

DPS SCHEDULE 4 PART 2

[TEMPLATE] CALL OFF TERMS

DRAFT

TABLE OF CONTENTS

A.	PRELIMINARIES	5
1.	DEFINITIONS AND INTERPRETATION	5
2.	DUE DILIGENCE.....	6
3.	REPRESENTATIONS AND WARRANTIES	7
B.	DURATION OF CALL OFF CONTRACT	8
4.	CALL OFF CONTRACT PERIOD.....	8
C.	CALL OFF CONTRACT PERFORMANCE	8
5.	IMPLEMENTATION PLAN	9
6.	SERVICES.....	10
7.	STANDARDS AND QUALITY	14
8.	TESTING	14
9.	SERVICE LEVELS AND SERVICE CREDITS.....	15
10.	CRITICAL SERVICE LEVEL FAILURE.....	15
11.	BUSINESS CONTINUITY AND DISASTER RECOVERY.....	16
12.	DISRUPTION.....	16
13.	SUPPLIER NOTIFICATION OF CUSTOMER CAUSE	16
14.	CONTINUOUS IMPROVEMENT	17
D.	CALL OFF CONTRACT GOVERNANCE	18
15.	PERFORMANCE MONITORING.....	18
16.	REPRESENTATIVES	18
17.	RECORDS, AUDIT ACCESS AND OPEN BOOK DATA	18
18.	CHANGE	20
19.	FINANCIAL DISTRESS.....	22
E.	PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS.....	22
20.	CALL OFF CONTRACT CHARGES AND PAYMENT.....	22
21.	PROMOTING TAX COMPLIANCE	24
22.	NOT USED	24
F.	SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS	24
23.	KEY PERSONNEL	24
24.	SUPPLIER PERSONNEL	25
25.	SUPPLY CHAIN RIGHTS AND PROTECTION	27
G.	PROPERTY MATTERS	27
26.	CUSTOMER PREMISES	27
27.	CUSTOMER PROPERTY	28
28.	SUPPLIER EQUIPMENT.....	29
H.	INTELLECTUAL PROPERTY AND INFORMATION	29

29.	INTELLECTUAL PROPERTY RIGHTS	29
30.	SECURITY AND PROTECTION OF INFORMATION	35
31.	PUBLICITY AND BRANDING	44
I.	LIABILITY AND INSURANCE	44
32.	LIABILITY.....	44
33.	INSURANCE	46
J.	REMEDIES AND RELIEF	46
34.	CUSTOMER REMEDIES FOR DEFAULT	46
35.	SUPPLIER RELIEF DUE TO CUSTOMER CAUSE	48
36.	FORCE MAJEURE.....	50
K.	TERMINATION AND EXIT MANAGEMENT	51
37.	CUSTOMER TERMINATION RIGHTS	51
38.	SUPPLIER TERMINATION RIGHTS	53
39.	TERMINATION BY EITHER PARTY	53
40.	PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION...53	
41.	CONSEQUENCES OF EXPIRY OR TERMINATION.....	54
L.	MISCELLANEOUS AND GOVERNING LAW	56
42.	COMPLIANCE.....	56
43.	ASSIGNMENT AND NOVATION.....	57
44.	WAIVER AND CUMULATIVE REMEDIES	58
45.	RELATIONSHIP OF THE PARTIES	58
46.	PREVENTION OF FRAUD AND BRIBERY.....	58
47.	SEVERANCE	59
48.	FURTHER ASSURANCES.....	60
49.	ENTIRE AGREEMENT	60
50.	THIRD PARTY RIGHTS	60
51.	NOTICES.....	61
52.	COMPLAINT HANDLING PROCEDURE	61
53.	DISPUTE RESOLUTION	62
54.	GOVERNING LAW AND JURISDICTION	62
	CALL OFF SCHEDULE 1: DEFINITIONS	63
	CALL OFF SCHEDULE 2: SERVICES.....	90
	ANNEX 1: CUSTOMER'S STATEMENT OF REQUIREMENTS AND SERVICES ORDERED	91
	ANNEX 2: SUPPLIER CALL OFF SOLUTION	92
	CALL OFF SCHEDULE 3: CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING	93
	ANNEX 1: CALL OFF CONTRACT CHARGES.....	97

ANNEX 2: PAYMENT TERMS/PROFILE.....	99
ANNEX 3: ALLOWABLE ASSUMPTIONS	100
CALL OFF SCHEDULE 4: IMPLEMENTATION PLAN, CUSTOMER RESPONSIBILITIES AND TESTING.....	101
PART A: IMPLEMENTATION PLAN AND CUSTOMER RESPONSIBILITIES....	102
ANNEX 1 – EXAMPLE IMPLEMENTATION PLAN A.....	103
PART B: TESTING	104
ANNEX 1 – MILESTONE ACHIEVEMENT CRITERIA.....	109
ANNEX 2 – MINIMUM TESTING REQUIREMENTS	110
ANNEX 3: TEST ISSUES – SEVERITY LEVELS	116
ANNEX 4: MILESTONE ACHIEVEMENT CERTIFICATE.....	117
CALL OFF SCHEDULE 5: FINANCIAL DISTRESS	118
CALL OFF SCHEDULE 6: SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING.....	123
PART A: SERVICE LEVELS AND SERVICE CREDITS.....	126
ANNEX 1 TO PART A: SERVICE LEVELS AND SERVICE LEVEL MEASUREMENT 128	
ANNEX 2 TO PART A: CRITICAL SERVICE LEVEL FAILURE	136
ANNEX 3 TO PART A: SERVICE LEVEL FAILURE AND SERVICE CREDIT CALCULATION EXAMPLES	137
PART B: PERFORMANCE MONITORING.....	139
ANNEX 1 TO PART B: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS	141
CALL OFF SCHEDULE 7: SECURITY.....	142
ANNEX 1: SECURITY POLICY	149
ANNEX 2: SECURITY MANAGEMENT PLAN	150
CALL OFF SCHEDULE 8: BUSINESS CONTINUITY AND DISASTER RECOVERY	151
ANNEX 1: BCDR TENDER POLICY.....	152
ANNEX 2: BCDR PLAN.....	153
CALL OFF SCHEDULE 9: EXIT MANAGEMENT	154
ANNEX 1: SUPPLIER'S EXIT PLAN	163
CALL OFF SCHEDULE 10: PSN TERMS	164
CALL OFF SCHEDULE 11: DISPUTE RESOLUTION PROCEDURE.....	165
CALL OFF SCHEDULE 12: VARIATION FORM.....	172
CALL OFF SCHEDULE 13: ALTERNATIVE AND/OR ADDITIONAL CLAUSES	174
CALL OFF SCHEDULE 14: HSCN MANDATORY SUPPLEMENTAL TERMS.....	185

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 the relevant Call Off Schedule, it shall have the meaning given to it in the Dynamic Purchasing System Agreement. If no meaning is given to it in the Dynamic Purchasing System 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; and
 - 1.3.9 the headings in this Call Off Contract are for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract.
- 1.4 Subject to Clause 1.5, 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 Dynamic Purchasing System Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 the Dynamic Purchasing System Agreement;

- 1.4.2 the Order Form;
- 1.4.3 the Call Off Terms;
- 1.4.4 Supplier Call Off Solution;
- 1.5 Any permitted changes by the Customer to the Template Call Off Terms and the Template Order Form under Clause 5 (Call for Competition Procedure) of the Dynamic Purchasing System Agreement and DPS Schedule 4 (Call for Competition Procedure) prior to them becoming the Call Off Terms and the Order Form and the Parties entering this Call Off Contract shall prevail over the Dynamic Purchasing System Agreement.

2. DUE DILIGENCE

- 2.1 Where the Customer has conducted a Call for Competition Procedure, the Supplier acknowledges that, subject to the Allowable Assumptions:
 - 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;
 - 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 relating to:
 - (a) the 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) the operating processes and procedures and the working methods of the Customer;
 - (c) the ownership, functionality, capacity, condition and suitability for use in the provision of the Services of the Customer Assets; and
 - (d) the 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) each aspect, if any, of the Operating Environment where the provision of the Services will be subject to site surveys, wayleaves and/or any other consents not yet granted;
 - (c) the actions needed to remedy each such unsuitable aspect; and
 - (d) a timetable for and the costs of those actions.
 - 2.1.5 it shall not be excused from the performance of any of its obligations under this Call Off Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

- (a) any unsuitable aspects of the Operating Environment not otherwise declared to the Customer in Clause 2.1.4;
- (b) any misinterpretation of the requirements of the Customer in the Order Form or elsewhere in this Call Off Contract; and/or
- (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3. REPRESENTATIONS AND WARRANTIES

3.1 Each Party represents and warrants that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Call Off Contract;
- 3.1.2 this Call Off Contract is executed by its duly authorised representative;
- 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative 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 shall, for the duration of this Call Off Contract, achieve and maintain HSCN Compliance which for the avoidance of doubt includes holding the HSCN Certificate;
- 3.2.2 it shall, for the duration of this Call Off Contract, comply with the HSCN Compliance Document Set;
- 3.2.3 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.4 subject to any declarations made pursuant to Clause 2.1.4(b), 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;
- 3.2.5 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;
- 3.2.6 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to the SQ Response (if applicable), its Call Off Solution (if applicable) 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;

- 3.2.7 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;
- 3.2.8 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;
- 3.2.9 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; and
- 3.2.10 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.
- 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 shall expire either:
- 4.1.1 at the end of the Call Off Contract Initial Period; or
- 4.1.2 where the Customer elects to extend the Call Off Contract Initial Period by giving the Supplier at least three (3) months' written notice, at the end of the Call Off Extension Period,
- unless it is terminated earlier in accordance with the terms of this Call Off Contract or otherwise by operation of Law.
- 4.2 The Parties agree that the Supplier shall, at least six (6) months prior to the expiry of the Call Off Contract Period, provide notification to the Customer of such expiry to enable the Customer to decide if an extension is required. The Supplier shall include in the notification, details of any proposed reduction to the Charges which will apply during the Call Off Extension Period.

