

- b) carry out, at the Supplier's expense, any work necessary to make the provision of the Goods 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 24 shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Goods;
  - (iii) without terminating or suspending the whole of this Call off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Goods only (whereupon the relevant provisions of Clause 24 shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Goods;

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

## 18.2 Rectification Plan Process

18.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process in accordance with this Call Off Contract:

- 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).

- 18.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of Annex 1 (Dispute Resolution Procedure) to the Call Off Terms.
- 18.2.3 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- a) is insufficiently detailed to be capable of proper evaluation;
  - b) will take too long to complete;
  - c) will not prevent reoccurrence of the Default; and/or
  - d) will rectify the Default but in a manner which is unacceptable to the Customer.
- 18.2.4 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.
- 18.2.5 If the Customer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

## 19. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

### 19.1 If the Supplier has failed to:

- 19.1.1 Achieve a Milestone by its Milestone Date, where used;
- 19.1.2 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 7 (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 21 (Customer Termination Rights) except Clause 21.2 (Termination Without Cause);



- c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date, where used:
    - (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
- 19.2 In order to claim any of the rights and/or relief referred to in Clause 19.1, the Supplier shall:
  - 19.2.1 comply with its obligations under Clause 7 (Notification of Customer Cause); and
  - 19.2.2 within five (5) 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.
- 19.3 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.
- 19.4 Without prejudice to Clause 4.8.1 (Continuing obligation to provide the Goods), if a Dispute arises as to:
  - 19.4.1 whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or
  - 19.4.2 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.
- 19.5 Any Variation that is required to the Implementation Plan or to the Call Off Contract Charges pursuant to this Clause 19 shall be implemented in accordance with the Variation Procedure.

## 20. FORCE MAJEURE

- 20.1 Subject to the remainder of this Clause 20 a Party may claim relief under this Clause 20 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.
- 20.2 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.
- 20.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 20 to the extent that consequences of the relevant Force Majeure Event:
- 20.3.1 are capable of being mitigated by any of the Goods, but the Supplier has failed to do so; and/or
  - 20.3.2 should have been foreseen and prevented or avoided by a prudent provider of goods similar to the Goods, operating to the standards required by this Call Off Contract.
- 20.4 Subject to Clause 20.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Goods affected by the Force Majeure Event.
- 20.5 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.
- 20.6 Where, as a result of a Force Majeure Event:
- 20.6.1 an Affected Party fails to perform its obligations in accordance with this Call Off Contract, then during the continuance of the Force Majeure Event:
    - a) the other Party shall not be entitled to exercise any rights to terminate this Call Off Contract in whole or in part as a result of such failure unless the provision of the Goods 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;
  - 20.6.2 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 18.1.1b) and



- 18.1.1c) (Customer Remedies for Inadequate Performance) as a result of such failure; and
- (ii) to receive Delay Payments pursuant to Clause **Error! Reference source not found.** (Delay Payments) where used to the extent that the Achievement of any Milestone is affected by the Force Majeure Event;
- b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Goods (or part of the Goods) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.
- 20.7 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.
- 20.8 Relief from liability for the Affected Party under this Clause 20 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 20.7.

## **J. TERMINATION AND EXIT MANAGEMENT**

### **21. CUSTOMER TERMINATION RIGHTS**

#### **21.1 Termination on Material Default**

- 21.1.1 The Customer may terminate this Call Off Contract for material Default by issuing a Termination Notice to the Supplier where:
- a) The representation and warranty given by the Supplier pursuant to Clause 2.2.5 (Representations and Warranties) is materially untrue or misleading;
- b) As a result of any Defaults the Customer incurs losses in a Contract Year which exceeds 80% of the value of the Supplier's aggregate annual liability limit for that Contract year as set out in Clause 17;
- c) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses A.1.2.3 where used, 4.5.2, 6.4, 9.5, 15.4.9, 30.6.2 and 38.2 where this is used
- d) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Customer, capable of remedy; and/or
- e) the Supplier commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer in accordance with the Rectification Plan Process.
- 21.1.2 For the purpose of Clause 21.1.1, 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.

## **21.2 Termination Without Cause**

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

## **21.3 Termination in Relation to Framework Agreement**

21.3.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier if the Framework Agreement is terminated for any reason whatsoever. For the avoidance of doubt this right shall not arise in the case of expiry of the Framework Agreement.

## **21.4 Termination in relation to Tax Compliance**

21.4.1 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 2.2.5 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 12; or
- c) the Supplier fails to provide details of proposed mitigating factors as required by Clause 12.1.2a) which in the reasonable opinion of the Customer, are acceptable.

# **22. SUPPLIER TERMINATION RIGHTS**

## **22.1 Termination on Customer Cause for Failure to Pay**

22.1.1 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 to the Supplier or any third party financier under any Financed Purchase Agreement which in aggregate exceeds a sum equal to fifty per cent (50%) of the Estimated Year 1 Call Off Contract Charges payable by the Customer to the Supplier and any sums payable by the Customer to the Supplier or any third party financier under any Financed Purchase Agreement in that Call Off Contract Year (for the avoidance of doubt including Call Off Contracts with a duration of less than one year) and such amount remains outstanding 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 11.3 (Retention and Set off).

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

## **23. TERMINATION BY EITHER PARTY**

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

- 23.1.1 Either Party may, by issuing a Termination Notice to the other Party terminate this Call Off Contract, in accordance with Clause 20.6.1a) (Force Majeure).

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

- 24.1 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 suspect 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.
- 24.2 Any suspension of this Call Off Contract under Clause 24.1 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.
- 24.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Goods and the Call Off Contract Charges, provided that the Supplier shall not be entitled:
  - 24.3.1 to an increase in the Call Off Contract Charges in respect of the provision of the Goods that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 21 (Customer Termination Rights) except Clause 21.2 (Termination Without Cause); or
  - 24.3.2 to reject the Variation.

