier agree to vary this Call Off Contract, 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.

2.1.4 In the event that the Supplier and the Contracting Authority are unable to agree any change to the Call Off Contract Charges in connection with any requested variation to the Contract Services, the Contracting Authority may agree that the Supplier should continue to perform its obligations under this Call Off Contract without the variation or may terminate this Call Off Contract in accordance with Clause 8.5.1.

3. CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING

3.1 Call Off Contract Charges, IPT and VAT

3.1.1 In consideration of the Supplier's performance of its obligations under this Call Off Contract, the Contracting Authority shall pay the Call Off Contract Charges in accordance with Clause 3.2 (Invoicing Procedure).

3.1.2 The Contracting Authority shall, in addition to the Call Off Contract Charges, pay any Lot 1 Charges upon receipt of a Valid Invoice issued in accordance with Clause 3.2.6.

3.1.3 The Call Off Contract Charges shall include all costs and expenses relating to the Contract Services provided to the Contracting Authority and/or the Supplier's

performance of its obligations under this Call Off Contract and no further amounts shall be payable by a Contracting Authority to the Supplier in respect of such performance, including in respect of matters such as:

- 3.1.3.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
- 3.1.3.2 any amount for any services provided or costs incurred by the Supplier prior to the commencement date of this Call Off Contract.
- 3.1.4 **The Contract Charges shall only be varied:**
 - 3.1.4.1 due to a specific change in Law in relation to which the Parties agree that a change is required to all or part of the Contract Charges;
 - 3.1.4.2 where all or part of the Contract Charges are reviewed and reduced in accordance with clause 2.1.3 and clause 3.1.5 of this Call Off Contract.
- 3.1.5 If at any time before the Contract Services have been delivered in full the Supplier reduces its Framework Prices for any Contract Services which are provided under the Framework Agreement in accordance with the terms of the Framework Agreement with the result that the Framework Prices are lower than the Call Off Contract Charges, the Call Off Contract Charges for the Contract Services shall automatically be reduced so as to be equal to the Framework Prices.
- 3.1.6 The Supplier shall indemnify the Contracting Authority on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Contracting Authority at any time 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 shall be paid 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 Contracting Authority.

3.2 Invoicing Procedure

- 3.2.1 The Contracting Authority shall pay all sums properly due and payable to the Supplier in respect of the Call Off Contract Charges in cleared funds by no later than thirty (30) calendar days after receipt of a Valid Invoice.
- 3.2.2 The Supplier shall ensure that all invoices submitted to the Contracting Authority for Contract Services are inclusive of the Management Charge payable to the Authority in respect of the Contract Services.
- 3.2.3 The Supplier shall ensure that each invoice for the Call Off Contract Charges (whether submitted electronically or in a paper form, as the Contracting Authority may specify):
 - 3.2.3.1 contains:
 - (a) all appropriate references, including the unique Purchase Order reference number and

- (b) a detailed breakdown of the Contract Services provided or to be provided; and
- 3.2.3.2 shows separately any credits due to the Contracting Authority; and
- 3.2.3.3 it is supported by any other documentation reasonably required by the Contracting Authority to substantiate that the invoice has been submitted in accordance with this Clause 3.2.
- 3.2.4 Where Lot 1 Charges are properly due and payable to a Framework Supplier from Lot 1, the Contracting Authority shall be liable for the payment of the Lot 1 Charges to the Supplier. Upon receipt of the Lot 1 Charges, the Supplier shall then pay the Lot 1 Charges to the Framework Supplier from Lot 1 as per their normal business terms.
- 3.2.5 The Lot 1 Charges shall only become payable, and the liability of the Contracting Authority shall only arise, upon receipt by the Contracting Authority of a Valid Invoice or where the terms of the Insurance Policy state otherwise.
- 3.2.6 The Supplier shall ensure that each invoice submitted to it from a Framework Supplier from Lot 1 for any Lot 1 Charges (whether submitted electronically or in a paper form, as the Contracting Authority may specify):
 - 3.2.6.1 contains:
 - (a) all appropriate references, including the unique Purchase Order reference number and
 - (b) a detailed breakdown of the Contract Services provided or to be provided; and
 - 3.2.6.2 shows separately:
 - (a) any credits due to the Contracting Authority (which may include the Management Charge); and
 - (b) the IPT added to the due and payable Premium;
 - (c) Insurance Services Brokerage.
 - 3.2.6.3 It is supported by any other documentation reasonably required by the Contracting Authority to substantiate that the invoice is a Valid Invoice.
- 3.2.7 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 a valid court order requiring an amount equal to such deduction to be paid by the Contracting Authority to the Supplier.
- 3.2.8 The Supplier shall not suspend the supply of the Contract Services unless the Supplier is entitled to terminate this Call Off Contract under Clause 9 on the grounds of the Contracting Authority's failure to pay undisputed sums of money. Interest shall be payable by the Contracting Authority in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any undisputed sums of money properly invoiced by the Supplier in respect of the Contract Services.

- 3.2.9 All payments due shall be made in cleared funds to such bank or building society account as the recipient Party may from time to time direct in writing.

3.3 Recovery of Sums Due

- 3.3.1 Wherever under this Call Off Contract any sum of money excluding Premium is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Contracting Authority in respect of any breach of this Call Off Contract), the Contracting Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Call Off Contract.
- 3.3.2 Any overpayment by either Party, whether of the Call Off Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

4. LIABILITY AND INSURANCE

4.1 Liability

- 4.1.1 Neither Party excludes or limits its liability for:

4.1.1.1 death or personal injury; or

4.1.1.2 fraud or fraudulent misrepresentation by it or its employees.

- 4.1.2 No individual nor any service company of the Supplier employing that individual shall have any personal liability to the Contracting Authority for the Contract Services supplied by that individual on behalf of the Supplier and the Contracting Authority shall not bring any claim under this Call Off Contract against that individual or such service company in respect of the Contract Services save in the case of fraud or any liability for death or personal injury.

- 4.1.3 Subject to the limits stated in Clause 4.1.8 below, subject to Clause 4.1.4 and without prejudice to the provisions of 4.1.5 below the Supplier shall fully indemnify and keep indemnified the Contracting Authority on demand in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with, the supply, purported supply or late supply of the Contract Services or the performance or non-performance by the Supplier of its obligations under the Framework Agreement and the Contracting Authority's financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused by any act or omission of the Supplier.

- 4.1.4 Subject to Clauses 4.1.1 and 4.1.5, in no event shall either Party be liable to the other for any:

4.1.4.1 loss of profits;

4.1.4.2 loss of business;

4.1.4.3 loss of revenue;

4.1.4.4 loss of or damage to goodwill;

4.1.4.5 loss of savings (whether anticipated or otherwise); and/or

4.1.4.6 any indirect, special or consequential loss or damage.

