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**FRAMEWORK SCHEDULE 4**

**RM3804 TECHNOLOGY SERVICES 2 CALL OFF TERMS**

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**CALL OFF SCHEDULES:**

Call Off Schedule 1 (Definitions)

Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing)

Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring)

Call Off Schedule 4 (Dispute Resolution Procedure)

Call Off Schedule 5 (Change Control Procedure)

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Call Off Schedule 6 (Transparency Reports)

Call Off Schedule 7 (Testing)

Call Off Schedule 8 (Security)

Call Off Schedule 9 (Software and Assets)

Call Off Schedule 10 (Business Continuity and Disaster Recovery)

Call Off Schedule 11 (Exit Management)

Call Off Schedule 12 (Staff Transfer)

Call Off Schedule 13 (Implementation Plan, Customer Responsibilities and Key Personnel)

Call Off Schedule 14 (Services)

Call Off Schedule 15 (Data Protection)

Call Off Schedule 16 (Cooperation Agreement)

Call Off Schedule 17 (Governance)

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**CALL OFF TERMS**

**TERMS AND CONDITIONS**

**A. PRELIMINARIES**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Call Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions) or the relevant Call Off Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Call Off Schedule 1 (Definitions) or relevant Call Off Schedule, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Call Off Contract, unless the context otherwise requires:
  - 1.3.1 the singular includes the plural and vice versa;
  - 1.3.2 reference to a gender includes the other gender and the neuter;
  - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - 1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - 1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under this Call Off Contract;
  - 1.3.8 references to "**Clauses**" and "**Call Off Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Call Off Contract and references in any Call Off Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Call Off Schedule in which these references appear;
  - 1.3.9 where definitions or interpretations are expressly set out in Call Off Schedule F (Collaboration Agreement), then the definitions and

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interpretations specified therein shall apply only in the context of that Schedule where used; and

1.3.10 the headings in this Call Off Contract are for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract.

1.4 Subject to Clauses 1.5 and 1.6 (Definitions and Interpretation), in the event of and only to the extent of any conflict between the Order Form, the Call Off Terms and the provisions of the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

1.4.1 the Framework Agreement, except Framework Schedule 18 (Tender);

1.4.2 the Order Form;

1.4.3 the Call Off Terms;

1.4.4 Framework Schedule 18 (Tender);

1.4.5 the Collaboration Agreement (Schedule 13), where used.

1.5 Any permitted changes by the Customer to the Template Call Off Terms and the Template Order Form under Clause 4 (Call Off Procedure) of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to them becoming the Call Off Terms and the Call Off Form shall prevail over the Framework Agreement.

1.6 Where any tender by the Supplier at further competition or the Tender contains provisions which are more favourable to the Customer in relation to this Call Off Contract, such provisions of the tender submitted at further competition or the Tender shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the the tender submitted at further competition or the Tender is more favourable to it in this context.

## **2. DUE DILIGENCE**

2.1 The Supplier acknowledges that:

2.1.1 the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Call Off Contract;

2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information and that it has entered into this Call Off Contract in reliance on its own due diligence alone;

2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Customer before the Call Off Commencement Date) of all relevant details, including but not limited to, details relating to the:

(a) suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Call Off Commencement Date) future Operating Environment;

(b) operating processes and procedures and the working methods of the Customer;

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- (c) ownership, functionality, capacity, condition and suitability for use in the provision of the Services of the Customer Assets; and
  - (d) existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Call Off Contract and/or which the Supplier will require the benefit of for the provision of the Services; and
- 2.1.4 it has advised the Customer in writing of:
  - (a) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
  - (b) the actions needed to remedy each such unsuitable aspect; and
  - (c) a timetable for and the costs of those actions.
- 2.1.5 the Supplier shall not be excused from the performance of any of its obligations under this Call Off Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
  - (a) unsuitable aspects of the Operating Environment;
  - (b) misinterpretation of the requirements of the Customer in the Order Form or elsewhere in this Call Off Contract; and/or
  - (c) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

**3. REPRESENTATIONS AND WARRANTIES**

**3.1 Each Party represents and warranties that:**

- 3.1.1 it has full capacity and authority to enter into and to perform this Call Off Contract;
- 3.1.2 this Call Off Contract is executed by its duly authorised representative;
- 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Call Off Contract; and
- 3.1.4 its obligations under this Call Off Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

**3.2 The Supplier represents and warrants that:**

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

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- 3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call Off Contract;
- 3.2.3 its execution, delivery and performance of its obligations under this Call Off Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
- 3.2.4 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to its tender submitted to the Customer under a Further Competition Procedure and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract;
- 3.2.5 as at the Call Off Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
- 3.2.6 it has and shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Services by the Customer;
- 3.2.7 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;
- 3.2.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Contract;
- 3.2.9 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 3.2.10 for the Call Off Contract Period and for a period of twelve (12) months after the termination or expiry of this Call Off Contract, the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Services without Approval or the prior written consent of the Customer, which shall not be unreasonably withheld. However this Clause 3.2.10 shall not preclude the Supplier's rights to (i) make generalised searches for employees by the use of advertisements in the media (including by any recruitment agency), (ii) hire any employee of the Customer who approaches the Supplier on an unsolicited basis; or (iii) solicit for

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employment or hire any such employee who ceases to be employed by the Customer.

- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.
- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.5 For the avoidance of doubt, the fact that any provision within this Call Off Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier which constitutes a material Default.

**B. DURATION OF CALL OFF CONTRACT**

**4. CALL OFF CONTRACT PERIOD**

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

**C. CALL OFF CONTRACT PERFORMANCE**

**5. IMPLEMENTATION PLAN**

**5.1 Formation of Implementation Plan**

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

**5.2 Control of Implementation Plan**



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- 5.2.1 Subject to Clause 5.2.2, the Supplier shall keep the Implementation Plan under review in accordance with the Customer's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Services. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 5.2.2 Changes to the Milestones (if any), Milestone Payments (if any) and Delay Payments (if any) shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- 5.2.3 Where so specified by the Customer in the Implementation Plan or the Order Form, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

**5.3 Rectification of Delay in Implementation**

- 5.3.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Call Off Contract:
- (a) it shall:
- (i) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and
  - (ii) include in its notification an explanation of the actual or anticipated impact of the Delay; and
  - (iii) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
  - (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- (b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Implementation Plan, Clause 5.4 (Delay Payments) shall apply.

**5.4 Delay Payments**

- 5.4.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Customer such Delay Payments (calculated as set out by the Customer in the Implementation Plan) and the following provisions shall apply:
- (a) the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to Achieve the corresponding Milestone;

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- (b) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
  - (i) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 30 (Customer Termination Rights) except Clause 30.6 (Termination Without Cause); or
  - (ii) the delay exceeds the number of days ("the **"Delay Period Limit"**") specified in section C of the Order Form for the purposes of this sub-Clause, commencing on the relevant Milestone Date;
    - (c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified by the Customer in the Implementation Plan);
    - (d) no payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver complies with Clause 37 (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Customer's rights to claim Delay Payments; and
    - (e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 5.4.1 and Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 25 (Liability).