C. CALL OFF CONTRACT PERFORMANCE

5. IMPLEMENTATION PLAN

5.1 General

- 5.1.1 The Parties may agree one or more Implementation Plan(s) in respect of this Call Off Contract in accordance with the procedure in Clause 5.1.2, provided that each shall be set out as a separate annex to Schedule 4 (Implementation Plan, Customer Responsibilities and Testing).
- 5.1.2 The Supplier shall submit a draft Implementation Plan to the Customer for Approval (such decision to the Customer for Approval or not shall not be unnecessarily delayed or withheld) within thirty (30) calendar days of notification by the Customer (including notification of the initial Service Instances on the Order Form or the first Implementation Plan produced after the Call Off Commencement Date as applicable) that it requires specific Service Instances from those set out in Part A of Annex 1 of Schedule 2.

5.2 Formation of Implementation Plan(s)

- 5.2.1 Each Implementation Plan must meet the criteria set out in Schedule 4 and identify the Service Instance Unique ID(s) (by reference to Part B of Annex 1 of Schedule 2) to which it applies and contain information at the level of detail necessary to manage the implementation stage effectively, and consistently with the Milestones. The Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 5.2.2 The Supplier shall provide each of the Deliverables identified in any Implementation Plan by the applicable Milestone Date assigned to that Deliverable.
- 5.2.3 The Supplier shall monitor its performance against the Implementation Plan(s) and Milestones (if any) and any other requirements of the Customer as set out in this Call Off Contract and report to the Customer on such performance.

5.3 Control of Implementation Plan(s)

- 5.3.1 Subject to Clause 5.3.2, the Supplier shall keep the Implementation Plan(s) 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(s).
- 5.3.2 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).

5.4 Rectification of Delay in Implementation

- 5.4.1 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:

- (A) 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
 - (B) include in its notification an explanation of the actual or anticipated impact of the Delay; and
 - (C) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (D) 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 of which a Delay Payment has been specified in the Implementation Plan, Clause 5.5 (Delay Payments) shall apply.

5.5 Delay Payments

5.5.1 If Delay Payments have been included as a requirement on an 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 in the Implementation Plan) and the following provisions shall apply:

- (a) the Supplier acknowledges and agrees that any Delay Payment is a genuine estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to Achieve the corresponding Milestone;
- (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:
 - (A) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 37 (Customer Termination Rights) except Clause 37.5 (Termination Without Cause); or
 - (B) the delay exceeds the period of one hundred (100) days 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 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 44 (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 5.5.

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 the description of the Services in Call Off Schedule 2 (Services) (or elsewhere in this Call Off Contract);
 - (b) are supplied in accordance with the provisions of this Call Off Contract;
 - (c) comply with its SQ Response; and
 - (d) where they are PSN Services, comply with the PSN Standards (and the mandatory supplemental terms of the PSN Standards shall be included in Call Off Schedule 10).
- 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) Call Off Contract Schedule 7 (Security);
 - (e) the Quality Plans (if applicable);
 - (f) the ICT Policy (if so required by the Customer); and
 - (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 18.1 (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:
 - (A)** the release of any new Supplier Software or upgrade to any Supplier Software enables continued delivery of the Services compliant with the 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;
 - (B)** 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;
 - (C)** 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;

- (D) 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
- (E) the Services are fully compatible with such elements of the Customer Software, Customer System, Customer Property or Customer Assets that are required for the delivery of the Services as described in the Order Form or otherwise used by the Supplier in connection with this Call Off Contract;
- (d) minimise any disruption to the 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 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 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 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, 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.

6.2 Time of Delivery of the Services

- 6.2.1 The Supplier shall provide the Services on the date(s) specified in the Order Form, Implementation Plan(s) (or elsewhere in this Call Off Contract) and the Milestone Dates (if any). Such provision shall include compliance with the obligations on the Supplier set out in Clause 5 (Implementation Plan) (if applicable).

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.

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 to 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 fit for purpose and free from material design errors;
- (b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution 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 29.9 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 6.4 (Undelivered Services) and 34 (Customer Remedies for Default), the Supplier shall, where practicable:

- (a) remedy any breach of its obligations in this 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 38 (Supplier Termination Rights) for failure by the Customer to pay undisputed Call Off Contract Charges.

7. STANDARDS AND QUALITY

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 Where the Customer has specified in the Order Form that it requires a Quality Plan, the following provisions shall apply:

7.2.1 The Supplier shall:

- (a) develop, within thirty (30) Working Days of the Call Off Commencement Date, 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**"); and
- (b) 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.

7.2.2 Following the approval by the Customer of the Quality Plans:

- (a) the Supplier shall implement all Deliverables in accordance with the Quality Plans; and
- (b) any Variation to the Quality Plans shall be agreed in accordance with the Variation Procedure.

7.3 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:

- 7.3.1 be appropriately experienced, qualified and trained to supply the Services in accordance with this Call Off Contract;
- 7.3.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Good and/or Services; and
- 7.3.3 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.

8. TESTING

8.1 The Parties shall comply with the provisions set out in Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Testing).

9. SERVICE LEVELS AND SERVICE CREDITS

9.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).

9.2 The Supplier shall at all times during the Call Off Contract Period provide the Services to meet or exceed the Service Level Target for each Service Level.

9.3 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 6 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.

9.4 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 Target.

9.5 A Service Credit shall be the Customer's exclusive financial remedy for a Service Level Failure except where:

9.5.1 the relevant Service Level Failure:

(a) constitutes a Critical Service Level Failure, in which case the provisions of Clause 10 shall apply;

(b) has arisen due to a Prohibited Act or deliberate Default by the Supplier or any Supplier Personnel; and

(c) results in:

(A) the corruption or loss of any Customer Data (in which case the remedies under Clause 30.3 (Protection of Customer Data) shall also be available); and/or

(B) the Customer being required to make a compensation payment to one or more third parties; and/or

9.5.2 the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 37 (Customer Termination Rights) except Clause 37.5 (Termination Without Cause).

10. CRITICAL SERVICE LEVEL FAILURE

10.1 On the occurrence of a Critical Service Level Failure:

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

10.1.2 the Charges in respect of the relevant Standalone Service Instance or Integrated Service Instance Set applicable to the Service Period in which the Critical Service Level Failure occurs shall be deducted from the Call Off Contract Charges which otherwise would have been payable by the Customer and the Supplier shall not invoice the Customer for the same; and

10.1.3 where the Supplier has already invoiced the Charges in respect of the relevant Standalone Service Instance or Integrated Service Instance Set applicable to the Service Period in which the Critical Service Level Failure

occurs to the Customer but the Customer has not yet paid such Charges the Supplier shall promptly issue a credit note to the Customer for the value of such Charges; and

10.1.4 where the Customer has already paid the Charges in respect of the relevant Standalone Service Instance or Integrated Service Instance Set applicable to the Service Period in which the Critical Service Level Failure occurs the Supplier shall promptly reimburse the Customer for the value of such Charges; and

10.1.5 the Customer shall be entitled to terminate the relevant Standalone Service Instance or Integrated Service Instance Set (or any Service Instance included in the Integrated Service Instance Set) for material Default; and

10.1.6 where two (2) Critical Service Level Failures occur in any three (3) consecutive Service Periods, the Customer will be entitled to terminate this Call Off Contract for material Default.

10.2 The Supplier:

10.2.1 agrees that the application of Clause 10.1 is commercially justifiable where a Critical Service Level Failure occurs; and

10.2.2 acknowledges that it has taken legal advice on the application of Clause 10.1 and has had the opportunity to price for that risk when calculating the Call Off Contract Charges.

11. BUSINESS CONTINUITY AND DISASTER RECOVERY

11.1 The Parties shall comply with the provisions of Call Off Schedule 8 (Business Continuity and Disaster Recovery).

12. DISRUPTION

12.1 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.

12.2 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.

12.3 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.

12.4 If the Supplier's proposals referred to in Clause 12.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.

12.5 If the Supplier is temporarily unable to fulfil the requirements of this Call Off Contract owing to disruption of normal business solely caused by the Customer, an appropriate allowance by way of an extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

13. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

13.1 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 38 (Supplier Termination Rights)), the Supplier shall:

13.1.1 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:

- (a) the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Call Off Contract; and
- (b) any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
- (c) 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.