- 4.1.5 The Supplier shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Contracting Authority) be recoverable by the Contracting Authority:
- 4.1.5.1 the additional operational and/or administrative costs and expenses arising from any material Default; and
 - 4.1.5.2 the cost of procuring, implementing and operating any alternative or replacement services to the Contract Services.
 - 4.1.5.3 any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.
- 4.1.6 No enquiry, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Contracting Authority to any document or information provided by the Supplier in its provision of the Contract Services, and no failure of the Contracting Authority to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to exercise all the obligations of a professional Supplier employed in a Contracting Authority/Supplier relationship
- 4.1.7 Save as otherwise expressly provided, the obligations of the Contracting Authority under this Call Off Contract are obligations of the Contracting Authority in its capacity as a contracting counterparty and nothing in this Call Off Contract shall operate as an obligation upon, or in any other way fetter or constrain the Contracting Authority in any other capacity, nor shall the exercise by the Contracting Authority of its duties and powers in any other capacity lead to any liability under this Call Off Contract (howsoever arising) on the part of the Contracting Authority to the Supplier.
- 4.1.8 Subject always to Clause 4.1.1 and Clause 4.1.4, the aggregate liability (whether expressed as an indemnity or otherwise) of the Supplier to the Contracting Authority for each year of this Contract:
- 4.1.8.1 for all defaults resulting in direct loss or damage to the property of the Contracting Authority shall be subject to a limit of £1 million (One Million Pounds) unless otherwise stipulated by the Contracting Authority in the Letter of Appointment following a further competition;
 - 4.1.8.2 In respect of all other defaults, claims, losses or damages whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the greater of the sum of £5 million (five Million Pounds) or a sum equivalent to One Hundred and Twenty-Five Per Cent (125%) of the Call Off Contract Charges paid or payable to the Supplier in the relevant year of this Call Off Contract calculated at the date of the event giving rise to the liability (estimated for the full year if the event occurs in the first year of this Call Off Contract) unless a different aggregate limit or limits is otherwise stipulated by the Contracting Authority in the Letter of Appointment following a further competition.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 All Intellectual Property Rights in the output from the Contract Services shall vest in the Supplier who shall grant to the Contracting Authority a non-exclusive, royalty-free, unlimited, irrevocable licence to use and exploit the same.

- 5.2 Subject to Clause 5.1 and save as expressly granted elsewhere under the Call Off Contract, the Contracting Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors and the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contracting Authority or its licensors.
- 5.3 The Supplier shall on demand fully indemnify and keep fully indemnified and hold the Contracting Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contracting Authority may suffer or incur as a result of any claim that the performance by the Supplier of the Contract Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "Claim").
- 5.4 If a Claim arises, the Contracting Authority shall notify the Supplier in writing of the Claim and the Contracting Authority shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 5.4.1 shall consult the Contracting Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 5.4.2 shall take due and proper account of the interests of the Contracting Authority;
 - 5.4.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Contracting Authority into disrepute; and
 - 5.4.4 shall not settle or compromise the Claim without the prior written approval of the Contracting Authority (not to be unreasonably withheld or delayed).
- 5.5 Neither Party shall have the right to use any of the other Party's names, logos or trademarks without the prior written approval of the other Party.
- 6. PROTECTION OF PERSONAL DATA**
- 6.1 With respect to the Parties' rights and obligations under the Call Off Contract, the Parties agree that they are joint Data Controllers in relation to the Contracting Authority's Personal Data.
- 6.2 Where the Supplier processes the Contracting Authority's Personal Data, the Supplier shall:
- 6.2.1 Process the Contracting Authority's Personal Data only in accordance with instructions from the Contracting Authority (which may be specific instructions or instructions of a general nature as set out in this Call Off Contract or as otherwise notified by the Contracting Authority to the Supplier during the term of this Call Off Contract);
 - 6.2.2 Process the Contracting Authority's Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any regulatory body;
 - 6.2.3 implement appropriate technical and organisational measures to protect the Contracting Authority's Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Contracting Authority's Personal Data and having regard to the nature of the Contracting Authority's Personal Data which is to be protected;
 - 6.2.4 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:

- (a) are aware of and comply with the Supplier's duties under this Clause 6.2.4;
 - (b) 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
 - (c) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- 6.2.5 obtain the Contracting Authority's prior written approval in order to transfer all or any of the Contracting Authority's Personal Data to any Sub-Contractors for the provision of the Contract Services;
- 6.2.6 notify the Contracting Authority within five (5) Working Days if the Supplier receives:
- (a) a request from a Data Subject to have access to the Contracting Authority's Personal Data relating to that person; or
 - (b) any other complaint or request relating to the Contracting Authority's obligations under the Data Protection Legislation;
- 6.2.7 provide the Contracting Authority with full cooperation and assistance (within the timescales reasonably required by the Contracting Authority) in relation to any complaint or request made (as referred to in Clause 6.2.6 including by promptly providing:
- (a) the Contracting Authority with full details of the complaint or request;
 - (b) 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; ;
 - (c) the Contracting Authority, on request by the Contracting Authority, with any Personal Data it holds in relation to a Data Subject; and
- 6.2.8 if requested by the Contracting Authority, 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 6.2.8 and provide to the Contracting Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals; and
- 6.2.9 permit or procure permission for the Contracting Authority or the Contracting Authority's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents and Sub-Contractors) and comply with all reasonable requests or directions by the Contracting Authority to enable the Contracting Authority to verify and/or procure that the Supplier is in full compliance with its obligations under this Call Off Contract;
- 6.3 Subject to Clause 6.4 the Supplier shall not Process or otherwise transfer any Personal Data in or to any Restricted Country.

- 6.4 The Supplier shall only be permitted to Process or otherwise transfer any Personal Data in or to a Restricted Country where they agree to enter into a data transfer agreement with the Contracting Authority on such terms as may be required by the Contracting Authority.
- 6.5 Where the Supplier enters into a data transfer agreement, the Supplier shall:
- 6.5.1 procure 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:
- 6.5.1.1 a direct data processing agreement with the Contracting Authority on such terms as may be required by the Contracting Authority; or
- 6.5.1.2 a data processing agreement with the Supplier on such terms as may be required by the Contracting Authority.
- 6.6 The Supplier shall comply at all times with the Data Protection Legislation 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 its applicable obligations under the Data Protection Legislation.
- 6.7 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Contracting Authority's Personal Data that the Contracting Authority may be irreparably harmed (including harm to its reputation). In such circumstances, the Contracting Authority may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 6.8 In the event that through any failure by the Supplier to comply with its obligations under this Call Off Contract, Contracting Authority's Personal Data is transmitted or Processed in connection with this Call Off Contract is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Contracting Authority in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Supplier.
- 6.9 **Confidentiality**
- 6.9.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in the Call Off Contract, each Party shall:
- 6.9.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;
- 6.9.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent, excluding the need for the Supplier to obtain an insurance quote from any Supplier on Lot 1.
- 6.9.1.3 not use or exploit the other Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and
- 6.9.1.4 immediately notify the other Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the other Party's Confidential Information.
- 6.9.2 Clause 6.2.1 shall not apply to the extent that:
- 6.9.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for