## 6. SERVICES

### 6.1 Provision of the Services

- 6.1.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Call Off Contract.
- 6.1.2 The Supplier shall ensure that the Services:
  - (a) comply in all respects with any description of the Services in the Order Form; and
  - (b) are supplied in accordance with the provisions of this Call Off Contract or the Tender.
- 6.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:
  - (a) all applicable Law;
  - (b) Good Industry Practice;
  - (c) the Standards;
  - (d) the Security Policy;
  - (e) the Quality Plans;
  - (f) the ICT Policy (if so required by the Customer); and

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- (g) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 6.1.3(a) to 6.1.3(f).

6.1.4 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Call Off Contract;
- (b) subject to Clause 15.1 (Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
  - (i) the release of any new Supplier Software or upgrade to any Supplier Software complies with the interface requirements of the Customer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Customer three (3) Months before the release of any new Supplier Software or Upgrade;
  - (ii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
  - (iii) any products or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Customer;
  - (iv) the Supplier System and Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer) and will be Euro Compliant; and
  - (v) the Services are fully compatible with any Customer Software, Customer System, Customer Property or Customer Assets described in the Order Form or otherwise used by the Supplier in connection with this Call Off Contract;
- (d) minimise any disruption to the Sites Services, the ICT Environment and/or the Customer's operations when providing the Services;
- (e) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the Call Off Expiry Date for any reason, to enable the timely transition of the supply of the Services (or any of them) to the Customer and/or to any Replacement Supplier;
- (g) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit

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of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;

- (h) provide the Customer with such assistance as the Customer may reasonably require during the Call Off Contract Period in respect of the supply of the Services;
- (i) deliver the Services in a proportionate and efficient manner;
- (j) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and
- (k) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.

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

**6.2 Time of Delivery of the Services**

- 6.2.1 The Supplier shall provide the Services on the date(s) specified in the Order Form and the Milestone Dates (if any). Such provision shall include compliance with the obligation on the Supplier set out in Clause 5 (Implementation Plan).

**6.3 Location and Manner of Delivery of the Services**

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

**6.4 Undelivered Services**

- 6.4.1 In the event that any of the Services are not Delivered in accordance with Clauses 6.1 (Provision of the Services), 6.2 (Time of Delivery of the Services) and 6.3 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.

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- 6.4.2 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 6.1, (Provision of the Services), 6.2 (Time of Delivery of the Services) and 6.3 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

**6.5 Specially Written Software warranty**

- 6.5.1 The Supplier warrants to the Customer that all components of the Specially Written Software shall:
- (a) be free from material design and programming errors;
  - (b) perform in all material respects in accordance with the relevant specifications contained in the Order Form and Documentation; and
  - (c) not infringe any Intellectual Property Rights.

**6.6 Obligation to Remedy of Default in the Supply of the Services**

- 6.6.1 Subject to Clauses 22.9.2 and 22.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 6.4.2 (Undelivered Services) and 27 (Customer Remedies for Default)), the Supplier shall, where practicable:
- (a) remedy any breach of its obligations in Clause 6 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
  - (b) meet all the costs of, and incidental to, the performance of such remedial work.

**6.7 Continuing Obligation to Provide the Services**

- 6.7.1 The Supplier shall continue to perform all of its obligations under this Call Off Contract and shall not suspend the provision of the Services, notwithstanding:
- (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
  - (b) the existence of an unresolved Dispute; and/or
  - (c) any failure by the Customer to pay any Call Off Contract Charges,
- unless the Supplier is entitled to terminate this Call Off Contract under Clause 31.1 (Termination on Customer Cause for Failure to Pay) for failure by the Customer to pay undisputed Call Off Contract Charges.

**7. STANDARDS AND QUALITY**

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- 7.1 The Supplier shall at all times during the Call Off Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.
- 7.2 If so required by the Customer the Supplier shall develop, within such period as specified by the Customer in section C of the Order Form, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 7.3 The Supplier shall seek Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed) of the Quality Plans before implementing them. The Supplier acknowledges and accepts that Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Call Off Contract.
- 7.4 Throughout the Call Off Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Customer, of the Services. The adoption of any such new or emergent standard or changes to existing Standards shall be agreed in accordance with the Variation Procedure. Any change to an existing Standard which is included in Framework Schedule 2 (Services and Key Performance Indicators) shall, in addition, require the written consent of the Authority.
- 7.5 Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Customer's receipt of the Services is explained to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 7.6 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Call Off Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard or Standards shall require Approval (and the written consent of the Authority where the relevant Standard or Standards is/are included in Framework Schedule 2 (Services and Key Performance Indicators)) and shall be implemented within an agreed timescale.
- 7.7 Following the approval by the Customer of the Quality Plans:
  - 7.7.1 the Supplier shall implement all Deliverables in accordance with the Quality Plans; and
  - 7.7.2 any Variation to the Quality Plans shall be agreed in accordance with the Variation Procedure.
- 7.8 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
  - 7.8.1 be appropriately experienced, qualified and trained to supply the Services in accordance with this Call Off Contract;
  - 7.8.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Services; and
  - 7.8.3 obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Services to the reasonable satisfaction of the Customer.

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- 7.9 Where a standard, policy or document is referred to in the Order Form by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall agree the impact of such change.

**8. SERVICE LEVELS AND SERVICE CREDITS**

- 8.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring).
- 8.2 The Supplier shall at all times during the Call Off Contract Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
- 8.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to the rights set out in the provisions of Part A of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.
- 8.4 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 8.5 A Service Credit shall be the Customer's exclusive financial remedy for a Service Level Failure except where:
- 8.5.1 the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;
  - 8.5.2 the Service Level Failure:
    - (a) exceeds the relevant Service Level Threshold;
    - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and
    - (c) results in:
      - (i) the corruption or loss of any Customer Data (in which case the remedies under Clause 23.2.8 (Protection of Customer Data) shall also be available); and/or
      - (ii) the Customer being required to make a compensation payment to one or more third parties; and/or
  - 8.5.3 the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 30 (Customer Termination Rights) except Clause 30.6 (Termination Without Cause).
- 8.6 Not more than once in each Contract Year the Customer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Level Performance Criteria and the Supplier shall not be entitled to object to, or increase the Call Off Contract Charges as a result of such changes, provided that:

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- 8.6.1 the total number of Service Level Performance Criteria for which the weighting is to be changed does not exceed the number set out, for the purposes of this Clause 8.6, in section C of the Order Form;
- 8.6.2 the principal purpose of the change is to reflect changes in the Customer's business requirements and/or priorities or to reflect changing industry standards; and
- 8.6.3 there is no change to the Service Credit Cap.