14. CONTINUOUS IMPROVEMENT

14.1 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Services in accordance with this Clause 14 with a view to reducing the Customer's costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Customer. As part of this obligation the Supplier shall identify and report ad hoc to the Customer regarding (for example):

14.1.1 the emergence of new and evolving relevant technologies which could improve the ICT Environment and/or the provision of the Services, and those technological advances potentially available to the Supplier and the Customer which the Parties may wish to adopt;

14.1.2 new or potential improvements to the Services or the provision of the Services including in respect of the quality, responsiveness, procedures, benchmarking methods, ways of performing the Services and customer support services in relation to the Services;

14.1.3 changes in business processes and working practices that would enable the Services to be provided at lower cost and/or with greater benefits to the Customer;

14.1.4 changes to the ICT Environment, business processes and working practices that would enable reductions in the total energy consumed in the provision of the Services.

14.1.5 improvements which the Supplier uses or is planning to use with its other Customers;

14.1.6 proposals as to how any investment required for continuous improvement could be shared with other Customers of the Supplier;

14.1.7 an usage report for the delivered services; and

14.1.8 any variation in Charges and cost / benefit analysis of the potential improvements identified subject to this Clause 14.

14.2 The Supplier shall ensure that the information that it provides to the Customer shall be sufficient for the Customer to decide whether any improvement should

be implemented. The Supplier shall provide any further information that the Customer requests.

14.3 If the Customer wishes to incorporate any improvement identified by the Supplier, including any impact on the Charges declared by the Supplier as part of that improvement, the Customer shall request a Variation in accordance with the Variation Procedure.

14.4 Notwithstanding anything to the contrary in this Call Off Contract, the Parties may not change or improve the Services in any way which adversely affects or may adversely affect any relevant PSN Standards or HSCN obligations and processes.

D. CALL OFF CONTRACT GOVERNANCE

15. PERFORMANCE MONITORING

15.1 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 6 (Service Levels, Service Credits and Performance Monitoring).

15.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.

16. REPRESENTATIVES

16.1 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.

16.2 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 24 (Supplier Personnel).

16.3 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.

17. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

17.1 The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Services provided under it, by any Sub-Contracts and the amounts paid by the Customer.

17.2 The Supplier shall:

17.2.1 keep the records and accounts referred to in Clause 17.1 in accordance with Good Industry Practice and Law; and

17.2.2 afford any Auditor access to the records and accounts referred to in Clause 17.1 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 17.1,

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 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 Supplier's and each Sub-Contractor's compliance with the applicable Law;
- (d) 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;
- (e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the DPS Guarantor and/or any Sub-Contractors or their ability to perform the Services;
- (f) 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;
- (g) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Call Off Contract;
- (h) 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;
- (i) 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;
- (j) review any Performance Monitoring Reports provided under Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (k) verify the accuracy and completeness of any information delivered or required by this Call Off Contract;
- (l) inspect the ICT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (m) review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing (if applicable);

- (n) review the Supplier's quality management systems (including all relevant Quality Plans (if applicable) and any quality manuals and procedures);
- (o) review the Supplier's compliance with the Standards;
- (p) 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;
- (q) review the integrity, confidentiality and security of the Customer Data;
- (r) where indicated on the Customer's Order Form that the Customer requires Full Audit Transparency, Auditor access will also be afforded to verify the Open Book Data; and/or
- (s) where the Customer is a private sector body the Customer is not permitted to require Full Audit Transparency on the Order Form.

17.3 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.

17.4 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:

- 17.4.1 all reasonable information requested by the Customer within the scope of the audit;
- 17.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
- 17.4.3 access to the Supplier Personnel.

17.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 17, 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.

18. CHANGE

18.1 Variation Procedure

- 18.1.1 Subject to the provisions of this Clause 18 and of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 18.1.2 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.

18.1.3 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.

18.1.4 If the Supplier requires resources other than those ordinarily deployed in the provision of the Service in order to complete the Impact Assessment, the Supplier must bring this to the attention of the Customer prior to commencing the Impact Assessment. In such circumstances, if the Customer wishes the Impact Assessment to proceed, the Customer shall pay any reasonable costs incurred by the Supplier in producing the Impact Assessment. For the avoidance of doubt, the Supplier will not be able to retrospectively recover costs incurred during the Impact Assessment that were not agreed by the Customer prior to the commencement of the Impact Assessment.

18.1.5 The Parties may agree to adjust the time limits specified in the Variation request to allow for the preparation of the Impact Assessment.

18.1.6 Subject to 18.1.5, 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 Order and the proposed Variation.

18.1.7 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:

- (A) agree to continue to perform its obligations under this Call Off Contract without the Variation; or
- (B) terminate this Call Off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Order in accordance with this Call Off Contract or where the Supplier can show evidence of financial commitment having been made to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

18.1.8 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.

18.2 Legislative Change

18.2.1 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.

18.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 18.2.1(b)), the Supplier shall:

- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
 - (A) whether any Variation is required to the provision of the Services, the Call Off Contract Charges or this Call Off Contract; and
 - (B) 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 Targets; and
- (b) provide to the Customer with evidence:
 - (A) 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;
 - (B) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (C) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 14 (Continuous Improvement), has been taken into account in amending the Call Off Contract Charges.

18.2.3 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 18.2.1(b)) shall be implemented in accordance with the Variation Procedure.

19. FINANCIAL DISTRESS

19.1 This Clause 19 applies only where the Customer has stipulated such on the Order Form during a Call for Competition Procedure.

19.2 The Parties shall comply with the provisions of Call Off Schedule 5 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

20. CALL OFF CONTRACT CHARGES AND PAYMENT

20.1 Call Off Contract Charges

- 20.1.1 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 the pricing and payment profile and the invoicing procedure in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).
- 20.1.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 8 (Testing) (if applicable), 17 (Records, Audit Access and Open Book Data), 30.6 (Freedom of Information), 30.7 (Protection of Personal Data).
- 20.1.3 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.

20.2 VAT

- 20.2.1 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.
- 20.2.2 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 or from 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 20.2 (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.

20.3 Retention and Set Off

- 20.3.1 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.
- 20.3.2 If the Customer wishes to exercise its right pursuant to Clause 20.3.1 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.
- 20.3.3 The Supplier shall make all 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 from a court of competent jurisdiction requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

20.4 Euro

- 20.4.1 Any requirement of Law to account for the Services in Euro, (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.

20.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 20.4.1 by the Supplier.

20.5 Income Tax and National Insurance Contributions

20.5.1 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.

21. PROMOTING TAX COMPLIANCE

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

- 21.1.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
- 21.1.2 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.

22. NOT USED

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

23. KEY PERSONNEL

- 23.1 This Clause 23 applies only where the Customer has stipulated the use of Key Personnel as set out in Clause 23.8 or additionally in the Order Form.
- 23.2 The Parties have agreed to the appointment of the Key Personnel. The Order Form lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Call Off Commencement Date.
- 23.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Call Off Contract Period.
- 23.4 The Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 23.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Call Off Schedule 9 (Exit Management)) unless:

- 23.5.1 requested to do so by the Customer;
- 23.5.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
- 23.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
- 23.5.4 the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).

23.6 The Supplier shall:

- 23.6.1 notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
- 23.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
- 23.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;
- 23.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and
- 23.6.5 ensure that any replacement for a Key Role:
 - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 23.6.6 procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.

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

23.8 The Key Personnel and their Key Roles shall be as specified in Section F of the Order Form.

24. SUPPLIER PERSONNEL

24.1 Supplier Personnel

24.1.1 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:

- (A) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (B) are vetted in accordance with Good Industry Practice and, where applicable, Call Off Schedule 7 (Security) and the Standards; and
 - (C) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call Off Schedule 7 (Security);
- (c) 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.
- 24.1.2 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).
- 24.1.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

24.2 Relevant Convictions

- 24.2.1 The following provisions apply only where the Customer has stipulated that Relevant Conviction provisions are required on the Order Form during a Call for Competition Procedure:
- (a) The Supplier shall ensure that no person who discloses that they have a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Services without Approval.
 - (b) For each member of Supplier Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):

- (A) carry out a check with the records held by the Department for Education (DfE);
 - (B) conduct thorough questioning regarding any Relevant Convictions; and
 - (C) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),
- and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.

25. SUPPLY CHAIN RIGHTS AND PROTECTION

25.1 Key Sub-Contractors

- 25.1.1 The Key Sub-Contractors shall be as listed in DPS Schedule 6 (Key Sub-Contractors).

25.2 Retention of Legal Obligations

- 25.2.1 Notwithstanding the Supplier's right to sub-contract pursuant to Clause 19 of the Dynamic Purchasing System Agreement (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

26. CUSTOMER PREMISES

26.1 Licence to occupy Customer Premises

- 26.1.1 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 9 (Exit Management).
- 26.1.2 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.
- 26.1.3 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 Order Form (or elsewhere in this Call Off Contract), 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 26.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 26.1.4 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.

- 26.1.5 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.

26.2 Security of Customer Premises

- 26.2.1 The Customer shall be responsible for maintaining the security of the Customer Premises. The Supplier shall comply with the reasonable security requirements of the Customer while on the Customer Premises.
- 26.2.2 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.