- disclosure under the FOIA, Code of Practice on Access to Government Information or the EIRs; or
- 6.9.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; or
 - 6.9.2.3 such information was obtained from a third party without obligation of confidentiality; or
 - 6.9.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call Off Contract; or
 - 6.9.2.5 It is independently developed without access to the other Party's Confidential Information.
- 6.9.3 The Supplier may only disclose the Contracting Authority's Confidential Information to those members of the Supplier's Staff who are directly involved in the provision of the Contract Services and who need to know the information, and shall ensure that such individuals are aware of and shall comply with these obligations as to confidentiality.
- 6.9.4 The Supplier shall not, and shall procure that the Supplier's Staff do not, use any of the Contracting Authority's Confidential Information received otherwise than for the purposes of this Call Off Contract.
- 6.9.5 At the written request of the Contracting Authority, the Supplier shall sign a confidentiality undertaking prior to commencing any work in accordance with this Call Off Contract.
- 6.9.6 Nothing in this Call Off Contract shall prevent the Contracting Authority from disclosing the Supplier's Confidential Information (including the Management Information obtained pursuant to clause 27.1 of the Framework Agreement):
- 6.9.6.1 to any Crown body or any other Contracting Authorities to the Framework Agreement on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any other Contracting Authority save as required by Law;
 - 6.9.6.2 to any consultant, contractor or other person engaged by the Contracting Authority for any purpose relating to or connected with this Call Off Contract or the Framework Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an Office of Government Commerce gateway review or any additional assurance programme;
 - 6.9.6.3 for the purpose of the examination and certification of the Contracting Authority's accounts; or
 - 6.9.6.4 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 has used its resources.
- 6.9.7 The Contracting Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant

to Clause 6.9.6 is made aware of the Contracting Authority's obligations of confidentiality.

- 6.9.8 Nothing in this Clause 6 shall prevent either Party 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 other Party's Confidential Information or an infringement of IPR.
- 6.9.9 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Call Off Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- 6.9.10 The Supplier shall, at all times during and after the performance of this Call Off Contract, indemnify the Contracting Authority and keep the Contracting Authority fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Contracting Authority arising from any breach of the Supplier's obligations under this Clause 6 except and to the extent that such liabilities have resulted directly from the Contracting Authority's instructions.
- 6.9.11 In the event that the Supplier fails to comply with its obligations in this Clause 6, the Contracting Authority reserves the right to terminate this Call Off Contract for material Default.

6.10 Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989

- 6.10.1 The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:
 - 6.10.1.1 the Official Secrets Acts 1911 to 1989; and
 - 6.10.1.2 section 182 of the Finance Act 1989.

6.11 Freedom of Information

- 6.11.1 The Supplier acknowledges that the Contracting Authority is subject to the requirements of the FOIA and the EIRs and shall assist and cooperate with the Contracting Authority to enable the Contracting Authority to comply with its Information disclosure obligations.
- 6.11.2 The Supplier shall and shall procure that its Sub-Contractors shall:
 - 6.11.2.1 transfer to the Contracting Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 6.11.2.2 provide the Contracting Authority with a copy of all Information relating to a Request for Information 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 specify) of the Contracting Authority's request; and
 - 6.11.2.3 provide all necessary assistance as reasonably requested by the Contracting Authority to enable the Contracting Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.

- 6.11.3 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) for the purpose of 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.
- 6.11.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Contracting Authority.
- 6.11.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 6) the Contracting Authority may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the EIRs to disclose information concerning the Supplier or the Contract Services:
- 6.11.5.1 in certain circumstances without consulting the Supplier; or
 - 6.11.5.2 following consultation with the Supplier and having taken the Supplier's views into account,
 - 6.11.5.3 provided always that where Clause 6.11.6 applies the Contracting Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 6.11.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of the Call Off Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Contracting Authority on reasonable notice to inspect such records as requested from time to time.
- 6.11.7 The Supplier acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Contracting Authority may be obliged to disclose it in accordance with Clause 6.11.5.

6.12 Transparency

- 6.12.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Call Off Contract is not Confidential Information. The Contracting Authority shall be responsible for determining in its absolute discretion whether any of the content of the Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 6.12.2 Notwithstanding any other term of the Call Off Contract, the Supplier hereby gives consent to the Contracting Authority to publish the Call Off Contract to the general public in its entirety (subject only to redaction of any information which is exempt from disclosure in accordance with the provisions of the FOIA), including any changes to the Call Off Contract agreed from time to time.

- 6.12.3 The Contracting Authority may consult with the Supplier to inform its decision regarding any redactions but the Contracting Authority shall have the final decision in its absolute discretion.
- 6.12.4 The Supplier shall assist and cooperate with the Contracting Authority to enable the Contracting Authority to publish the Call Off Contract.

7. REPRESENTATIONS AND WARRANTIES

7.1 Each Party warrants that:

- 7.1.1 It has full capacity and authority to enter into and to perform this Call Off Contract;
- 7.1.2 this Call Off Contract is executed by its duly authorised representative;
- 7.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Call Off Contract; and
- 7.1.4 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).

7.2 The Supplier represents and warrants that:

- 7.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 7.2.2 it has all necessary consents (including, where its procedures so require, the consent of its parent company) licences authorisations permissions (statutory, regulatory, contractual or otherwise) to enter into this Call Off Contract;
- 7.2.3 In entering the Call Off Contract it has not committed any fraud;
- 7.2.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 7.2.5 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender 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 and it will advise the Contracting Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 7.2.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Call Off Contract;
- 7.2.7 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Call Off Contract;

- 7.2.8 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfill its obligations under the Call Off Contract;
- 7.2.9 no proceedings or other steps have been taken and not discharged or dismissed (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;
- 7.2.10 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or Trojans, spyware or other malware into the computing environment (including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Contracting Authority; and
- 7.2.11 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Call Off Contract and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Contract Services.
- 7.2.12 it has read and fully understood the Letter of Appointment and these Call Off Terms and is capable of performing the Contract Services in all respects in accordance with the Call Off Contract;
- 7.2.13 the Supplier and each of its Key Sub-Contractors and Sub-Contractors has all Staff, equipment and experience necessary for the proper performance of the Contract Services; and
- 7.2.14 it will at all times:
- 7.2.14.1 perform its obligations under the Call Off Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
 - 7.2.14.2 comply with all the KPIs;
 - 7.2.14.3 carry out the Contract Services within the timeframe agreed with the Contracting Authority; and
 - 7.2.14.4 ensure to the satisfaction of the Contracting Authority that the Contract Services are provided and carried out by such appropriately qualified, skilled and experienced Suppliers and/or other Staff as shall be necessary for the proper performance of the Contract Services.
- 7.3 The Supplier shall immediately notify the Contracting Authority in writing:
- 7.3.1 of any material detrimental change in the financial standing and/or credit rating of the Supplier;
 - 7.3.2 if the Supplier undergoes a Change of Control; and
 - 7.3.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.
- 7.4 For the avoidance of doubt, the fact that any provision within the Call Off Contract is expressed as a warranty shall not preclude any right of termination the Contracting Authority

would have in respect of breach of that provision by the Supplier if that provision had not been so expressed.