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

- 25.1 **Consequences of Termination under Clauses D.3 (Termination in Relation to Guarantee) where used, 21.1 (Termination on Material Default), Error! Reference source not found. (Termination in Relation to Financial Standing) where used, 21.3 (Termination in Relation to Framework Agreement) where used, 21.5 (Termination in Relation to Variation) where used and 21.4 (Termination in Relation to Tax Compliance)**
  - 25.1.1 Where the Customer:

- a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 25.1; and
- b) then makes other arrangements for the supply of the Goods, 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.

**25.2 Consequences of Termination under Clauses 21.2 (Termination without Cause), 21.3 (Termination in Relation to Framework Agreement), 21.5 (Termination in Relation to Variation) where used and 22.1 (Termination on Customer Cause for Failure to Pay)**

**25.2.1 Where:**

- a) the Customer terminates (in whole or in part) this Call Off Contract under Clause 21.2 (Termination without Cause); or
- b) the Supplier terminates this Call Off Contract pursuant to Clause 22.1 (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 21.2 (Termination without Cause).

**25.2.2 The Customer shall not be liable under Clause 25.2.1 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.

**25.3 Consequences of Termination under Clause 23.1 (Termination for Continuing Force Majeure Event)**

**25.3.1** 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 23.1 (Termination for Continuing Force Majeure Event).

**25.4 Consequences of Termination for Any Reason**

**25.4.1** 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 9 (Records, Audit Access & Open Book Data), 14 (Intellectual Property Rights), 15.4 (Confidentiality), 15.6 (Freedom of Information) 15.7 (Protection of Personal Data), 17 (Liability), 25 (Consequences of Expiry or Termination), 31 (Severance), 33 (Entire Agreement), 34 (Third Party Rights) 36 (Dispute Resolution) and 37 (Governing Law and Jurisdiction), Annex 1 to the Terms & Conditions (Dispute Resolution Procedure), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing), where these are 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.

## **K. MISCELLANEOUS AND GOVERNING LAW**

### **26. COMPLIANCE**

#### **26.1 Health and Safety**

26.1.1 The Supplier shall perform its obligations under this Call Off Contract (including those in relation to the Goods) 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.

26.1.2 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

#### **26.2 Official Secrets Act and Finance Act**

26.2.1 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.

#### **26.3 Environmental Requirements**

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

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

## **27. ASSIGNMENT AND NOVATION**

- 27.1 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.

## **28. WAIVER AND CUMULATIVE REMEDIES**

- 28.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 35 (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.
- 28.2 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.

## **29. RELATIONSHIP OF THE PARTIES**

- 29.1 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.

## **30. PREVENTION OF FRAUD AND BRIBERY**

- 30.1 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:
- 30.1.1 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
  - 30.1.2 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.
- 30.2 The Supplier shall not during the Call Off Contract Period:
- 30.2.1 commit a Prohibited Act; and/or
  - 30.2.2 do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 30.3 The Supplier shall during the Call Off Contract Period:



- 30.3.1 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;
  - 30.3.2 keep appropriate records of its compliance with its obligations under Clause 30.3.1 and make such records available to the Customer on request;
  - 30.3.3 if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Goods in connection with this Call Off Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
  - 30.3.4 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.
- 30.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 30.1, or has reason to believe that it has or any of the Supplier Personnel have:
  - 30.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 30.4.2 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
  - 30.4.3 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.
- 30.5 If the Supplier makes a notification to the Customer pursuant to Clause 30.4, 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 9 (Records, Audit Access and Open Book Data).
- 30.6 If the Supplier breaches Clause 30.3, the Customer may by notice:
  - 30.6.1 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
  - 30.6.2 immediately terminate this Call Off Contract for material Default.
- 30.7 Any notice served by the Customer under Clause 30.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).

### **31. SEVERANCE**

- 31.1 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 the 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.
- 31.2 In the event that any deemed deletion under Clause 31.1 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 possible, achieves the Parties' original commercial intention.
- 31.3 If the Parties are unable to resolve the Dispute within twenty (20) Working Days of the date of the notice given pursuant to Clause 31.2, 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 31.

### **32. FURTHER ASSURANCES**

- 32.1 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.

### **33. ENTIRE AGREEMENT**

- 33.1 This Call Off Contract constitutes 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.
- 33.2 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.
- 33.3 Nothing in this Clause 33 shall exclude any liability in respect of misrepresentations made fraudulently.

### **34. THIRD PARTY RIGHTS**

- 34.1 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.
- 34.2 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.



- 34.3 Any amendments or modifications to this Call Off Contract may be made and may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

### 35. NOTICES

- 35.1 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, an e-mail is accepted as being "in writing".
- 35.2 Subject to Clause 35.3, 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 35.3 and 35.4)	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

- 35.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1<sup>st</sup> Class or other prepaid in the manner set out in the table in Clause 35.2:

- 35.3.1 any Termination Notice (Clause 21),
- 35.3.2 any notice in respect of:
- a) partial termination, suspension or partial suspension (Clause 24);
  - b) waiver (Clause 28);
  - c) Default or Customer Cause; and

35.3.3 any Dispute Notice.

- 35.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 35.3 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 35.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 35.5 This Clause 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).
- 35.6 For the purposes of this Clause 35, the address and email address of each Party shall be the address and email address set out in the Order Form.

## **36. DISPUTE RESOLUTION**

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

## **37. GOVERNING LAW AND JURISDICTION**

- 37.1 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.
- 37.2 Subject to Clause 36 (Dispute Resolution) and Annex 1 to these Call Off Terms (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.



## **ANNEX 1: DISPUTE RESOLUTION PROCEDURE**