27. CUSTOMER PROPERTY

- 27.1 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.
- 27.2 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.
- 27.3 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.
- 27.4 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.
- 27.5 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.
- 27.6 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 Call Off Schedule 7 (Security) and the Customer's reasonable security requirements from time to time.
- 27.7 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.

28. SUPPLIER EQUIPMENT

- 28.1 Unless otherwise stated in the Order Form (or elsewhere in this Call Off Contract), the Supplier shall provide all the Supplier Equipment necessary for the provision of the Services.
- 28.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.
- 28.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Call Off Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.
- 28.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Supplier's property located on Customer Premises which is due to the negligent act or omission of the Customer.
- 28.5 Subject to any express provision of the BCDR Plan (if applicable) to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Call Off Contract, including the Service Level Targets.
- 28.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.
- 28.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- 28.7.1 remove from the Customer Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Call Off Contract; and
 - 28.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.

H. INTELLECTUAL PROPERTY AND INFORMATION

29. INTELLECTUAL PROPERTY RIGHTS

- 29.1 Allocation of title to IPR
- 29.1.1 Save as expressly granted 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:
 - (A) in the Supplier Software;
 - (B) the Supplier Background IPR;
 - (C) in the Third Party Software;
 - (D) the Third Party IPR;
 - (E) in the Specially Written Software; and
 - (F) 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:

(A) Customer Software;

(B) Customer Background IPR; and

(C) Customer Data.

29.1.2 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 29.1, 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).

29.1.3 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.

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

29.2.1 The Supplier hereby grants to the Customer, or shall procure the direct grant of such to the Customer a 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.

29.2.2 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.

29.2.3 The Supplier acknowledges and agrees that the ownership of the media referred to in Clause 29.2.2(b) shall vest in the Customer upon their receipt by the Customer.

29.3 Licences granted by the Supplier: Supplier Software and Supplier Background IPR

29.3.1 The Supplier hereby grants to the Customer a royalty-free and non-exclusive licence to use, copy, modify, amend and distribute:

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

29.4 Customer's right to sub-licence

29.4.1 The Customer shall be freely entitled to sub-license the rights granted to it pursuant to Clause 29.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR).

29.4.2 The Customer may sub-licence:

- (a) the rights granted under Clause 29.3 (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:
 - (A) the sub-licence is on terms no broader than those granted to the Customer; and
 - (B) the sub-licence only authorises the third party to use the rights licenced in Clause 29.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) for purposes 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; and
- (b) the rights granted under Clause 29.3 (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 Specially Written Software and/or the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Customer.

29.5 Customer's right to assign/novate licences

29.5.1 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 29.2

(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 29.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to:
 - (A) a Central Government Body; or
 - (B) 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 29.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 29.3 (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 29.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and Clause 29.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR).
- (d) If a licence granted in Clause 29.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 29.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) is novated under Clause 29.5.1(b) or there is a change of the Customer's status pursuant to Clause 29.5.1(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.

29.6 Third Party IPR and Third Party Software

- 29.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR and any Third Party Software which is not commercial off-the-shelf software grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 29.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) and Clause 29.5.1(b) (Customer's right to assign/novate licences).
- 29.6.2 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 than such software is usually made available.

29.7 Licence granted by the Customer

- 29.7.1 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 30.4 (Confidentiality); and
- (b) the Supplier shall not without Approval, which the Customer shall have the sole and absolute right to grant or deny, use the licenced materials for any other purpose or for the benefit of any person other than the Customer.

29.8 Duration and Termination of licenses

29.8.1 The duration of licences granted by the Supplier to the Customer pursuant to Clauses 29.2.1 and 29.3.1 shall be either;

- (a) perpetual but only if the Customer has stipulated such during a Call for Competition Procedure; or
- (b) in all other circumstances, for the duration of the Call Off Contract Period.

29.8.2 Subject to Clause 29.8.1(b), all licences granted pursuant to this Clause 29 (Intellectual Property Rights) (other than those granted pursuant to Clause 29.6.2 (Third Party IPR and Third Party Software) and 29.7.1 (Licence granted by the Customer) shall survive the Call Off Expiry Date.

29.8.3 The Supplier shall, if requested by the Customer in accordance with Call Off Schedule 9 (Exit Management), 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 29.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

29.8.4 The licence granted pursuant to Clause 29.7.1 (Licence granted by the Customer) and any sub-licence granted by the Supplier in accordance with Clause 29.7.1 (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 (6) 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.

29.9 IPR Indemnity

- 29.9.1 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.
- 29.9.2 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:
 - (A)** the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (B)** the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;
 - (C)** there is no additional cost to the Customer; and
 - (D)** the terms and conditions of this Call Off Contract shall apply to the replaced or modified Services.
- 29.9.3 If the Supplier elects to procure a licence in accordance with Clause 29.9.2(a) or to modify or replace an item pursuant to Clause 29.9.2(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 29.9.1, 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.
- 29.9.4 The provisions of Clauses 29.9.1 to 29.9.3 (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 in a manner not reasonably to be inferred from the description of the Services in Call Off Schedule 2 (Services) or the provisions of this Call Off Contract.
- 29.9.5 The Supplier shall promptly notify the Customer (in writing) of any IPR Claim.
- 29.9.6 The Customer shall:
- (a) notify the Supplier in writing of any IPR Claim of which it is aware;
 - (b) allow (subject to Clause 29.9.7) the Supplier to conduct all negotiations and proceedings and provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and
 - (c) not, without first consulting with the Supplier, make an admission relating to the IPR Claim.

29.9.7 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the Customer into disrepute.

30. SECURITY AND PROTECTION OF INFORMATION

30.1 Security Requirements

30.1.1 The Supplier shall comply with Call Off Schedule 7 (Security).

30.2 Malicious Software

30.2.1 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).

30.2.2 Notwithstanding Clause 30.2.1, 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.

30.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 30.2.2 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 30.2.1) 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 the obligation set out in Clause 30.2.1) or the Customer Data (whilst the Customer Data was under the control of the Customer).

30.3 Protection of Customer Data

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

30.3.2 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.

30.3.3 To the extent that the Customer Data is held and/or Processed by the Supplier:

- (a) 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.

- (b) the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- (c) the Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. 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).
- (d) 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 requirements of Call Off Schedule 7 (Security).

30.3.4 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.

30.3.5 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 8 (Business Continuity and Disaster Recovery) 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 8 (Business Continuity and Disaster Recovery)

30.4 Confidentiality

30.4.1 For the purposes of this Clause 30.4, 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.

30.4.2 Except to the extent set out in this Clause 30.4 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.

30.4.3 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 30.6 (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:
 - (A) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;
 - (B) 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
 - (C) 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.

30.4.4 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.

30.4.5 Subject to Clauses 30.4.2 and 30.4.7, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:

- (a) The Authority; and
- (b) 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
- (c) its professional advisers for the purposes of obtaining advice in relation to this Call Off Contract.

30.4.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 30.4.5, 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.

30.4.7 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 30.4.7(a) for any purpose necessary to this Call Off Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract;
- (f) to the HSCN Authority: or
- (g) to a proposed transferee, assignee or novatee of, or successor in title to the Customer.

30.4.8 The Authority may disclose any Confidential Information in relation to this Call Off Contract in accordance with the provisions of the Dynamic Purchasing System Agreement. In such circumstances, the Customer acknowledges that the Supplier owes no duty of care for information disclosed by the Authority.

30.4.9 Nothing in this Clause 30.4 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.

30.4.10 In the event that the Supplier fails to comply with Clauses 30.4.2 to 30.4.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

30.5 Transparency

30.5.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Contract is not Confidential Information. The 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.

30.5.2 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.

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

30.6 Freedom of Information

30.6.1 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;

- (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.

30.6.2 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.

30.7 Protection of Personal Data

30.7.1 With respect to the Parties' rights and obligations under this Call Off Contract, the Parties acknowledge that the Customer is a Data Controller and that the Supplier is a Data Processor.