8. CUSTOMER TERMINATION RIGHTS

8.1 Termination on Insolvency

8.1.1 The Contracting Authority may terminate this Call Off Contract with immediate effect by issuing a Termination Notice to the Supplier if:

- 8.1.1.1** 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, the Supplier's creditors; or
- 8.1.1.2** a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Supplier be wound up or a resolution for the winding-up of the Supplier is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- 8.1.1.3** a petition is presented for the winding-up of the Supplier (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 in respect of the Supplier pursuant to section 98 of the Insolvency Act 1986; or
- 8.1.1.4** a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Supplier's business or assets; or
- 8.1.1.5** a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within ten (10) Working Days;
- 8.1.1.6** an application is made in respect of the Supplier either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 8.1.1.7** if the Supplier is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 8.1.1.8** the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- 8.1.1.9** in the reasonable opinion of the Contracting Authority, 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 Contract Services in accordance with the Call Off Contract; or
 - (b)** could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Contract Services in accordance with this Call Off Contract; or

- 8.1.1.10 the Supplier demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Supplier; or
- 8.1.1.11 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Supplier comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 8.1.1.12 the Supplier being an individual dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 8.1.1.13 where the Supplier is an individual or partnership, any event analogous to those listed in Clauses 8.1.1.1 to 8.1.1.11 (inclusive) occurs in relation to that individual or partnership;
- 8.1.1.14 any event analogous with those listed in Clauses 8.1.1.1 to 8.1.1.13 occurs under the law of any other jurisdiction.

8.2 Termination on Material Default

- 8.2.1 The Contracting Authority may terminate this Call Off Contract for material Default by issuing a Termination Notice to the Supplier where:
 - 8.2.1.1 the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Contracting Authority, capable of remedy; ;
 - 8.2.1.2 the Supplier commits a Default, including a material Default, which in the opinion of the Contracting Authority is remediable but has not remedied such Default to the satisfaction of the Contracting Authority with ten (10) Working Days or such other longer period as may be specified by the Contracting Authority after issue of a written notice to the Supplier specifying the material Default and requesting it to be remedied; and/or
 - 8.2.1.3 the Contracting Authority expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: Clause 6 (Confidentiality), Clause 7 (Representations and Warranties) and Clause 12 (Prevention of Fraud and Bribery).

8.3 Termination on Change of Control

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

8.3.1.2 where no notification has been made, the date that the Contracting Authority becomes aware that a Change of Control has occurred or is planned or is in contemplation,

but shall not be permitted to terminate where the Contracting Authority's written consent to the continuation of this Call Off Contract was granted prior to the Change of Control.

8.4 Termination in Relation to Financial Standing

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

8.4.1.1 adversely impacts on the Supplier's ability to supply the Contract Services under this Call Off Contract; or

8.4.1.2 could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Contract Services under this Call Off Contract.

8.5 Termination Without Cause

8.5.1 The Contracting Authority shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving written notice of at least three months'.

8.6 Termination in Relation to the Framework Agreement

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

8.7 Partial Termination

8.7.1 Where the Contracting Authority is entitled to terminate this Call Off Contract pursuant to this Clause 8, the Contracting Authority shall be entitled to terminate all or part of this Call Off Contract provided always that the parts of this Call Off Contract not terminated can operate effectively to deliver the intended purpose of this Call Off Contract or a part thereof.

8.8 Termination for loss of FCA Licence

8.8.1 The Contracting Authority may terminate this Call Off Contract with immediate effect by issuing a Termination Notice to the Supplier where the Supplier ceases to be licensed by the FCA to carry on regulated activities.

8.9 Termination for breach of Regulations

8.9.1 The Contracting Authority may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where Regulation 73(1) of the Public Contracts Regulations 2015 applies.

9. SUPPLIER TERMINATION RIGHTS

9.1 The Supplier may, by issuing a Termination Notice to the Contracting Authority, terminate this Call Off Contract if the Contracting Authority fails to pay an undisputed sum due to the Supplier under this Call Off Contract and the said undisputed sum due remains outstanding

for forty (40) Working Days (the "Undisputed Sums Time Period") after the receipt by the Contracting Authority of a written notice of non-payment from the Supplier specifying:

- 9.1.1 the Contracting Authority's failure to pay; and
- 9.1.2 the correct overdue and undisputed sum; and
- 9.1.3 the reasons why the undisputed sum is due; and
- 9.1.4 the requirement on the Contracting Authority 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).

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

10. CONSEQUENCES OF EXPIRY OR TERMINATION

- 10.1 Subject to Clause 10.2, where the Contracting Authority terminates this Call Off Contract pursuant to Clause 8 (Contracting Authority Termination Rights) and then makes other arrangements for the supply of this Call Off Contract Services:

- 10.1.1 the Contracting Authority may recover from the Supplier the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Contracting Authority in securing the Contract Services in accordance with the requirements of this Call Off Contract;

- 10.1.2 the Contracting Authority shall take all reasonable steps to mitigate such additional expenditure; and

- 10.1.3 no further payments shall be payable by the Contracting Authority to the Supplier until the Contracting Authority has established the final cost of making those other arrangements, whereupon the Contracting Authority shall be entitled to deduct an amount equal to the final cost of such other arrangements from the further payments then due to the Supplier.

- 10.2 Clause 10.1 shall not apply where the Contracting Authority terminates this Call Off Contract:

- 10.2.1 solely pursuant to Clause 8.3 or Clause 8.4; or

- 10.2.2 solely pursuant to Clause 8.6 if termination pursuant to Clause 8.6 occurs as a result of termination of the Framework Agreement pursuant to the provisions of clauses 33.1, 33.4, or 33.8 thereof.

- 10.3 On the termination of this Call Off Contract for any reason, the Supplier shall, at the request of the Contracting Authority and at the Supplier's cost:

- 10.3.1 immediately return to the Contracting Authority all Confidential Information and the Contracting Authority's Personal Data in its possession or in the possession or under the control of any permitted Key Sub-Contractors or Sub-Contractors, which was obtained or produced in the course of providing the Contract Services, except where the retention of Contracting Authority's Personal Data is required by Law and or the FCA;

- 10.3.2 promptly destroy all copies of the Contracting Authority Data and provide written confirmation to the Contracting Authority that the data has been destroyed,