**9. CRITICAL SERVICE LEVEL FAILURE**

9.1 On the occurrence of a Critical Service Level Failure:

- 9.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
- 9.1.2 the Customer shall (subject to the Service Credit Cap set out in Clause 25.2.1(a) (Financial Limits)) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Call Off Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this Clause 9.1 shall be without prejudice to the right of the Customer to terminate this Call Off Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.

9.2 The Supplier:

- 9.2.1 agrees that the application of Clause 9.1 is commercially justifiable where a Critical Service Level Failure occurs; and
- 9.2.2 acknowledges that it has taken legal advice on the application of Clause 9.1 and has had the opportunity to price for that risk when calculating the Call Off Contract Charges.

**10. DISRUPTION**

- 10.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call Off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 10.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.
- 10.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Call Off Contract.
- 10.4 If the Supplier's proposals referred to in Clause 10.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.
- 10.5 If the Supplier is temporarily unable to fulfil the requirements of this Call Off Contract owing to disruption of normal business solely due to a Customer Cause, then subject to Clause 11 (Supplier Notification of Customer Cause), an appropriate allowance by way of an extension of time will be Approved by the



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Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

**11. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE**

11.1 Without prejudice to any other obligations of the Supplier in this Call Off Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 31.1.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall notify the Customer as soon as reasonably practicable (and in any event within two (2) Working Days of the Supplier becoming aware) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:

11.1.1 the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Call Off Contract; and

11.1.2 any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and

11.1.3 use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

**D. CALL OFF CONTRACT GOVERNANCE****12. PERFORMANCE MONITORING**

12.1 Unless otherwise Approved or notified by the Customer, the Supplier shall comply with the monitoring requirements set out in Part B of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring).

12.2 In the case of any additional or alternative monitoring requirements of the Customer, the provisions relating to performance monitoring of this Call Off Contract shall apply as set out in section C of the Order Form.

**13. REPRESENTATIVES**

13.1 Each Party shall have a representative for the duration of this Call Off Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Call Off Contract.

13.2 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 18 (Supplier Personnel).

13.3 The Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Call Off Commencement Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.

**14. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

14.1 The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract

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including the Services provided under it, any Sub-Contracts and the amounts paid by the Customer.

**14.2 The Supplier shall:**

14.2.1 keep the records and accounts referred to in Clause 14.1 in accordance with Good Industry Practice and Law; and

14.2.2 afford any Auditor access to the records and accounts referred to in Clause 14.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 14.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call Off Contract Agreement including for the following purposes to:

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

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- (k) review any Performance Monitoring Reports provided under Part B of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (l) verify the accuracy and completeness of any information delivered or required by this Call Off Contract;
- (m) inspect the ICT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (n) review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (o) review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (p) review the Supplier's compliance with the Standards;
- (q) inspect the Customer Assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date; and/or
- (r) review the integrity, confidentiality and security of the Customer Data.

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

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

14.4.1 all reasonable information requested by the Customer within the scope of the audit;

14.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and

14.4.3 access to the Supplier Personnel.

14.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 14, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

## **15. CHANGE**

### **15.1 Variation Procedure**

15.1.1 Subject to the provisions of this Clause 15 and of Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation

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does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

- 15.1.2 A Party may request a Variation by completing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 15.1.3 The Customer may require the Supplier to carry out an impact assessment of the Variation on the Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:
- (a) details of the impact of the proposed Variation on the Services and the Supplier's ability to meet its other obligations under this Call Off Contract;
  - (b) details of the cost of implementing the proposed Variation;
  - (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Call Off Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
  - (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
  - (e) such other information as the Customer may reasonably request in (or in response to) the Variation request.
- 15.1.4 The Parties may agree to adjust the time limits specified in the Variation request to allow for the preparation of the Impact Assessment.
- 15.1.5 Subject to 15.1.4, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Services and the proposed Variation.
- 15.1.6 In the event that:
- (a) the Supplier is unable to agree to or provide the Variation; and/or
  - (b) the Parties are unable to agree a change to the Call Off Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof,
- the Customer may:
- (i) agree to continue to perform its obligations under this Call Off Contract without the Variation; or
  - (ii) terminate this Call Off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Services in accordance with this Call Off Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Call Off Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter.

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Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

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

**15.2 Legislative Change**

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

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

15.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 15.2.1(b)), the Supplier shall:

- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
  - (i) whether any Variation is required to the provision of the Services, the Call Off Contract Charges or this Call Off Contract; and
  - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
  - (b) provide to the Customer with evidence:
    - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
    - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
    - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause B2.7 (Continuous Improvement) where used, has been taken into account in amending the Call Off Contract Charges.

15.2.3 Any change in the Call Off Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 15.2.1(b)) shall be implemented in accordance with the Variation Procedure.

**E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS****16. CALL OFF CONTRACT CHARGES AND PAYMENT****16.1 Call Off Contract Charges**

16.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Services, the Customer shall pay the undisputed Call Off Contract Charges in accordance with

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the pricing and payment profile and the invoicing procedure in Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing).

- 16.1.2 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses A1 (Testing) where used, 14 (Records, Audit Access and Open Book Data), 23.5 (Freedom of Information), 23.6 (Protection of Personal Data).
- 16.1.3 If the Customer fails to pay any undisputed Call Off Contract Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 16.1.4 If at any time during this Call Off Contract Period the Supplier reduces its Framework Prices for any Services which are provided under the Framework Agreement (whether or not such Services are offered in a catalogue, if any, which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Call Off Contract Charges for such Services under this Call Off Contract by the same amount.

**16.2 VAT**

- 16.2.1 The Call Off Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a Valid Invoice.
- 16.2.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 16.2 (VAT) shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

**16.3 Retention and Set Off**

- 16.3.1 The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Call Off Contract or under any other agreement between the Supplier and the Customer.
- 16.3.2 If the Customer wishes to exercise its right pursuant to Clause 16.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Call Off Contract Charges.
- 16.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

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

16.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 16.4.1 by the Supplier.

**16.5 Income Tax and National Insurance Contributions**

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

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Personnel.

16.5.2 In the event that any one of the Supplier Personnel is a Worker as defined in Call Off Schedule 1 (Definitions), and that particular Worker is liable to be taxed in the UK in respect of any consideration it receives relating to the Services, then the Supplier shall ensure that its contract with the Worker includes the following requirements:

- (a) that the Worker must comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration;
- (b) that the Worker must comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to national insurance contributions in respect of that consideration;
- (c) that the Customer may, at any time during the Call Off Contract Period, request that the Worker provide information which demonstrates how the Worker complies with the above requirements (a) and (b), or why those requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided;
- (d) that the Worker's contract may be terminated at the Customer's request if:
  - (i) the Worker fails to provide information requested by the Customer within the time specified by the Customer; and/or

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- (ii) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with requirements (a) or (b) or confirms that the Worker is not complying with those requirements; and
  - (e) that the Customer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

**17. PROMOTING TAX COMPLIANCE**

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

17.1.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and

17.1.2 promptly provide to the Customer:

- (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.