30.7.2 The Supplier shall:

- (a) prior to the Processing of any Personal Data under this Call Off Contract and where requested by the Customer provide a Privacy Impact Assessment ("PIA") to the Customer which will include (but not be limited to);
 - (A) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (B) an assessment of the necessity and proportionality on the processing operations in relation to the Services;
 - (C) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (D) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;
- (b) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call Off Contract, except where Processing is and as required by Law or any regulatory body, in which case the Supplier shall inform the Customer of the relevant requirement prior to Processing, unless prevented from doing so by law;

- (c) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised, unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data under the Call Off Contract, including all measures required by the Data Protection Laws, and in particular Article 32 of the GDPR;
- (d) not disclose or transfer the Personal Data to or allow the processing of Personal Data by any Sub-Contractor, Affiliate and/or third party without the prior written consent of the Customer, and in the case of any Sub-Contractor or other third party whom the Supplier wishes to engage for the Processing of Personal Data under this Call Off Contract ("**Sub-processor**") such consent to be conditional upon:
 - (A) the Supplier entering into a contract with the Sub-processor which includes terms which are substantially the same as those set out in this clause;
 - (B) the Supplier remaining fully liable to the Customer for any failure by the Sub-processor to fulfil its obligations in relation to the Processing of Personal Data; and
 - (C) the use of the Sub-processor being otherwise in accordance with Clause 30.7.3;
- (e) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (A) are aware of and comply with the Supplier's duties under this Clause 30.7 and Clause 30.4 (Confidentiality);
 - (B) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and
 - (C) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (f) notify the Customer within forty-eight (48) hours if it:
 - (A) receives from a Data Subject (or third party on their behalf):
 - (A) a Data Subject Access Request (or purported Data Subject Access Request);
 - (B) a request to rectify, block or erase any Personal Data; or
 - (C) any other request, complaint or communication relating to the Customer's obligations under the Data Protection Laws;
 - (B) receives any communication from the Information Commissioner or any other Regulatory Body in connection with Personal Data; or
 - (C) receives 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; or
 - (D) considers that any instructions from the Customer infringe the Data Protection Laws;

- (a) the Supplier shall submit a Variation request to the Customer which, if the Customer agrees, shall be dealt with in accordance with the Variation Procedure;
- (b) the Supplier shall set out in its Variation request and/or Impact Assessment details of the following:
 - (A) the Personal Data which will be transferred to and/or Processed in any Restricted Country;
 - (B) the Restricted Country or Countries which the Personal Data will be transferred to and/or Processed in; and
 - (C) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - (D) 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 Data Protection Laws;
- (c) in providing and evaluating the Variation request and Impact Assessment, the Parties shall ensure that they have regard to and comply with the 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 Country; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - (A) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Laws) into this Call Off Contract or a separate data processing agreement between the Parties; and
 - (B) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Country 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 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 Data Protection Laws) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

30.7.4 The Supplier shall assist the Customer to comply with any obligations under the Data Protection Laws 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 the Data Protection Laws to the

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

- 30.7.5 The Supplier shall (and shall procure that all Supplier Personnel) comply with any notification requirements under Data Protection Laws and both Parties will duly observe all their obligations under Data Protection Laws which arise in connection with this Call Off Contract.
- 30.7.6 The Supplier will, in conjunction with the Customer, in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with the provisions of the GDPR upon its implementation.
- 30.7.7 The Supplier will provide all reasonable assistance required by the Customer to enable the Customer to comply with any obligations arising under any relevant law implementing or otherwise giving effect to the NIS Directive, including by making any changes to the technical and organisational security measures implemented in accordance with Clause 30.7.2(c).
- 30.7.8 The Supplier will provide the Customer with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under this Clause 30.7.
- 30.7.9 The Supplier will notify the Customer immediately, and in any event no later than twelve (12) hours, after becoming aware of a Data Loss Event, in particular the Supplier will;
- (a) when notifying the Customer of a Data Loss Event, describe the nature of the event including the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
 - (b) cooperate fully with any Customer investigation into the Data Loss Event including but not limited to the causes and effects (actual or potential);
 - (c) provide immediate access to the Supplier's premises and systems for the purposes of any Customer investigation under this Call Off Contract;
 - (d) take all necessary actions to remedy the causes of the Data Loss Event and to ensure the protection of Personal Data from any further loss;
 - (e) not make any public statement of any kind without the prior approval of the Customer;
 - (f) where appropriate, provide all assistance necessary to enable the Customer to fulfil its obligations to notify any Regulatory Body, including in particular the Information Commissioner within seventy-two (72) hours after becoming aware of the Data Loss Event.
- 30.7.10 The Supplier shall indemnify the Customer on a continuing basis against any and all Losses incurred by the Customer arising from the Supplier's Default under this Clause 30.7 and/or any failure by the Supplier or any Sub-Contractor to comply with their respective obligations under Data Protection Laws.

30.7.11 Nothing in this Clause 30.7 shall be construed as requiring the Supplier or any relevant Sub-Contractor to be in breach of any Data Protection Laws.

30.7.12 Immediately upon the termination or expiry of this Agreement (or any part thereof) the Supplier shall cease Processing the Personal Data (or any part thereof, as applicable) (except as necessary to comply with the terms of any Exit Plan or an obligation under any Law), and as soon as reasonably practicable thereafter, at the Customer's option (to be exercised without undue delay), either (i) securely return to the Customer or securely transfer to a new supplier; or (ii) securely wipe from its systems (so that the Personal Data cannot reasonably be recovered or reconstructed), the Personal Data and any copies of it or the information it contains.

31. PUBLICITY AND BRANDING

31.1 The Supplier shall not:

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

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

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

31.2 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, 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

32. LIABILITY

32.1 Unlimited Liability

32.1.1 Neither Party excludes or limits its liability for:

(a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);

(b) bribery or Fraud by it or its employees;

(c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(d) any liability to the extent it cannot be excluded or limited by Law.

32.2 Financial Limits

32.2.1 Subject to Clause 32.1 (Unlimited Liability), the Supplier's total aggregate liability:

(a) in respect of all 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 in relation to any Defaults occurring in a Call Off Contract Year, the higher of one hundred thousand pounds (£100,000) or a sum equal to one hundred and fifty percent (150%) of

the Call Off Contract Charges paid and payable to the Supplier under this Call Off Contract in that Call Off Contract Year, unless a different aggregate limit or percentage under this Clause (a) is stipulated by the Customer during a Call for Competition Procedure.

32.2.2 Subject to Clauses 32.1 (Unlimited Liability) and 32.2 (Financial Limits) and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses shall be limited to:

- (a) in relation to any Customer Causes occurring in a Call Off Contract Year, a sum equal to the Call Off Contract Charges paid and payable to the Supplier under this Call Off Contract in that Call Off Contract Year; and
- (b) in relation to any termination subject to the consequences described in Clause 42.2.1, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract during the Call Off Contract Period.

32.3 Non-recoverable Losses

32.3.1 Subject to Clause 32.1 (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).

32.4 Recoverable Losses

32.4.1 Subject to Clause 32.2 (Financial Limits), and notwithstanding Clause 32.3.1 (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 reasonable additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the reasonable 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.

32.5 Miscellaneous

32.5.1 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.

32.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 32.2 (Financial Limits).

33. INSURANCE

- 33.1 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 25 (Insurance) of the Dynamic Purchasing System 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 Dynamic Purchasing System 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 as the Customer may stipulate during a Call for Competition Procedure.
- 33.2 The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause 33.1 above for six (6) years after the Call Off Expiry Date.
- 33.3 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause 33.1 or at the Supplier's option 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.
- 33.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause 33.1, 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.
- 33.5 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.
- 33.6 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

J. REMEDIES AND RELIEF

34. CUSTOMER REMEDIES FOR DEFAULT

34.1 Remedies

- 34.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising (including under Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 9.5 (Service Levels and Service Credits) and 5.5.1(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):
 - (A)** instruct the Supplier to comply with the Rectification Plan Process;
 - (B)** suspend this Call Off Contract (whereupon the relevant provisions of Clause 40 (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;
 - (C)** 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 40 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Good and/or Services;

34.1.2 Where the Customer exercises any of its step-in rights under Clauses 34.1.1(c)(B) or 34.1.1(c)(C), the Customer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

34.2 Rectification Plan Process

34.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 34.1.1(c)(A):

- (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:
 - (A)** full details of the Default that has occurred, including a root cause analysis;
 - (B)** the actual or anticipated effect of the Default; and
 - (C)** 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).

34.2.2 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 Call Off Schedule 11 (Dispute Resolution Procedure).

34.2.3 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.

34.2.4 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.

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

35. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

35.1 If the Supplier has failed to:

- 35.1.1 Achieve a Milestone by its Milestone Date;
- 35.1.2 provide the Services in accordance with the Service Levels;
- 35.1.3 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 13 (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 37 (Customer Termination Rights) except Clause 37.5 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:

- (A) 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;
 - (B) 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;
 - (C) 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:
- (A) the Supplier shall not be liable to accrue Service Credits; and
 - (B) 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,
- in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Customer Cause.
- (e) the Supplier may recover actual costs incurred due to the Customer Cause where:
- (A) the costs are directly attributable to the Customer Cause;
 - (B) they were unavoidable; and
 - (C) they can be evidenced;
- 35.2 In order to claim any of the rights and/or relief referred to in Clause 35.1, the Supplier shall:
- 35.2.1 comply with its obligations under Clause 13 (Notification of Customer Cause); and
 - 35.2.2 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.
- 35.3 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.
- 35.4 Without prejudice to Clauses 6.7 (Continuing Obligation to Provide the Services):
- 35.4.1 whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or

35.4.2 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.

35.5 Any Variation that is required to the Implementation Plan or to the Call Off
Contract Charges pursuant to this Clause 35 shall be implemented in accordance
with the Variation Procedure.

36. FORCE MAJEURE

36.1 Subject to the remainder of this Clause 36 (and, in relation to the Supplier,
subject to its compliance with its obligations in Clause 11 (Business Continuity
and Disaster Recovery)), a Party may claim relief under this Clause 36 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.

36.2 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.

36.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under
this Clause 36 to the extent that consequences of the relevant Force Majeure
Event:

36.3.1 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

36.3.2 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.

36.4 Subject to Clause 36.5, 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.

36.5 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.