- except where the retention of Contracting Authority's Personal Data is required by Law and or the FCA;
- 10.3.3 immediately deliver to the Contracting Authority in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property and IPR) issued or made available to the Supplier by the Contracting Authority in connection with this Call Off Contract provided to the Supplier;
 - 10.3.4 vacate, and procure that the Supplier's Staff vacate, any premises of the Contracting Authority occupied for the purposes of providing the Contract Services;
 - 10.3.5 return to the Contracting Authority any sums prepaid in respect of the Contract Services not provided by the Call Off Contract Expiry Date or termination (howsoever arising); and
 - 10.3.6 promptly provide all information concerning the provision of the Contract Services which may reasonably be requested by the Contracting Authority for the purposes of adequately understanding the manner in which the Contract Services have been provided or for the purpose of allowing the Contracting Authority or any replacement Supplier to conduct due diligence.
- 10.4 Without prejudice to any other right or remedy which the Contracting Authority may have, if any Contract Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of this Call Off Contract then the Contracting Authority may (whether or not any part of the Contract Services have been delivered) do any one or more of the following:
- 10.4.1 at the Contracting Authority's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the performance of the Contract Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Contracting Authority's instructions;
 - 10.4.2 without terminating this Call Off Contract, itself supply or procure the supply of all or part of the Contract Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Contracting Authority that the Supplier will once more be able to supply all or such part of the Contract Services in accordance with this Call Off Contract;
 - 10.4.3 without terminating the whole of this Call Off Contract, terminate this Call Off Contract in respect of part of the Contract Services only and thereafter itself supply or procure a third party to supply such part of the Contract Services; and/or
 - 10.4.4 charge the Supplier for, whereupon the Supplier shall on demand pay, any costs reasonably incurred by the Contracting Authority (including any reasonable administration costs) in respect of the supply of any part of the Contract Services by the Contracting Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Contract Services and provided that the Contracting Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Contract Services.
- 10.5 Save as otherwise expressly provided in this Call Off Contract:
- 10.5.1 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

10.5.2 termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Contracting Authority or the Supplier under the following Clauses: Clause 3 (Call Off Contract Charges, Payment and Invoicing); Clause 4 (Liability and Insurance); Clause 5 (Intellectual Property Rights); Clause 6 (Protection of Personal Data); Clause 6 (Confidentiality); Clause 6.10 (Official Secrets Act); Clause 6.11 (Freedom of Information); Clause 12 (Prevention of Fraud and Bribery); Clause 16 (Waiver and Cumulative Remedies); Clause 20 (Entire Agreement); Clause 21 (Third Party Rights); Clause 22 (Notices); Clause 23 (Dispute and Law); Clause 26 (Exit Management); Clause 20 of the Framework Agreement 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 termination or expiry of this Call Off Contract.

10.6 The Supplier shall fully indemnify the Contracting Authority against any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.

11. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

11.1 The Supplier shall not, and shall procure that its Key Sub-Contractors and/or Sub-Contractors shall not, make any press announcements or publicise this Call Off Contract in any way without the Contracting Authority's prior written approval and shall take reasonable steps to ensure that the Supplier's Staff and professional advisors comply with this Clause 11. Any such press announcements or publicity proposed under this Clause 11 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,

11.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Contracting Authority shall be entitled to publicise this Call Off Contract in accordance with any legal obligation upon the Contracting Authority including any examination of this Call Off Contract by the Auditors.

11.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Contracting Authority or bring the Contracting Authority into disrepute.

12. PREVENTION OF FRAUD AND BRIBERY

12.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Call Off Commencement Date:

12.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

12.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

12.2 The Supplier shall not during the Call Off Contract Period:

12.2.1 commit a Prohibited Act; and/or

12.2.2 do or suffer anything to be done which would cause the Contracting Authority or any of the Contracting Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

- 12.3 The Supplier shall during the Call Off Contract Period:
- 12.3.1 establish, maintain and enforce, and require that its Key Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 12.3.2 keep appropriate records of its compliance with its obligations under Clause 12.3.1 and make such records available to the Contracting Authority on request;
 - 12.3.3 if so required by the Contracting Authority, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Contracting Authority in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Contract Services in connection with this Call Off Contract are compliant with the relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Contracting Authority may reasonably request; and
 - 12.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Contracting Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 12.4 The Supplier shall immediately notify the Contracting Authority in writing if it becomes aware of any breach of Clause 12.1 or 12.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 12.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 12.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 12.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call Off Contract or otherwise suspects that any person or Party directly or indirectly connected with this Call Off Contract has committed or attempted to commit a Prohibited Act.
- 12.5 If the Supplier makes a notification to the Contracting Authority pursuant to Clause 12.4, the Supplier shall respond promptly to the Contracting Authority's enquiries, co-operate with any investigation, and allow the Contracting Authority to audit any books, records and/or any other relevant documentation.
- 12.6 If the Supplier breaches Clause 12.3, the Contracting Authority may by notice:
- 12.6.1 require the Supplier to remove from performance of this Call Off Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
 - 12.6.2 immediately terminate this Call Off Contract for material Default.
- 12.7 Any notice served by the Contracting Authority under Clause 12.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Contracting Authority believes has committed the Prohibited Act and the action that the Contracting Authority has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).

13. EQUALITY AND DIVERSITY

13.1 The Supplier shall:

13.1.1 perform its obligations under this Call Off Contract (including those in relation to provision of the Contract Services) in accordance with:

13.1.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and

13.1.1.2 any other requirements and instructions which the Contracting Authority reasonably imposes in connection with any equality obligations imposed on the Contracting Authority at any time under applicable equality Law;

13.1.2 take all necessary steps, and inform the Contracting Authority 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).

14. TRANSFER AND SUB-CONTRACTING

14.1 The Supplier shall not assign, novate, enter into a Sub-Contract in respect of, or in any other way dispose of, this Call Off Contract or any part of it without the Contracting Authority's prior written consent. The Contracting Authority has consented to the engagement of any Sub-Contractors specifically identified in the Letter of Appointment.

14.2 The Supplier shall be responsible for all acts and omissions of its Sub-Contractors and those employed or engaged by the Sub-Contractors as though they are its own.

14.3 The Contracting Authority may assign, novate or otherwise dispose of its rights and obligations under this Call Off Contract or any part thereof to:

14.3.1 any other Contracting Authorities; or

14.3.2 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 Contracting Authority; or

14.3.3 any private sector body which substantially performs the functions of the Contracting Authority,

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Call Off Contract.

14.4 Any change in the legal status of the Contracting Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 14.5, affect the validity of this Call Off Contract. In such circumstances, this Call Off Contract shall bind and inure to the benefit of any successor body to the Contracting Authority.

14.5 If the rights and obligations under this Call Off Contract are assigned, novated or otherwise disposed of pursuant to Clause 14.3 a body which is not a Contracting Authorities there is a change in the legal status of the Contracting Authority such that it ceases to be a Contracting Authorities (in the remainder of this Clause any such body being referred to as a "Transferee"):

14.5.1 the rights of termination of the Contracting Authority in Clause 8 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and

- 14.5.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Call Off Contract or any part thereof with the previous consent in writing of the Supplier.
- 14.6 The Contracting Authority may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this Call Off Contract. In such circumstances the Contracting Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under this Call Off Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 14.7 For the purposes of Clause 14.5 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Call Off Contract.
- 15. SUPPLY CHAIN PROTECTION**
- 15.1 The Supplier shall ensure that all Sub-Contracts contain a provision:
- 15.1.1 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;
- 15.1.2 requiring that any Invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- 15.1.3 requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses 15.1.1 and 15.1.2 above; and
- 15.1.4 conferring a right to the Contracting Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 15.2 The Supplier shall:
- 15.2.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
- 15.2.2 provide the Contracting Authority with a quarterly summary of its compliance with this Clause 15.1.4 certified by a director of the Supplier as being accurate and not misleading.
- 15.3 Any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for failing to regard an Invoice as valid and undisputed.
- 15.4 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).
- 15.5 For the avoidance of doubt, Clauses 15.1, 15.2, 15.3 and 15.4 shall also apply to any Key Sub-Contractor.