17.2 In the event that the Supplier fails to comply with this Clause 17 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable, then the Customer reserves the right to terminate this Call Off Contract for material Default.

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

**18. SUPPLIER PERSONNEL**

**18.1 Supplier Personnel**

18.1.1 The Supplier shall:

- (a) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- (b) ensure that all Supplier Personnel:
  - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
  - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards;
  - (iii) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call Off Schedule E (Security), if applicable; and
  - (iv) obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Services to the reasonable satisfaction of the Customer.



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- (c) subject to Call Off Schedule A3 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
  - (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Call Off Contract shall be a Default by the Supplier;
  - (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
  - (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
  - (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
  - (h) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.
- 18.1.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Call Off Contract, it may:
- (a) refuse admission to the relevant person(s) to the Customer Premises; and/or
  - (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
- 18.1.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

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

### **19.1 Appointment of Sub-Contractors**

- 19.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
  - (b) comply with its obligations under this Call Off Contract in the Delivery of the Services; and
  - (c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Call Off Contract.
- 19.1.2 Prior to sub-contacting any of its obligations under this Call Off Contract, the Supplier shall notify the Customer and provide the Customer with:

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

19.1.3 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 19.1.2, the Supplier shall also provide:

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

19.1.4 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 19.1.2 (or, if later, receipt of any further information requested pursuant to Clause 19.1.3), object to the appointment of the relevant Sub-Contractor they consider that:

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

19.1.5 If:

- (a) the Customer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
  - (i) the Supplier's notice issued pursuant to Clause 19.1.2; and
  - (ii) any further information requested by the Customer pursuant to Clause 19.1.3; and
- (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority and the Customer in accordance with Clause 19.2 (Appointment of Key Sub-Contractors).

the Supplier may proceed with the proposed appointment.

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

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

19.2.2 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Customer (the decision to consent not to be

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unreasonably withheld or delayed). The Authority and/or the Customer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:

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

19.2.3 Except where the Authority and the Customer have given their prior written consent under Clause 19.2.1, the Supplier shall ensure that each Key Sub-Contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Call Off Contract;
- (b) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
- (c) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Call Off Contract in respect of:
  - (i) data protection requirements set out in Clauses E (Security Requirements) where used, 23.2 (Protection of Customer Data) and 23.6 (Protection of Personal Data);
  - (ii) FOIA requirements set out in Clause 23.5 (Freedom of Information);
  - (iii) the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in Clause 6.1.4(j) (Provision of Services);
  - (iv) the keeping of records in respect of the Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
  - (v) the conduct of audits set out in Clause 14 (Records, Audit Access & Open Book Data);
  - (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 30 (Customer Termination Rights), 32 (Termination by Either Party) and 34 (Consequences of Expiry or Termination) of this Call Off Contract;
  - (g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;

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- (h) a provision, where a provision in Call Off Schedule A3 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be.

**19.3 Supply Chain Protection**

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

- (a) 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; and
- (b) a right for the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (c) 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 (a) and (b) directly above.

Also, any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

19.3.2 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
- (b) include within the Performance Monitoring Reports required under Part B of Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring) a summary of its compliance with this Clause 19.3.2, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.

19.3.3 Notwithstanding any provision of Clauses 23.3 (Confidentiality) and 24 (Publicity and Branding) if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

**19.4 Termination of Sub-Contracts**

19.4.1 The Customer may require the Supplier to terminate:

- (a) a Sub-Contract where:
  - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant to any of

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the termination events in Clause 30 (Customer Termination Rights) except Clause 30.6 (Termination Without Cause); and/or

- (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or
  - (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
    - (i) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
    - (ii) the Customer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

**19.5 Competitive Terms**

19.5.1 If the Customer is able to obtain from any Sub-Contractor or any other third party (including any supplier on CCS's Technology Products 2 framework agreement (RM3733) or any other of CCS's framework agreements and any successors to these available during the Call Off Contract Period) more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Customer may:

- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or
- (b) subject to Clause 19.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

19.5.2 If the Customer exercises the option pursuant to Clause 19.5.1, then the Call Off Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.

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

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

19.5.4 The Supplier agrees to procure any products necessary for the provision of the Services through CCS's Technology Products 2 framework agreement (RM3733) or services through any other CCS framework agreement where requested to do so by the Customer (in section C of the Order Form) except where the Supplier itself features on the relevant lot, in which case a clear conflict of interest would

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exist. In such circumstances the Supplier shall promptly advise the Customer of the conflict of interest and shall not act as Agent.

19.5.5 Where the Customer makes a request pursuant to Clause 19.5.4, the Supplier shall act as an Agent of the Customer to procure products from the Technology Products 2 framework agreement (RM3733) or other CCS framework agreement, as applicable and the Parties shall agree the terms on which the Supplier shall act as Agent, except where rendered unable due to the conflict of interest described in Clause 19.5.4.

19.5.6 In acting as an Agent for the Customer the Supplier shall as a minimum:

- (a) comply with the Agency terms agreed pursuant to Clause 19.5.5 together with all reasonable instructions made by the Customer;
- (b) comply with all terms and conditions governing the call off procedure under the relevant framework agreement, as if it were the Customer; and
- (c) comply with the Public Contracts Regulations 2015 as if it were the Customer including the observation of the overarching treaty principles governing public procurement procedure; to treat economic operators equally and fairly, without discrimination, and in a transparent and proportionate manner.

## **19.6 Retention of Legal Obligations**

19.6.1 Notwithstanding the Supplier's right to Sub-Contract pursuant to this Clause 19 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

## **G. PROPERTY MATTERS**

### **20. CUSTOMER PREMISES**

#### **20.1 Licence to occupy Customer Premises**

20.1.1 Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Call Off Contract. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Call Off Contract and in accordance with Call Off Schedule A4 (Exit Management) where used.

20.1.2 The Supplier shall limit access to the Customer Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Call Off Contract and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Customer Premises as the Customer may reasonably request.

20.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2.1.3(a) (Due Diligence) and set out in the

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Order Form, should the Supplier require modifications to the Customer Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this Clause 20.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.

20.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Customer Premises and conduct of personnel at the Customer Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

20.1.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Call Off Contract, the Customer retains the right at any time to use any Customer Premises in any manner it sees fit.

**20.2 Security of Customer Premises**

20.2.1 The Customer shall be responsible for maintaining the security of the Customer Premises in accordance with the Security Policy. The Supplier shall comply with the Security Policy, and any other reasonable security requirements of the Customer while on the Customer Premises.

20.2.2 The Customer shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

**21. CUSTOMER PROPERTY**

21.1 Where the Customer issues Customer Property free of charge to the Supplier such Customer Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Customer Property.

21.2 The Supplier shall not in any circumstances have a lien or any other interest on the Customer Property and at all times the Supplier shall possess the Customer Property as fiduciary agent and bailee of the Customer.

21.3 The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Customer Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Customer Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.