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

36.6.1 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;

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

- (a) the Customer shall not be entitled:

- (A) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 34.1.1(b) and 34.1.1(c) (Customer Remedies for Default) as a result of such failure;

- (B) to receive Delay Payments pursuant to Clause 5.5.1 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and

- (C) to receive Service Credits 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.

36.7 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.

36.8 Relief from liability for the Affected Party under this Clause 36 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 36.7.

K. TERMINATION AND EXIT MANAGEMENT

37. CUSTOMER TERMINATION RIGHTS

37.1 Termination on Material Default

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

- (a) the Supplier has their HSCN Compliance rejected or revoked by the HSCN Authority;

- (b) the representation and warranty given by the Supplier pursuant to Clause 3.2 (Representations and Warranties) is materially untrue or misleading;

- (c) as a result of any Defaults, the Customer incurs Losses in any Call Off Contract Year which exceed eighty per cent (80%) of the value of the Supplier's aggregate annual liability limit for that Call Off Contract Year as set out in Clause 32.2.1(a) (Liability);

- (d) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: 6.4.2 (Provision of Services), 10.1 (Critical Service Level

Failure), 12.4 (Disruption), 17.5 (Records, Audit Access and Open Book Data), 30.4.10 (Confidentiality), 46.6.2 (Prevention of Fraud and Bribery);

- (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;

37.1.2 For the purpose of Clause 37.1.1, 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.

37.2 Termination in Relation to Financial Standing

37.2.1 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.

37.3 Termination on Insolvency

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

37.4 Termination on Change of Control

37.4.1 The Supplier shall notify the Customer immediately if the Supplier undergoes a Change of Control and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier within six (6) Months of:

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

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

37.5 Termination Without Cause

37.5.1 The Customer shall have the right to terminate this Call Off Contract by giving at least thirty (30) Working Days' written notice to the Supplier, such notice to be served no earlier than the first anniversary of the Call Off Commencement Date.

37.6 Termination in Relation to Dynamic Purchasing System Agreement

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

37.7 Termination in Relation to Variation

37.7.1 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.

37.8 Termination in Relation to Promoting Tax Compliance

37.8.1 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 7.2.8 of the Dynamic Purchasing System Agreement 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 21; or
- (c) the Supplier fails to provide details of proposed mitigating factors as required by Clause 21.1.2(a) which in the reasonable opinion of the Customer, are acceptable

38. SUPPLIER TERMINATION RIGHTS

38.1 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 five thousand pounds (£5,000) 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:

- 38.1.1 the Customer's failure to pay; and
- 38.1.2 the correct overdue and undisputed sum; and
- 38.1.3 the reasons why the undisputed sum is due; and
- 38.1.4 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 20.3 (Retention and Set off).

38.2 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).

39. TERMINATION BY EITHER PARTY

39.1 Termination for continuing Force Majeure Event

39.1.1 Either Party may, by issuing a Termination Notice to the other Party terminate this Call Off Contract if, in accordance with Clause 36.6.1(a) (Force Majeure).

40. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

- 40.1 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 (including any Standalone Service Instance and/or Integrated Service Instance Set) 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.
- 40.2 The Supplier has the right to suspend the delivery of all or part of the Services for a reasonable period where there is or has been:
- 40.2.1 illegal or prohibited use of all or part of the Services; or
 - 40.2.2 legal, regulatory, police or security services instruction to suspend all or part of the Services.
- 40.3 Any suspension of this Call Off Contract under Clause 40.1 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.
- 40.4 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:
- 40.4.1 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 37 (Customer Termination Rights) except Clause 37.5 (Termination Without Cause); and
 - 40.4.2 reject the Variation.

41. CONSEQUENCES OF EXPIRY OR TERMINATION

- 41.1 Consequences of termination under Clauses 37.1 (Termination on Material Default), 37.2 (Termination in Relation to Financial Standing) and 37.3 (Termination on Insolvency)
- 41.1.1 Where the Customer:
 - (a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 41.1; 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.
 - 41.1.2 Where the Customer terminates (in whole or in part) this Call Off Contract under Clause 37.1 (Termination on Material Default) prior to

Achievement of one (1) or more CPP Milestones, then the Supplier shall within ten (10) Working Days of issue of the relevant Termination Notice:

- (a) issue a credit note to the Customer in respect of the total amount of all payments (including any Milestone Payments) paid by the Customer to the Supplier under this Call Off Contract to date in respect of the Service Instances stated on the Implementation Plan(s) to which those CPP Milestones relate; and
- (b) pay to the Customer as a debt a sum equal to the total amount of all payments (including any Milestone Payments) paid by the Customer to the Supplier under this Call Off Contract to date in respect of the Service Instances stated on the Implementation Plan(s) to which those CPP Milestones relate together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

41.2 Consequences of termination under Clauses 37.4 (Termination on Change of Control) 37.5 (Termination without Cause), 37.6 (Termination in Relation to Dynamic Purchasing System Agreement), 37.7 (Termination in Relation to Variation) and Clause 38 (Supplier Termination Rights).

41.2.1 Where:

- (a) the Customer terminates (in whole or in part) this Call Off Contract under Clauses 37.4 (Termination on Change of Control), 37.5 (Termination without Cause), 37.6 (Termination in Relation to Dynamic Purchasing System Agreement) and 37.7 (Termination in Relation to Variation); or
- (b) the Supplier terminates this Call Off Contract pursuant to Clause 39 (Supplier Termination Rights),

the Customer shall, subject to Clause 32.2.2(d), 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 37.5 (Termination without Cause).

41.2.2 The Customer shall not be liable under Clause 41.2.1 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.

41.3 Consequences of termination under Clause 39.1 (Termination for Continuing Force Majeure Event)

41.3.1 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 39.1 (Termination for Continuing Force Majeure Event).

41.4 Consequences of Termination for Any Reason

41.4.1 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 17 (Records, Audit Access & Open Book Data), 29 (Intellectual Property Rights), 30.4 (Security and Protection of Information), 32 (Liability), 33 (Insurance), 41 (Consequences of Expiry or Termination), 44 (Waiver and Cumulative Remedies) 47 (Severance), 49 (Entire Agreement), 50 (Third Party Rights), 51 (Notices), 53 (Dispute Resolution) and 54 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), Call Off Schedule 9 (Exit Management), Call Off Schedule 11 (Dispute Resolution Procedure), and, without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

41.5 Exit management

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

L. MISCELLANEOUS AND GOVERNING LAW

42. COMPLIANCE

42.1 Health and Safety

42.1.1 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.

42.1.2 Each Party shall promptly notify the other 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

42.1.3 While on the Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Personnel and other persons working there and any instructions from the Customer on any necessary associated safety measures.

42.2 Equality and Diversity

42.2.1 The Supplier shall:

- (a) perform its obligations under this Call Off Contract (including those in relation to provision of the Services) in accordance with:
 - (A) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - (B) 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).

42.3 Official Secrets Act and Finance Act

42.3.1 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.

42.4 Environmental Requirements

- 42.4.1 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.
- 42.4.2 The Customer shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

43. ASSIGNMENT AND NOVATION

- 43.1 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.
- 43.2 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:
 - 43.2.1 any other Contracting Body; or
 - 43.2.2 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
 - 43.2.3 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 43.2.
- 43.3 A change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 43.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.

43.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a body which is not a Contracting Body or if a body which is not a Contracting Body succeeds the Customer (both “**Transferee**” in the rest of this Clause) the right of termination of the Customer in Clause 37.3 (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 37.3 (Termination on Insolvency) and to Supplier or DPS Guarantor in the definition of Insolvency Event were references to the Transferee).

44. WAIVER AND CUMULATIVE REMEDIES

44.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 51 (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.

44.2 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.

45. RELATIONSHIP OF THE PARTIES

45.1 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.

46. PREVENTION OF FRAUD AND BRIBERY

46.1 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:

46.1.1 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

46.1.2 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.

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

46.2.1 commit a Prohibited Act; and/or

46.2.2 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.

46.3 The Supplier shall during the Call Off Contract Period:

46.3.1 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;

46.3.2 keep appropriate records of its compliance with its obligations under Clause 46.3.1 and make such records available to the Customer on request;

46.3.3 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. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and

46.3.4 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.

46.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 46.1, or has reason to believe that it has or any of the Supplier Personnel have:

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

46.4.2 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

46.4.3 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.

46.5 If the Supplier makes a notification to the Customer pursuant to Clause 46.4, 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 17 (Records, Audit Access and Open Book Data).

46.6 If the Supplier breaches Clause 46.3, the Customer may by notice:

46.6.1 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

46.6.2 immediately terminate this Call Off Contract for material Default.

46.7 Any notice served by the Customer under Clause 46.4 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).

47. SEVERANCE

47.1 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.

47.2 In the event that any deemed deletion under Clause 47.1 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.

47.3 If the Parties are unable to resolve the Dispute arising under this Clause 47 within twenty (20) Working Days of the date of the notice given pursuant to Clause 47.2, 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 47.

48. FURTHER ASSURANCES

48.1 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.

49. ENTIRE AGREEMENT

49.1 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.

49.2 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.