16. WAIVER AND CUMULATIVE REMEDIES

- 16.1 The failure of either Party to insist upon strict performance of any provision of this Call Off Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Call Off Contract.
- 16.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 22.
- 16.3 A waiver by either Party of any right or remedy arising from a breach of this Call Off Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Call Off Contract.
- 16.4 Except as otherwise expressly provided by this Call Off Contract, all remedies available to either Party for breach of this Call Off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies

17. FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Call Off Contract.

18. SEVERABILITY

- 18.1 If any provision of this Call Off Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Call Off Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call Off Contract shall not be affected..
- 18.2 In the event that any deemed deletion under Clause 18.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract or materially alters the balance of risks and rewards in this Call Off Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.
- 18.3 If the Parties are unable to resolve the good faith negotiations referred to in Clause 18.2 within twenty (20) Working Days of the date of the notice given pursuant to Clause 19.2 and to the satisfaction of both Parties, this Call Off Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Contract is terminated pursuant to this Clause 18..

19. RELATIONSHIP OF PARTIES

- 19.1 Except as expressly provided otherwise in this Call Off Contract, nothing in this Call Off Contract, nor any actions taken by the Parties pursuant to this Call Off Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

20. ENTIRE AGREEMENT

- 20.1 This Call Off Contract, together with a completed, signed and dated Framework Agreement and the other documents referred to in them constitute the entire agreement and

understanding between the Parties in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.

- 20.2 Each of the Parties acknowledges and agrees that in entering into this Call Off Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Call Off Contract.
- 20.3 The Supplier acknowledges that it has:
- 20.3.1 entered into this Call Off Contract in reliance on its own due diligence alone; and
 - 20.3.2 received sufficient information required by it in order to determine whether it is able to provide the Contract Services in accordance with the terms of this Call Off Contract.
- 20.4 Nothing in Clauses 20.1 and 20.2 shall operate:
- 20.4.1 to exclude fraud or fraudulent misrepresentation; or
 - 20.4.2 to limit the rights of the Contracting Authority pursuant to Clause 45 of the Framework Agreement (Third Party Rights).

21. THIRD PARTY RIGHTS

- 21.1 A person who is not a party to this Call Off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, provided that this Clause 21.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 21.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Call Off Contract or any one or more Clauses of it.

22. NOTICES

- 22.1 Any notices given under or in relation to this Contract shall be in writing by letter, (signed by or on behalf of the Party giving it) sent by hand, post, registered post or by the recorded delivery service or by electronic mail to the address or email address and for the attention of the relevant Party set out in Clause 22.4 or to such other address or email address as that Party may have stipulated in accordance with Clause 22.5.
- 22.2 A notice shall be deemed to have been received:
- 22.2.1 if delivered personally, at the time of delivery;
 - 22.2.2 in the case of pre-paid first class post, special or other recorded delivery two (2) Working Days from the date of posting; and
 - 22.2.3 in the case of electronic communication, two (2) Working Days after posting of a confirmation letter.
- 22.3 In proving service, it shall be sufficient to prove that personal delivery was made, or (including for the purposes of electronic mail, the confirmation letter) that the envelope containing the notice was addressed to the relevant Party set out in Clause 22.4 (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, special or other recorded delivery.

22.4 For the purposes of Clause 22.2, the address or email address of each Party shall be the address or email address specified in paragraph 14 of the Letter of Appointment.

22.5 Either Party may change its address or email address for service by serving written notice in accordance with this Clause 22.

22.6 For the avoidance of doubt, any notice given under this Call Off Contract shall not be validly served if sent by electronic mail (email) where the confirmation letter is not sent within 24 hours of the electronic mail (email) being sent..

23. DISPUTES AND LAW

23.1 Governing Law and Jurisdiction

This Call Off Contract shall be governed by and interpreted in accordance with the Laws of the country stipulated in the Letter of Appointment (England & Wales unless otherwise specified) and the parties agree to submit to the exclusive jurisdiction of the courts of that chosen country any dispute that arises in connection with this Call Off Contract.

23.2 Dispute Resolution

The Parties shall follow the dispute resolution procedure as set out in the Dispute Resolution Procedure.

24. STAFF TRANSFER

24.1 The Parties shall comply with the provisions of Schedule 2 (Staff Transfer).

26. SUPPLIER COUNTERPARTS

25.1 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

26. EXIT MANAGEMENT

26.1 The Parties shall comply with the exit management provisions set out in Call Off Schedule 3 (Exit Management).

CALL OFF SCHEDULE 1: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this Call Off Schedule 1, the following definitions shall apply:

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Counter Notice"	has the meaning given to it in paragraph 6.2 of this Call Off Schedule;
"Exception"	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Contract Services;
"Expert"	the person appointed by the Parties in accordance with paragraph 5.2 of this Call Off Schedule;
"Mediation Notice"	has the meaning given to it in paragraph 3.2 of this Call Off Schedule; and
"Mediator"	the independent third party appointed in accordance with paragraph 4.2 of this Call Off Schedule.

2. INTRODUCTION

2.1 If a Dispute arises then:

2.1.1 the representative of the Contracting Authority and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

2.2.1 the material particulars of the Dispute;

2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this Call Off Schedule, the reason why.

2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Call Off Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

2.4 Subject to paragraph 3.2 of this Call Off Schedule, the Parties shall seek to resolve Disputes:

2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Call Off Schedule);

2.4.2 then by mediation (as prescribed in paragraph 4 of this Call Off Schedule); and

- 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Call Off Schedule) or litigation (in accordance with Clause 23.1 of this Call Off Contract (Governing Law and Jurisdiction)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Call Off Schedule) where specified under the provisions of this Call Off Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Call Off Schedule.
- 2.6 In exceptional circumstances where the use of the times in this Call Off Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Contracting Authority.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- 2.7.1 In paragraph 3.2.3, ten (10) Working Days;
- 2.7.2 In paragraph 4.2, ten (10) Working Days;
- 2.7.3 in paragraph 5.2, five (5) Working Days; and
- 2.7.4 In paragraph 6.2, ten (10) Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

- 3.1 Following the service of a Dispute Notice, the Contracting Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Contracting Authority's Contract Manager and the Supplier's Account Manager.
- 3.2 If:
- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
- 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Call Off Schedule; or
- 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Call Off Schedule within thirty (30) Working Days of service of the Dispute Notice,

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

4. MEDIATION

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Call Off Contract.