21.4 The Customer Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.

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- 21.5 The Supplier shall maintain the Customer Property in good order and condition (excluding fair wear and tear) and shall use the Customer Property solely in connection with this Call Off Contract and for no other purpose without Approval.
- 21.6 The Supplier shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with the Customer's Security Policy, where applicable, and the Customer's reasonable security requirements from time to time.
- 21.7 The Supplier shall be liable for all loss of, or damage to the Customer Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Customer Cause. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Customer Property.

**H. INTELLECTUAL PROPERTY AND INFORMATION****22. INTELLECTUAL PROPERTY RIGHTS****22.1 Allocation of title to IPR**

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

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

22.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 22.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

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



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**22.2 Licences granted by the Supplier: Specially Written Software and Project Specific IPR**

22.2.1 The Supplier hereby grants to the Customer, or shall procure the direct grant to the Customer of, a perpetual, royalty-free, irrevocable, non-exclusive licence to use:

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software (including any Supplier Background IPR or Third Party IPR that are embedded in or which are an integral part of the Specially Written Software) which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate such Specially Written Software;
- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “**Software Supporting Materials**”); and
- (c) the Project Specific IPR including but not limited to the right to copy, adapt, publish (including on the ICT Environment) and distribute such Project Specific IPR.

22.2.2 The Supplier shall:

- (a) inform the Customer of all Specially Written Software that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
- (b) deliver to the Customer the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Customer.

22.2.3 The Supplier acknowledges and agrees that the ownership of the media referred to in Clause 22.2.2(b) shall vest in the Customer upon their receipt by the Customer.

**22.3 Licences granted by the Supplier: Supplier Software and Supplier Background IPR**

22.3.1 The Supplier hereby grants to the Customer a perpetual, royalty-free and non-exclusive licence to use:

- (a) the Supplier Software for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer’s (or, if the Customer is a Central Government Body, any other Central Government Body’s) business or function including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display); and

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- (b) the Supplier Background IPR for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to as part of the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function.

22.3.2 At any time during the Call Off Contract Period or following the Call Off Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Software or the Supplier Background IPR under Clause 22.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Customer Cause which constitutes a material breach of the terms of Clauses 22.3.1(a) or 22.3.1(b) (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.

22.3.3 In the event the licence of the Supplier Software or the Supplier Background IPR is terminated pursuant to Clause 22.3.2), the Customer shall:

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

## **22.4 Customer's right to sub-license**

22.4.1 The Customer shall be freely entitled to sub-license the rights granted to it pursuant to Clause 22.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR).

22.4.2 The Customer may sub-license:

- (a) the rights granted under Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
  - (i) the sub-licence is on terms no broader than those granted to the Customer; and
  - (ii) the sub-licence only authorises the third party to use the rights licensed in Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) for purposes relating to the Services (or

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substantially equivalent services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and

- (b) the rights granted under Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Customer.

## **22.5 Customer's right to assign/novate licences**

### **22.5.1 The Customer:**

- (a) shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 22.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR); and
- (b) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to:
  - (i) a Central Government Body; or
  - (ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.
- (c) Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 22.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR). If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 22.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR).
- (d) If a licence granted in Clause 22.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) is novated under Clause 22.5.1(a) and/or Clause 22.5.1(b) or there is a change of the Customer's status pursuant to Clause 22.5.1(c) (both such bodies being referred to as the "**Transferee**"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

## **22.6 Third Party IPR and Third Party Software**

22.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR and any Third Party Software which is not

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commercial off-the-shelf software grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) and Clause 22.5.1(b) (Customer's right to assign/novate licences). If the Supplier cannot obtain for the Customer a licence materially in accordance with the licence terms set out in Clause 22.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) and Clause 22.5.1(b) (Customer's right to assign/novate licences) in respect of any such Third Party IPR and/or Third Party Software, the Supplier shall:

- (a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
- (b) only use such Third Party IPR and/or Third Party Software if the Customer Approves the terms of the licence from the relevant third party.

22.6.2 The Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Customer on terms no less favourable that such software is usually made available.

## **22.7 Licence granted by the Customer**

22.7.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call Off Contract Period to use the Customer Software, the Customer Background IPR and the Customer Data solely to the extent necessary for providing the Services in accordance with this Call Off Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 23.3 (Confidentiality); and
- (b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

## **22.8 Termination of licenses**

**22.8.1** Subject to Clauses 22.3.2 and/or 22.3.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR), all licences granted pursuant to this Clause 22 (Intellectual Property Rights) (other than those granted pursuant to Clause 22.6.2 (Third Party IPR and Third Party Software) and 22.7.1 (Licence granted by the Customer)) shall survive the Call Off Expiry Date.

22.8.2 The Supplier shall, if requested by the Customer in accordance with Call Off Schedule A4 (Exit Management) where used, grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPR, Third Party IPR and/or Third Party Software on terms equivalent to those set out in Clause 22.3.1 (Licences granted by the Supplier: Supplier Software

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and Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

22.8.3 The licence granted pursuant to Clause 22.7.1 (Licence granted by the Customer ) and any sub-licence granted by the Supplier in accordance with Clause 22.7.1 (Licence granted by the Customer) shall terminate automatically on the Call Off Expiry Date and the Supplier shall:

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

## **22.9 IPR Indemnity**

22.9.1 The Supplier shall during and after the Call Off Contract Period, on written demand indemnify the Customer against all Losses incurred by, awarded against or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

22.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

- (a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
  - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
  - (ii) the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;
  - (iii) there is no additional cost to the Customer; and
  - (iv) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Services.

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22.9.3 If the Supplier elects to procure a licence in accordance with Clause 22.9.2(a) or to modify or replace an item pursuant to Clause 22.9.2(b), but this has not avoided or resolved the IPR Claim, then:

- (a) the Customer may terminate this Call Off Contract by written notice with immediate effect; and
- (b) without prejudice to the indemnity set out in Clause 22.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute services including the additional costs of procuring, implementing and maintaining the substitute items.

22.9.4 The provisions of Clauses 22.9.1 to 22.9.3 (inclusive) shall not apply to the extent that any IPR Claim is caused by any use by or on behalf of the Customer of the Software, or the use of the Customer Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Call Off Contract or in a manner not reasonably to be inferred from the description of the Services in the Order Form or the provisions of this Call Off Contract.

22.9.5 The Customer agrees that:

- (a) it will notify the Supplier in writing of any IPR Claim;
- (b) it will allow the Supplier to conduct all negotiations and proceedings and will provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and
- (c) it will not, without first consulting with the Supplier, agree to make any payment or make an admission relating to the IPR Claim.

22.9.6 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute. The Supplier shall not settle or compromise any IPR Claim without the Customer's Approval (not to be unreasonably withheld or delayed).

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

### **23.1 Malicious Software**

23.1.1 The Supplier shall, as an enduring obligation throughout the Call Off Contract Period use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).