49.3 Nothing in this Clause 49 shall exclude any liability in respect of misrepresentations made fraudulently.

50. THIRD PARTY RIGHTS

50.1 The provisions of Schedule 14 (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA.

50.2 Subject to Clause 50.1, a person who is not a Party to this Call Off Contract has no right under the CRTPA 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.

50.3 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.

50.4 Any amendments or modifications to this Call Off Contract may be made, and any rights created under Clause 50.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

51. NOTICES

51.1 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 51, an e-mail is accepted as being **"in writing"**.

51.2 Subject to Clause 51.3, 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 51.3 and 51.4)	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

51.3 The following notices may only be served as an attachment to an email:

51.3.1 any Termination Notice (Clause 37 (Customer Termination Rights)),

51.3.2 any notice in respect of:

(a) partial termination, suspension or partial suspension (Clause 40 (Partial Termination, Suspension and Partial Suspension)),

(b) waiver (Clause 44 (Waiver and Cumulative Remedies))

(c) Default or Customer Cause; and

51.3.3 any Dispute Notice.

51.4 This Clause 51 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).

51.5 For the purposes of this Clause 51, the email address of each Party shall be the email address for the Customer Representative and the Supplier Representative set out in the Order Form.

52. COMPLAINT HANDLING PROCEDURE

52.1 Complaints raised by the Customer must be managed in accordance with this Clause 52.

52.2 If the Customer wishes to raise a complaint, the Customer must write to the email address set out in the Order Form or as communicated to the Customer in writing by the Supplier from time-to-time.

52.3 Customer complaints must be given priority treatment and acknowledged by the Supplier to the Customer within one (1) Working Day of receipt, such acknowledgement to include the estimated timescale for resolution.

52.4 The Supplier shall send a progress report to the Customer in accordance with the timescales for resolution issued pursuant to Clause 52.3. Updates are to be in line with the Milestones detailed for the complaint resolution.

52.5 Any complaint that is not resolved within the estimated timescale for resolution may be escalated by the Customer to the Authority and/or deemed a Dispute.

53. DISPUTE RESOLUTION

53.1 The Parties shall resolve Disputes arising out of or in connection with this Call Off Contract in accordance with the Dispute Resolution Procedure defined in Call Off Schedule 11 (Dispute Resolution Procedure).

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

54. GOVERNING LAW AND JURISDICTION

54.1 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.

54.2 Subject to Clause 53 (Dispute Resolution) and Call Off Schedule 11 (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.

CALL OFF SCHEDULE 1: DEFINITIONS

In accordance with Clause 1 (Definitions and Interpretations) of this Call Off Contract including its recitals the following expressions shall have the following meanings:

"Achieve"	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Success Criteria and in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone and "Achieved" and "Achievement" shall be construed accordingly;
"Achieved Service Level"	means the actual level of performance of a Service achieved by the Supplier in relation to a Service Level for a Service Period;
"Acquired Rights Directive"	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Additional Clauses"	means the additional Clauses in Call Off Schedule 13 (Alternative and/or Additional Clauses) and any other additional Clauses stipulated by the Customer during a Call for Competition Procedure and set out in the Order Form or elsewhere in this Call Off Contract;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Agreed Service Time"	means the period during which the Supplier ensures the Services are Available to the Customer;
"Allowable Assumptions"	means the assumptions set out in Annex 3 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
"Alternative Clauses"	means the alternative Clauses in Call Off Schedule 13 (Alternative and/or Additional Clauses) and any other alternative Clauses stipulated by the Customer during a Call for Competition Procedure and set out in the Order Form or elsewhere in this Call Off Contract;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Approved Sub-Licensee"	means any of the following: a Central Government Body; any third party providing services to a Central Government Body; and/or 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;
"Authority to Proceed" or "ATP"	means the authorisation to the Supplier to commence the provision of the relevant Deliverable, Service or Service Instance to the Customer, provided by the Customer in the form of a Milestone

	Achievement Certificate in respect of the relevant Milestone in the Implementation Plan;
"Auditor"	<p>means:</p> <p>the Customer's internal and external auditors;</p> <p>the Customer's statutory or regulatory auditors;</p> <p>the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</p> <p>HM Treasury or the Cabinet Office;</p> <p>the HSCN Authority;</p> <p>any party formally appointed by the Customer to carry out audit or similar review functions; and</p> <p>successors or assigns of any of the above;</p>
"Available"	a Service shall be "Available" when the Customer's end users are able to access and use all its functions at a level that enables them to carry out their normal duties and "Availability" shall be construed accordingly;
"Authority"	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
"BCDR Services"	means the Business Continuity Services and Disaster Recovery Services as defined in Call Off Schedule 8 (Business Continuity and Disaster Recovery);
"BCDR Plan"	means the Supplier's plan relating to business continuity and disaster recovery as referred to in Clause 11 (Business Continuity and Disaster Recovery) and Call Off Schedule 8 (Business Continuity and Disaster Recovery);
"Call for Competition Procedure"	means the award procedure described in paragraph 4 of DPS Schedule 4 (Call For Competition Procedure);
"Call Off Agreement"	means a legally binding agreement (entered into pursuant to the provisions of the Dynamic Purchasing System Agreement) for the provision of the Services made between a Contracting Body and the Supplier pursuant to DPS Schedule 4 (Call for Competition Procedure);
"Call Off Commencement Date"	means the date of commencement of this Call Off Contract as set out in the Order Form;
"Call Off Contract"	means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the Dynamic Purchasing System Agreement) consisting of the Order Form and the Call Off Terms;
"Call Off Contract Charges"	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract, as set out in Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and

	Invoicing), for the full and proper performance by the Supplier of its obligations under this Call Off Contract less any Deductions;
"Call Off Contract Period"	means the term of this Call Off Contract from the Call Off Commencement Date until the expiry of the Call Off Contract Initial Period or any Call Off Contract Extension Period or date of earlier termination, which shall in no event exceed a maximum duration of sixty (60) Months;
"Call Off Contract Year"	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;
"Call Off Expiry Date"	means: the end date of the Call Off Contract Period unless the right to extend is exercised pursuant to Clause 4 (Call Off Contract Period) in which case it means the end date of the Call Off Extension Period; or if this Call Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call Off Contract;
"Call Off Extension Period"	means an extension period exercised by the Contracting Body under clause 4 of the Call Off Main Terms which shall not either, in any event: exceed twenty-four (24) months in total; or take the Call Off Contract Period beyond sixty (60) Months in total.
"Call Off Contract Initial Period"	means the period as stated on the Order Form from and including the Call Off Commencement Date;
"Call Off Schedule"	means a schedule to this Call Off Contract;
"Call Off Terms"	means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Services, together with the Call Off Schedules hereto;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: Government Department; Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Agency;
"Change in Law"	means any change in Law which impacts on the supply of the Services and performance of the Call Off Terms which comes into force after the Call Off Commencement Date;
"Change of Control"	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Cloud Service Access Service"	means the Service Type of that name as set out in the Customer's Statement of Requirements;

"CN-SP Deed"	means the deed executed by the Supplier in the form of the template CN-SP Deed available at https://digital.nhs.uk/health-social-care-network/suppliers , and which is part of the HSCN Compliance Document Set;
"Consumer Network Service Provider" or "CN-SP"	means an organisation that is supplying or is approved to supply HSCN Connectivity Services having achieved the appropriate HSCN Compliance;
"Commercially Sensitive Information"	means the Confidential information listed in the Order Form (if any) comprising of a commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
"Contracting Body"	means the Authority, the Customer and any other bodies listed in paragraph III.1.1 of the OJEU Notice;
"Contract Performance Point" or "CPP"	means a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the relevant Deliverable, Service or Service Instance is working satisfactorily in its operating environment in accordance with Part B of Call Off Schedule 4;
"Control"	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
"Conviction"	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;
"Core Components"	means the components described in paragraph 2.2.1 of Part A of DPS Schedule 2 (Services and Key Performance Indicators);
"Costs"	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <p>the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Person Day, of engaging the Supplier Personnel, including:</p> <p>base salary paid to the Supplier Personnel;</p> <p>employer's national insurance contributions;</p>

pension contributions;

car allowances;

any other contractual employment benefits;

staff training;

work place accommodation;

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

reasonable recruitment costs, as agreed with the Customer;

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

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

but excluding:

Overhead;

financing or similar costs;

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

taxation;

finances and penalties; and

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

"Critical Service Level Failure"

means any instance of critical service level failure specified in Annex 2 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);

"Crown"

means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

"Crown Body"

means any department, office or executive agency of the Crown;

"CRTPA"

means the Contracts (Rights of Third Parties) Act 1999;

"Customer"

means the customer(s) identified in the Order Form;