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

5. EXPERT DETERMINATION

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Contract Services or otherwise relates to a financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body.
- 5.3 The Expert shall act on the following basis:
 - 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - 5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
 - 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
 - 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
 - 5.3.5 the process shall be conducted in private and shall be confidential; and
 - 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6. ARBITRATION

- 6.1 The Contracting Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Call Off Schedule.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Contracting Authority of its intentions and the Contracting Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "Counter Notice") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 23.1 of this Call Off Contract

(Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

- 6.3 If:
- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Call Off Schedule shall apply;
 - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 81 of this Call Off Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
 - 6.3.3 the Contracting Authority does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Call Off Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Call Off Schedule or commence court proceedings in the courts in accordance with Clause 23.1 of this Call Off Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Call Off Schedule, the Parties hereby confirm that:
- 6.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA") (subject to paragraphs 6.4.5 to 6.4.7 of this Call Off Schedule);
 - 6.4.2 the arbitration shall be administered by the LCIA;
 - 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - 6.4.5 the chair of the arbitral tribunal shall be British;
 - 6.4.6 the arbitration proceedings shall take place in London and in the English language; and
 - 6.4.7 the seat of the arbitration shall be London.

7. URGENT RELIEF

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

CALL OFF SCHEDULE 2: STAFF TRANSFER

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

- "Admission Agreement"** The agreement to be entered into by which the supplier agrees to participate in the Schemes as amended from time to time;
- "Eligible Employee"** any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
- "Fair Deal Employees"** those Transferring Contracting Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
- "Former Supplier"** a supplier supplying services to the Contracting Authority 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);
- "New Fair Deal"** the revised Fair Deal position set out in the HM Treasury guidance: *"Fair Deal for staff pensions: staff transfer from central government"* issued in October 2013;
- "Notified Sub-contractor"** a Sub-contractor identified in the Annex to this Schedule to whom Transferring Contracting Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
- "Replacement Services"** means any services which are substantially similar to any of the Contract Services and which the Customer receives in substitution for any of the Contract Services following the Call Off Expiry Date, whether those services are provided by the Contracting Authority internally and/or by any third party;
- "Replacement Supplier"** means any third party provider of Replacement Services appointed by or at the direction of the Contracting Authority from time to time or where the Contracting Authority is providing Replacement Services for its own account, shall also include the Contracting Authority;
- "Replacement Sub-Contractor"** 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);
- "Relevant Transfer"** a transfer of employment to which the Employment Regulations applies;
- "Relevant Transfer Date"** in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
- "Schemes"** the Principal Civil Service Pension Scheme available to employees

of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);

"Service Transfer"

any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;

"Service Transfer Date"

the date of a Service Transfer;

"Staffing information"

in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Contracting Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Supplier's Final Supplier Personnel List"

a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

**"Supplier's Provisional
Supplier Personnel List"**

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

**"Transferring Contracting
Authority Employees"**

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

**"Transferring Former Supplier
Employees"**

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

**"Transferring Supplier
Employees"**

those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Contracting Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF CONTRACT SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

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

2. INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Contracting Authority shall:
 - 2.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Contracting Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - 2.1.2 procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure

that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Contracting Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Contracting Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Contracting Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

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

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

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

2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Contracting Authority and, if applicable, Former Supplier within 6 months of the Call Off Commencement Date.

3. PROCUREMENT OBLIGATIONS

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

CALL OFF SCHEDULE 3: EXIT MANAGEMENT

1. DEFINITIONS

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

"Contracting Authority's Assets"	means the Contracting Authority's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Contracting Authority and which is or may be used in connection with the provision of the Contract Services;
"Exit Information"	has the meaning given to it in paragraph 4.1 of this Call Off Schedule;
"Exit Manager"	means the person appointed by each Party pursuant to paragraph 3.4 of this Call Off Schedule for managing the Parties' respective obligations under this Call Off Schedule;
"Exit Plan"	means the plan referred to in paragraph 5 of this Call Off Schedule;
"Registers"	means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Call Off Schedule;
"Replacement Services"	means any Contract Services which are substantially similar to any of the Contract Services and which the Contracting Authority receives in substitution for any of the Contract Services following the Call Off Expiry Date, whether those Contract Services are provided by the Contracting Authority internally and/or by any third party;
"Replacement Supplier"	means any third party provider of Replacement Services appointed by or at the direction of the Contracting Authority from time to time or where the Contracting Authority is providing Replacement Services for its own account, shall also include the Contracting Authority;
"Service Transfer"	any transfer of the Contract Services (or any part of the Contract Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-contractor;
"Service Transfer Date"	the date of a Service Transfer;
"Termination Assistance"	means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Contracting Authority pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in paragraph 6.1 of this Call Off Schedule;
"Termination Assistance Period"	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance

	as such period may be extended pursuant to paragraph 6.2 of this Call Off Schedule;
"Transferable Contracts"	means the Sub-Contracts, licences for Supplier Background IPR, Project Specific IPR, licences for Third Party IPR or other agreements which are necessary to enable the Contracting Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant documentation;
"Transferring Contracts"	has the meaning given to it in paragraph 9.2 of this Call Off Schedule; and
"Transferring Supplier Employees"	those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTRODUCTION

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

3. OBLIGATIONS DURING THE CALL OFF AGREEMENT PERIOD TO FACILITATE EXIT

- 3.1 During the Call Off Agreement Period, the Supplier shall:
 - 3.1.1 create and maintain a Register of all Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
 - 3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Contracting Authority and/or Replacement Supplier to understand how the Supplier provides the Contract Services and to enable the smooth transition of the Services with the minimum of disruption;
 - 3.1.3 agree the format of the Registers with the Contracting Authority as part of the process of agreeing the Exit Plan; and
 - 3.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.
- 3.2 The Supplier shall (unless otherwise agreed by the Contracting Authority in writing) procure that all licences for Third Party IPR and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Contracting Authority to the Contracting Authority (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Contract Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Contracting Authority;
- 3.3 Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2 of this Call Off Schedule which the Supplier proposes to enter into after the Call Off Commencement Date is assignable and/or capable of

novation to the Contracting Authority (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Contracting Authority of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Contracting Authority so directs, may include the Supplier seeking an alternative Sub-Contractor or provider of Contract Services to which the relevant agreement relates.

- 3.4 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Call Off Schedule and provide written notification of such appointment to the other Party within three (3) months of the Call Off Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Call Off Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Call Off Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Call Off Contract and all matters connected with this Call Off Schedule and each Party's compliance with it.