23.1.2 Notwithstanding Clause 23.1.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.

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23.1.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 23.1.2 shall be borne by the Parties as follows:

- (a) by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Customer has waived the obligation set out in Clause 23.1.1) or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
- (b) by the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived its obligation set out in Clause 23.1.1) or the Customer Data (whilst the Customer Data was under the control of the Customer).

**23.2 Protection of Customer Data**

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

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

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

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

23.2.5 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with any BCDR Plan or otherwise. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).

23.2.6 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).

23.2.7 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

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23.2.8 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:

- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Call Off Schedule B1 (Business Continuity and Disaster Recovery) where used, or as otherwise required by the Customer, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
- (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Call Off Schedule B1 (Business Continuity and Disaster Recovery) where used, or as otherwise required by the Customer.

### **23.3 Confidentiality**

23.3.1 For the purposes of this Clause 23.3, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.

23.3.2 Except to the extent set out in this Clause 23.3 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call Off Contract or without obtaining the owner's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

23.3.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 23.5 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
  - (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;



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- (ii) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Services provided under this Call Off Contract; or
- (iii) the conduct of a Central Government Body review in respect of this Call Off Contract; or
  - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

23.3.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

23.3.5 Subject to Clauses 23.3.2 and 23.3.7, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Call Off Contract; and
- (b) its professional advisers for the purposes of obtaining advice in relation to this Call Off Contract.

23.3.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 23.3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.

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

- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 23.3.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Call Off Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or

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- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer,

and for the purposes of the foregoing, references to disclosure 23.3.5 on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause 23.3.5.

23.3.8 Nothing in this Clause 23.3 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

23.3.9 In the event that the Supplier fails to comply with Clauses 23.3.2 to 23.3.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

## **23.4 Transparency**

23.4.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Contract and any Transparency Reports under it is not Confidential Information and shall be made available in accordance with the procurement policy note 13/15 <https://www.gov.uk/government/publications/procurement-policy-note-1315-increasing-the-transparency-of-contract-information> (note that his PPN has been superseded by procurement policy note 01/17 <https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>) and the Transparency Principles referred to therein. The Customer shall determine whether any of the content of this Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

23.4.2 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives his consent for the Customer to publish this Call Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Call Off Contract agreed from time to time.

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

## **23.5 Freedom of Information**

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

- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;

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- (b) transfer to the Customer all Requests for Information relating to this Call Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

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

## **23.6 Protection of Personal Data**

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

23.6.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call Off Contract;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in Clauses E (Security Requirements) where used and 23.2 (Protection of Customer Data);
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call Off Contract);
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:

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- (i) are aware of and comply with the Supplier's duties under this Clause 23.6.2 and Clauses E (Security Requirements) where used, 23.2 (Protection of Customer Data) and 23.3 (Confidentiality);
- (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and
- (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
  - (e) notify the Customer within five (5) Working Days if it receives:
    - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;
    - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
    - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
  - (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint, communication or request made (as referred to at Clause 23.6.2(e)), including by promptly providing:
    - (i) the Customer with full details and copies of the complaint, communication or request;
    - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescale
- as set out in the DPA; and
- (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
  - (g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 23.6.2 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

23.6.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "**Restricted Countries**"). If, after the Call Off Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any outside the European Economic Area, the following provisions shall apply:

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- (a) the Supplier shall propose a Variation to the Customer which, if it is agreed by the Customer, shall be dealt with in accordance with the Variation Procedure and Clauses 23.6.3(b) to 23.6.3(d);
  - (b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:
    - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
    - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
    - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
  - (c) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;
  - (d) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
  - (e) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
    - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and
    - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
      - (A) a direct data processing agreement with the Customer on such terms as may be required by the Customer; or
      - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-Contractor relating to the relevant Personal Data transfer, and
    - (iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

23.6.4 The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the DPA and shall not perform its obligations under this Call Off Contract in such a way as to cause the Customer to breach any of the Customer's obligations under

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the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

**24. PUBLICITY AND BRANDING**

24.1 The Supplier shall not:

24.1.1 make any press announcements or publicise this Call Off Contract in any way; or

24.1.2 use the Customer's name or brand in any promotion or marketing or announcement of orders,

without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed).

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

**I. LIABILITY AND INSURANCE**

**25. LIABILITY**

**25.1 Unlimited Liability**

25.1.1 Neither Party excludes or limits its liability for:

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

25.1.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 22.9 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

**25.2 Financial Limits**

25.2.1 Subject to Clause 25.1.1 (Unlimited Liability), the Supplier's total aggregate liability

(a) in respect of all:

(i) Service Credits; and

(ii) Compensation for Critical Service Level Failure;

incurred in any rolling period of twelve (12) Months shall be subject in aggregate to the Service Credit Cap;

(b) in respect of all other Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:

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- (i) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, the higher of one million pounds (£1,000,000) or a sum equal to one hundred and twenty five per cent (125%) of the Estimated Year 1 Call Off Contract Charges;
- (ii) in relation to any Defaults occurring in each subsequent Call Off Contract Year, the higher of one million pounds (£1,000,000) in each such Call Off Contract Year or a sum equal to one hundred and twenty five per cent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year.

25.2.2 Subject to Clauses 25.1.1 (Unlimited Liability) and 25.2.1 (Financial Limits) and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:

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

**25.3 Non-recoverable Losses**

25.3.1 Subject to Clause 25.1.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:

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

**25.4 Recoverable Losses**

25.4.1 Subject to Clause 25.2.1 (Financial Limits), and notwithstanding Clause 25.3.1 (Non-recoverable Losses), the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;

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- (c) the additional cost of procuring Replacement Services for the remainder of the Call Off Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Call Off Contract;
- (d) any compensation or interest paid to a third party by the Customer; and
- (e) any fine, penalty or costs incurred by the Customer pursuant to Law.

**25.5 Miscellaneous**

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

25.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 25.2.1 (Financial Limits).

**26. INSURANCE**

- 26.1 Without limitation to the generality of Clause 26.2, the Supplier shall ensure that it maintains the policy or policies of insurance as are stipulated in the Order Form.
- 26.2 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 29 (Insurance) of the Framework Agreement, the Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Framework Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract.
- 26.3 The Supplier shall effect and maintain the policy or policies of insurance referred to in Clauses 26.1 and 26.2 above for six (6) years after the Call Off Expiry Date.
- 26.4 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clauses 26.1 and 26.2 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 26.5 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under this Clause 26, the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 26.6 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 26.7 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any



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insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

**J. REMEDIES AND RELIEF****27. CUSTOMER REMEDIES FOR DEFAULT****27.1 Remedies**

27.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising (including under Call Off Schedule 3 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 8.5 (Service Levels and Service Credits) and 5.4.1(b) (Delay Payments), if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:

- (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Customer's instructions;
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Call Off Contract;
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
  - (i) instruct the Supplier to comply with the Rectification Plan Process;
  - (ii) suspend this Call Off Contract (whereupon the relevant provisions of Clause 33 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
  - (iii) without terminating or suspending the whole of this Call Off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 33 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services;

27.1.2 Where the Customer exercises any of its step-in rights under Clauses 27.1.1(c)(ii) or 27.1.1(c)(iii), the Customer shall have the right to charge the Supplier for and the Supplier shall on demand pay any

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costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

**27.2 Rectification Plan Process**

27.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 27.1.1(c)(i):

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

27.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph **Error! Reference source not found.** of Call Off Schedule 4 (Dispute Resolution Procedure).

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

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

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

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

**28. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE**

28.1 If the Supplier has failed to:

28.1.1 Achieve a Milestone by its Milestone Date;

28.1.2 provide the Services in accordance with the Service Levels;

28.1.3 comply with its obligations under this Call Off Contract,

(each a “Supplier Non-Performance”),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 11 (Supplier Notification of Customer Cause)):

- (a) the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (b) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 30 (Customer Termination Rights) except Clause 30.6 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
  - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
  - (ii) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;
  - (iii) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and/or
  - (d) where the Supplier Non-Performance constitutes a Service Level Failure:
    - (i) the Supplier shall not be liable to accrue Service Credits;
    - (ii) the Customer shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 9 (Critical Service Level Failure); and
    - (iii) the Supplier shall be entitled to invoice for the Call Off Contract Charges for the provision of the relevant Services affected by the Customer Cause,
    - (iv) in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Customer Cause.

28.2 In order to claim any of the rights and/or relief referred to in Clause 28.1, the Supplier shall:

28.2.1 comply with its obligations under Clause 11 (Notification of Customer Cause); and

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

- (a) the Supplier Non-Performance;
- (b) the Customer Cause and its effect on the Supplier’s ability to meet its obligations under this Call Off Contract; and
- (c) the relief claimed by the Supplier.

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

28.4 Without prejudice to Clauses 6.7 (Continuing obligation to provide the Services), if a Dispute arises as to:

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

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

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

28.5 Any Variation that is required to the Implementation Plan or to the Call Off Contract Charges pursuant to this Clause 28 shall be implemented in accordance with the Variation Procedure.

**29. FORCE MAJEURE**

29.1 Subject to the remainder of this Clause 29 (and, in relation to the Supplier, subject to its compliance with its obligations in Clause B1 (Business Continuity and Disaster Recovery) where used), a Party may claim relief under this Clause 29 from liability for failure to meet its obligations under this Call Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

29.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

29.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 29 to the extent that consequences of the relevant Force Majeure Event:

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

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

29.4 Subject to Clause 29.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

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

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

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

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

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

- (a) the Customer shall not be entitled:
  - (i) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 27.1.1(b) and 27.1.1(c) (Customer Remedies for Default) as a result of such failure;
  - (ii) to receive Delay Payments pursuant to Clause 5.4 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
  - (iii) to receive Service Credits or withhold and retain any of the Call Off Contract Charges as Compensation for Critical Service Level Failure pursuant to Clause 9 (Critical Service Level Failure) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; and
- (b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.

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- 29.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract.
- 29.8 Relief from liability for the Affected Party under this Clause 29 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract and shall not be dependent on the serving of notice under Clause 29.7.

**K. TERMINATION****30. CUSTOMER TERMINATION RIGHTS****30.1 Termination in Relation to Guarantee**

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

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

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

- (e) the Supplier fails to provide the documentation required by Clause C.1 by the date so specified by the Customer.

**30.2 Termination on Material Default**

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

- (a) the Supplier commits a Critical Service Level Failure;
- (b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable;
- (c) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clauses 25.2.1(a) and 25.2.1(b) (Liability);
- (d) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: 5.2.3 (Implementation Plan), 6.4.2 (Services), 9.1 (Critical Service Level Failure), 10.4 (Disruption), 14.5 (Records, Audit Access and Open Book Data), 17 Promoting Tax

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Compliance, 23.3.9 (Confidentiality), 39.6.2 (Prevention of Fraud and Bribery), Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Call Off Schedule A3 (Staff Transfer) where applicable;

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

30.2.2 For the purpose of Clause 30.2.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

**30.3 Termination in Relation to Financial Standing**

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

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

**30.4 Termination on Insolvency**

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

**30.5 Termination on Change of Control**

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

30.5.2 The Supplier shall ensure that any notification made pursuant to Clause 30.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

30.5.3 The Customer may terminate this Call Off Contract under Clause 30.5 by issuing a Termination Notice to the Supplier within six (6) Months of:

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

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

**30.6 Termination for breach of Regulations**

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

**30.7 Termination Without Cause**

30.7.1 The Customer shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving written notice of at least the number of days stipulated, for the purposes of this Clause 30.7.1, in section B of the Order Form.

**30.8 Termination in Relation to Framework Agreement**

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

**30.9 Termination In Relation to Benchmarking**

30.9.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in paragraphs 3 and 4 of Framework Schedule 12 (Continuous Improvement and Benchmarking).

**30.10 Termination in Relation to Variation**

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

**30.11 Termination in relation to Tax Compliance**

30.11.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier in the event that:

- a) the warranty given by the Supplier pursuant to Clause 3.2.5 is materially untrue; or
- b) the Supplier commits a material breach of its obligation to notify the Customer of any Occasion of Tax Non-Compliance as required by Clause 17; or
- c) the Supplier fails to provide details of proposed mitigating factors as required by Clause 17.1.2(a) which in the reasonable opinion of the Customer, are acceptable.

**31. SUPPLIER TERMINATION RIGHTS**

**31.1 Termination on Customer Cause for Failure to Pay**

31.1.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call Off Contract if the Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract which in aggregate exceeds the amount stipulated in section C of the Order Form for the purposes of this Clause 31.1.1 (the '**Undisputed Sums**')



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**Limit**”), and the said undisputed sum due remains outstanding for forty (40) Working Days (the “**Undisputed Sums Time Period**”) after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

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

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 16.3 (Retention and Set off).

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

**32. TERMINATION BY EITHER PARTY****32.1 Termination for continuing Force Majeure Event**

32.1.1 Either Party may, by, by issuing a Termination Notice to the other Party terminate this Call Off Contract if, in accordance with Clause 29.6.1(a) (Force Majeure).

**33. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION**

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

33.2 Any suspension of this Call Off Contract under Clause 33.1 shall be for such period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

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

33.3.1 an increase in the Call Off Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer’s termination rights under Clause 30 (Customer Termination Rights) except Clause 30.6 (Termination Without Cause); and

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33.3.2 reject the Variation.