4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 4.1 On reasonable notice at any point during the Call Off Agreement Period, the Supplier shall provide to the Contracting Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Contracting Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- 4.1.1 details of the Contract Service(s);
 - 4.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - 4.1.3 an inventory of Contracting Authority Data in the Supplier's possession or control;
 - 4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Contract Services;
 - 4.1.6 all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Call Off Contract; and
 - 4.1.7 such other material and information as the Contracting Authority shall reasonably require,
- (together, the "Exit Information").
- 4.2 The Supplier acknowledges that the Contracting Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Contracting Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Contracting Authority may not under this paragraph 4.2 of this Call Off Schedule disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).
- 4.3 The Supplier shall:
- 4.3.1 notify the Contracting Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Contracting Authority regarding such proposed material changes; and

- 4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Contracting Authority.
- 4.4 The Supplier may charge the Contracting Authority for its reasonable additional costs to the extent the Contracting Authority requests more than four (4) updates in any six (6) month period.
- 4.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
 - 4.5.1 prepare an informed offer for those Contract Services; and
 - 4.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

5. EXIT PLAN

- 5.1 The Supplier shall, within three (3) months after the Call Off Commencement Date, deliver to the Contracting Authority an Exit Plan which:
 - 5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Contract Services from the Supplier to the Contracting Authority and/or its Replacement Supplier on the expiry or termination of this Call Off Agreement;
 - 5.1.2 complies with the requirements set out in paragraph 5.3 of this Call Off Schedule;
 - 5.1.3 is otherwise reasonably satisfactory to the Contracting Authority.
- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.3 Unless otherwise agreed by the Contracting Authority, the Exit Plan shall set out, as a minimum:
 - 5.3.1 how the Exit Information is obtained;
 - 5.3.2 the management structure to be employed during both transfer and cessation of the Services;
 - 5.3.3 the management structure to be employed during the Termination Assistance Period;
 - 5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 5.3.5 how the Contract Services will transfer to the Replacement Supplier and/or the Contracting Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Contracting Authority's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - 5.3.6 details of contracts (if any) which will be available for transfer to the Contracting Authority and/or the Replacement Supplier upon the Call Off Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Contract Services will be available for such transfer);
 - 5.3.7 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Services

following the Call Off Expiry Date charged at rates agreed between the Parties at that time;

- 5.3.8 proposals for providing the Contracting Authority or a Replacement Supplier copies of all documentation:
- (a) used in the provision of the Contract Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Contract Services;
- 5.3.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Contract Services;
- 5.3.10 proposals for the identification and return of all Contracting Authority Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
- 5.3.11 proposals for the disposal of any redundant Contract Services and materials;
- 5.3.12 procedures to deal with requests made by the Contracting Authority and/or a Replacement Supplier for Staffing Information pursuant to Call Off Schedule 2 (Staff Transfer);
- 5.3.13 how each of the issues set out in this Call Off Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Contracting Authority with the aim of ensuring that there is no disruption to or degradation of the Contract Services during the Termination Assistance Period; and
- 5.3.14 proposals for the supply of any other information or assistance reasonably required by the Contracting Authority or a Replacement Supplier in order to effect an orderly handover of the provision of the Contract Services.

6. TERMINATION ASSISTANCE

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

7. TERMINATION ASSISTANCE PERIOD

- 7.1 Throughout the Termination Assistance Period, or such shorter period as the Contracting Authority may require, the Supplier shall:
- 7.1.1 continue to provide the Contract Services (as applicable) and, if required by the Contracting Authority pursuant to paragraph 6.1 of this Call Off Schedule, provide the Termination Assistance;
 - 7.1.2 in addition to providing the Services and the Termination Assistance, provide to the Contracting Authority any reasonable assistance requested by the Contracting Authority to allow the Services to continue without interruption following the termination or expiry of this Call Off Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Contracting Authority and/or its Replacement Supplier;
 - 7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Call Off Schedule without additional costs to the Contracting Authority;
 - 7.1.4 continue to provide the Services and the Termination Assistance to a satisfactory level, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3 of this Call Off Schedule; and
 - 7.1.5 at the Contracting Authority's request and on reasonable notice, deliver up-to-date Registers to the Contracting Authority.
- 7.2 Without prejudice to the Supplier's obligations under paragraph 7.1.3 of this Call Off Schedule, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Call Off Schedule without additional costs to the Contracting Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to agreement in writing between the Parties.
- 7.3 If the Supplier demonstrates to the Contracting Authority's reasonable satisfaction that transition of the Services and provision of the Termination Assistance during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to perform the Contract Services to a satisfactory level, the Parties shall agree in writing any changes to the Contract Services necessary to allow the Supplier to perform the Contract Services to a satisfactory level.

8. TERMINATION OBLIGATIONS

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

- (b) any equipment which belongs to the Contracting Authority;
 - (c) any items that have been on-charged to the Contracting Authority, such as consumables; and
 - (d) any sums prepaid by the Contracting Authority in respect of Contract Services not performed by the Call Off Expiry Date;
- 8.2.5 provide access during normal working hours to the Contracting Authority and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:
- (a) such information relating to the Contract Services as remains in the possession or control of the Supplier; and
 - (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Contracting Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.
- 8.3 Paragraphs 8.2.1 and 8.2.3 shall not apply where such information needs to be retained by the Supplier for statutory compliance purposes.
- 8.4 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 8.5 Except where this Call Off Agreement provides otherwise, all licences, leases and authorisations granted by the Contracting Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

9. ASSETS AND SUB-CONTRACTS

- 9.1 Following notice of termination of this Call Off Agreement and during the Termination Assistance Period, the Supplier shall not, without the Contracting Authority's prior written consent:
- 9.1.1 terminate, enter into or vary any Sub-Contract; or
 - 9.1.2 terminate, enter into or vary any licence for software in connection with the provision of Services.
- 9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5 of this Call Off Schedule, the Contracting Authority shall provide written notice to the Supplier setting out which, if any, of the Transferable Contracts the Contracting Authority requires to be assigned or novated to the Contracting Authority and/or the Replacement Supplier (the "Transferring Contracts") in order for the Contracting Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Contracting Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Contracting Authority and/or its Replacement Supplier to enable it to determine which Transferable Contracts the Contracting Authority and/or its Replacement Supplier requires to provide the Services or the Replacement Services.
- 9.3 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Contracting Authority and/or the Replacement Supplier of the Transferring Contracts.

The Supplier shall execute such documents and provide such other assistance as the Contracting Authority reasonably requires to effect this novation or assignment.

9.4 The Contracting Authority shall:

9.4.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

9.4.2 once a Transferring Contract is novated or assigned to the Contracting Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

9.5 The Supplier shall hold any Transferring Contracts on trust for the Contracting Authority until such time as the transfer of the relevant Transferring Contract to the Contracting Authority and/or the Replacement Supplier has been effected.

9.6 The Supplier shall indemnify the Contracting Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Contracting Authority (and/or Replacement Supplier) pursuant to paragraph 9.3 of this Call Off Schedule in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

10. CHARGES

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

11. APPORTIONMENTS

11.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Contracts shall be apportioned between the Contracting Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

11.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

11.1.2 the Contracting Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

11.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

11.2 Each Party shall pay (and/or the Contracting Authority shall procure that the Replacement Supplier shall pay) any monies due under paragraph 11.1 of this Call Off Schedule as soon as reasonably practicable.