**34. CONSEQUENCES OF EXPIRY OR TERMINATION**

34.1 Consequences of termination under Clauses 30.1 (Termination in Relation to Guarantee), 30.2 (Termination on Material Default), 30.3 (Termination in Relation to Financial Standing), 30.8 (Termination in Relation to Framework Agreement), 30.9 (Termination in Relation to Benchmarking) and 30.10 (Termination in Relation to Variation)

34.1.1 Where the Customer:

- (a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 34.1; and
- (b) then makes other arrangements for the supply of the Services,  
the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period provided that Customer shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

34.2 Consequences of termination under Clauses 30.7 (Termination without Cause) and 31.1 (Termination on Customer Cause for Failure to Pay)

34.2.1 Where:

- (a) the Customer terminates (in whole or in part) this Call Off Contract under Clause 30.6 (Termination without Cause); or
- (b) the Supplier terminates this Call Off Contract pursuant to Clause 31.1 (Termination on Customer Cause for Failure to Pay),

the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 30.6 (Termination without Cause).

34.2.2 The Customer shall not be liable under Clause 34.2.1 to pay any sum which:

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

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**34.3 Consequences of termination under Clause 32.1 (Termination for Continuing Force Majeure Event)**

**34.3.1** The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause 32.1 (Termination for Continuing Force Majeure Event).

**34.4 Consequences of Termination for Any Reason**

**34.4.1** Save as otherwise expressly provided in this Call Off Contract:

- (a) termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 14 (Records, Audit Access & Open Book Data), 22 (Intellectual Property Rights), 23.3 (Confidentiality), 23.5 (Freedom of Information) 23.6 (Protection of Personal Data), 25 (Liability), 34 (Consequences of Expiry or Termination), 40 (Severance), 42 (Entire Agreement), 43 (Third Party Rights) 45 (Dispute Resolution) and 46 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing), Call Off Schedule 8 (Exit Management) where used, Call Off Schedule A3 (Staff Transfer) where applicable, Call Off Schedule 4 (Dispute Resolution Procedure), Call Off Schedule F (Collaboration Agreement) where used and, without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

**L. MISCELLANEOUS AND GOVERNING LAW**

**35. COMPLIANCE**

**35.1 Health and Safety**

**35.1.1** The Supplier shall perform its obligations under this Call Off Contract (including those in relation to the Services) in accordance with:

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

**35.1.2** Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Call Off Contract.

**35.1.3** While on the Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect

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of Supplier Personnel and other persons working there and any instructions from the Customer on any necessary associated safety measures.

**35.2 Equality and Diversity**

35.2.1 The Supplier shall:

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

**35.3 Official Secrets Act and Finance Act**

35.3.1 The Supplier shall comply with the provisions of:

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

**35.4 Environmental Requirements**

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

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

**36. ASSIGNMENT AND NOVATION**

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

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

- 36.2.1 any other Contracting Body; or
- 36.2.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
- 36.2.3 any private sector body which substantially performs the functions of the Customer,

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 36.2.

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- 36.3 A change in the legal status of the Customer shall not, subject to Clause 36.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.
- 36.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a private sector body in accordance with Clause 36.2.3 (the “**Transferee**” in the rest of this Clause) the right of termination of the Customer in Clause 30.4 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in Clause 30.4 (Termination on Insolvency) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee).

**37. WAIVER AND CUMULATIVE REMEDIES**

- 37.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 44 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Call Off Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.
- 37.2 Unless otherwise provided in this Call Off Contract, rights and remedies under this Call Off Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

**38. RELATIONSHIP OF THE PARTIES**

- 38.1 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.

**39. PREVENTION OF FRAUD AND BRIBERY**

- 39.1 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:
- 39.1.1 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
  - 39.1.2 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.
- 39.2 The Supplier shall not during the Call Off Contract Period:
- 39.2.1 commit a Prohibited Act; and/or
  - 39.2.2 do or suffer anything to be done which would cause the Customer or any of the Customer’s employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements

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or otherwise incur any liability in relation to the Relevant Requirements.

**39.3 The Supplier shall during the Call Off Contract Period:**

39.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

39.3.2 keep appropriate records of its compliance with its obligations under Clause 39.3.1 and make such records available to the Customer on request;

39.3.3 if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the 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 Customer may reasonably request; and

39.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.

**39.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 39.1, or has reason to believe that it has or any of the Supplier Personnel have:**

39.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

39.4.2 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

39.4.3 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.

**39.5 If the Supplier makes a notification to the Customer pursuant to Clause 39.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with Clause 14 (Records, Audit Access and Open Book Data).**

**39.6 If the Supplier breaches Clause 39.3, the Customer may by notice:**

39.6.1 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

39.6.2 immediately terminate this Call Off Contract for material Default.

**39.7 Any notice served by the Customer under Clause 39.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has**

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committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).

**40. SEVERANCE**

- 40.1 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.
- 40.2 In the event that any deemed deletion under Clause 40.1 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.
- 40.3 If the Parties are unable to resolve the Dispute arising under this Clause 40 within twenty (20) Working Days of the date of the notice given pursuant to Clause 40.2, this Call Off Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Contract is terminated pursuant to this Clause 40.

**41. FURTHER ASSURANCES**

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

**42. ENTIRE AGREEMENT**

- 42.1 This Call Off Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 42.2 Neither Party has been given, nor entered into this Call Off Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call Off Contract.
- 42.3 Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

**43. THIRD PARTY RIGHTS**

- 43.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part D of Call Off Schedule A3 (Staff Transfer) where applicable and the provisions of paragraph 9.9 of Schedule A4 (Exit Management) where used (together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party**”).

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**Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.]

- 43.2 Subject to Clause 43.1, a person who is not a Party to this Call Off Contract has no right under the CTRPA to enforce any term of this Call Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 43.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.
- 43.4 Any amendments or modifications to this Call Off Contract may be made, and any rights created under Clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

**44. NOTICES**

- 44.1 Except as otherwise expressly provided within this Call Off Contract, any notices sent under this Call Off Contract must be in writing. For the purpose of this Clause 44, an e-mail is accepted as being "in writing".
- 44.2 Subject to Clause 44.3, the following table sets out the method by which notices may be served under this Call Off Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 44.3 and 44.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 <sup>st</sup> Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 44.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail



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Signed For™ 1<sup>st</sup> Class or other prepaid in the manner set out in the table in Clause 44.2:

44.3.1 any Termination Notice (Clause 30 (Customer Termination Rights));

44.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 33 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 37 (Waiver and Cumulative Remedies))
- (c) Default or Customer Cause; and

44.3.3 any Dispute Notice.

44.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

44.5 This Clause 44 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

44.6 For the purposes of this Clause 44, the address and email address of each Party shall be the address and email address set out in the Order Form.

## **45. DISPUTE RESOLUTION**

45.1 The Parties shall resolve Disputes arising out of or in connection with this Call Off Contract in accordance with the Dispute Resolution Procedure.

45.2 The Supplier shall continue to provide the Services in accordance with the terms of this Call Off Contract until a Dispute has been resolved.

## **46. GOVERNING LAW AND JURISDICTION**

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

46.2 Subject to Clause 45 (Dispute Resolution) and Call Off Schedule 4 (Dispute Resolution Procedure) (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.