"Customer Assets"

means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or

	<p>leased to the Customer and which is or may be used in connection with the provision of the Services;</p>
"Customer Background IPR"	<p>means:</p> <p>IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, processes and procedures;</p> <p>IPRs created by the Customer independently of this Call Off Contract; and/or</p> <p>Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract;</p> <p>but excluding IPRs owned by the Customer subsisting in the Customer Software;</p>
"Customer Cause"	<p>means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Customer is liable to the Supplier;</p>
"Customer Data"	<p>means:</p> <p>the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which:</p> <p>are supplied to the Supplier by or on behalf of the Customer; or</p> <p>the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or</p> <p>any Personal Data for which the Customer is the Data Controller;</p>
"Customer Edge Router" or "CE Router"	<p>means a router located on the Customer Premises which is connected to the Supplier's core network via the Provider Edge Router and is typically owned by the Supplier;</p>
"Customer Premise Equipment" or "CPE"	<p>means equipment installed at the Customer Premises which enables connectivity between the Customer's LAN and the Supplier's network;</p>
"Customer Premises"	<p>means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for provision of the Services (or any of them);</p>
"Customer Property"	<p>means the property, other than real property and IPR, including the Customer System issued or made available to the Supplier by the Customer in connection with this Call Off Contract;</p>
"Customer Representative"	<p>means the representative appointed by the Customer from time to time in relation to this Call Off Contract;</p>
"Customer Responsibilities"	<p>means the responsibilities of the Customer in the Order Form or agreed in writing between the Parties from time to time in connection with this Call Off Contract;</p>
"Customer Software"	<p>means any software identified as such in the Order Form together with all other software which is not identified as such in the Order Form but which is owned by or licensed to the Customer and which</p>

	is or will be used by the Supplier for the purposes of providing the Services;
"Customer System"	means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Call Off Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the Services;
"Customer's Confidential Information"	means: all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Customer (including all Customer Background IPR and Project Specific IPR); any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Customer's attention or into the Customer's possession in connection with this Call Off Contract; and information derived from any of the above;
"Customer's Statement of Requirements"	means the statement of requirements set out at Annex 1 of Call Off Schedule 2;
"Data Controller"	has the meaning given to it in the Data Protection Laws;
"Data Loss Event"	a breach of any system containing Personal Data that causes unauthorised access to Personal Data, actual or potential loss of Personal Data;
"Data Processor"	has the meaning given to it in the Data Protection Laws;
"Data Protection Laws"	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and , with effect from 25 May 2018, the GDPR ;
"Data Subject"	has the meaning given to it in the Data Protection Laws;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws, to access his or her Personal Data;
"Deductions"	means all Service Credits, Delay Payments or any other deduction which the Customer is paid or is payable under this Call Off Contract;
"Default"	means any breach of the obligations of the Supplier (including but not limited to the abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of its Sub-

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

"Defect"

means any of the following:

any error, damage or defect in the manufacturing of a Deliverable; or

any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or

any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract; or

any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract;

"Delay"

means:

a delay in the Achievement of a Milestone by its Milestone Date; or
a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;

"Delay Payments"

means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified in the Order Form;

"Deliverable"

means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Call Off Contract;

"Dependent Service"

means a Service provided by the Supplier, which is dependent on another Service provided by the Supplier to function;

"Disclosing Party"

has the meaning given to it in Clause 30.4 (Confidentiality);

"Dispute"

means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

"Dispute Notice"

means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

"Dispute Resolution Procedure"

means the dispute resolution procedure set out in Call Off Schedule 11 (Dispute Resolution Procedure);

"Documentation"	<p>means all documentation as:</p> <p>is required to be supplied by the Supplier to the Customer under this Call Off Contract;</p> <p>would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services;</p> <p>is required by the Supplier in order to provide the Services; and/or</p> <p>has been or shall be generated for the purpose of providing the Services;</p>
"DOTAS"	<p>means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;</p>
"Downtime"	<p>means any period of time within the Agreed Service Time during which a Service is not Available, excluding Planned Downtime;</p>
"DPS Commencement Date"	<p>means the date of commencement of the Dynamic Purchasing System Agreement;</p>
"DPS Guarantor"	<p>means the party to a deed of guarantee in favour of the Authority in respect of the Supplier's provision of the Services and in the form set out in DPS Schedule 10 (Template Guarantee) granted pursuant to DPS Clause 8 (Guarantee);</p>
"DPS Period"	<p>means the period from the DPS Commencement Date until the expiry or earlier termination of the Dynamic Purchasing System Agreement;</p>
"DPS Schedule"	<p>means a schedule to the Dynamic Purchasing System Agreement;</p>
"Due Diligence Information"	<p>means any information supplied to the Supplier by or on behalf of the Customer prior to the Call Off Commencement Date;</p>
"Dynamic Purchasing System Agreement"	<p>means the dynamic purchasing system agreement between the Authority and the Supplier with reference number RM3825 for the provision of HSCN access services;</p>
"End User"	<p>means an individual who uses the Service;</p>
"Environmental Information Regulations or EIRs"	<p>means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;</p>

"Environmental Policy"

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

"Euro Compliant"

means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Customer's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):

be able to perform all such functions in any number of currencies and/or in Euros;

during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;

recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;

incorporate protocols for dealing with rounding and currency conversion;

recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and

permit the input of data in euro and display an outcome in euro where such data, supporting the Customer's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

"Expedited Dispute Timetable"

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

"Expert"

means the person appointed by the Parties in accordance with paragraph 5 of Call Off Schedule 11 (Dispute Resolution Procedure);

"FOIA"

means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

"Force Majeure"	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <p>acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Call Off Contract;</p> <p>riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p> <p>acts of the Crown, local government or Regulatory Bodies;</p> <p>fire, flood or any disaster; and</p> <p>an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:</p> <p>any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and</p> <p>any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</p> <p>any failure of delay caused by a lack of funds;</p>
"Force Majeure Notice"	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"Full Audit Transparency"	means Auditor access to those elements set out in Clause 17.2.2(r);
"General Data Protection Regulation" or "GDPR"	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);
"General Anti-Abuse Rule"	means the legislation in Part 5 of the Finance Act 2013 and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Go-Live Date"	means, in respect of a Service Instance, the date that such Service Instance goes into Live Operation;
"Go-Live Milestone"	means the Milestone labelled in an Implementation Plan as the 'Go-Live Milestone';
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care,

	diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	means Her Majesty's Revenue and Customs;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"HSCN Authority"	means the Health and Social Care Information Centre (trading as NHS Digital);
"HSCN Certificate"	means the certification awarded to a supplier which has successfully passed stage 2 of HSCN Compliance;
"HSCN Compliance" or "HSCN Compliant"	means a status as detailed in the document "HSCN Compliance Operating Model" as set out at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers , and as updated by the HSCN Authority from time to time;
"HSCN Compliance Document Set"	means all documentation and associated processes relating to HSCN Compliance as available at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers , and as may be updated from time to time by the HSCN Authority including but not limited to; HSCN Obligations Framework; HSCN Compliance Operating Model; HSCN CN-SP Service Management Requirement Addendum; CN-SP Deed; and HSCN Mandatory Supplemental Terms;
"HSCN Connectivity Service"	means the Service Type of that name (with managed and unmanaged variants) as set out in the Customer's Statement of Requirements;
"HSCN Mandatory Supplemental Terms" or "HSCN MST"	means those terms included within Call Off Schedule 14 and as may be updated from time to time by the HSCN Authority at https://digital.nhs.uk/health-social-care-network/suppliers ;
"HSCN Network Analytics Service"	means the service for analysing HSCN network traffic as set out in the HSCN Solution Overview Document;
"HSCN Obligations Framework"	means the obligations framework as available at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers , which may be updated from time to time by the HSCN Authority;

"HSCN Solution Overview Document"	means the document containing the architecture and technical solution for HSCN (the latest version can be accessed at http://systems.digital.nhs.uk/hscn/suppliers/);
"HSCN Transition Network"	means the legacy network being replaced by HSCN as set out in the HSCN Solution Overview Document;
"ICT Environment"	means the Customer System and the Supplier System;
"ICT Policy"	means the Customer's ICT policy in force as at the Call Off Commencement Date, as updated from time to time in accordance with the Variation Procedure;
"IDS Dedicated Service"	means the Service Type of that name as set out in the Customer's Statement of Requirements;
"IDS Integrated Service"	means the Service Type of that name as set out in the Customer's Statement of Requirements;
"Impact Assessment"	has the meaning given to it in Clause 18.1.3 (Variation Procedure);
"Implementation Plan"	means the plan or plans specified in Clause 5 (Implementation Plan);
"Imposed Carrier Downtime"	means time during which the Supplier is prevented from supplying the Services due to unavailability of an underlying telecommunications service from a third-party provider on which the Services are dependent. In any instance where the Supplier claims Imposed Carrier Downtime, the Supplier must be able to provide evidence to the satisfaction of the Customer that the interruption to the Services was in fact due in its entirety to unavailability of the underlying service,
"In-Bound Internet Service"	means the Service Type of that name as set out in the Customer's Statement of Requirements;
"Information"	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
"Incident"	means an unplanned incident or interruption to Services, reduction in the quality of the Services or event which could affect the Services in the future;
"Incident Resolution Time"	means the time taken by the Supplier to Resolve an Incident, as set out in Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Insolvency Event"	means, in respect of the Supplier or DPS Guarantor (as applicable): a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a

	creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
	a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
	an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
	it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
	being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
	where the Supplier or DPS Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
	any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;
"Integrated Service Instance Set"	means two (2) or more Service Instances that are stated as being integrated in Part A and/or Part B of Annex 1 of Schedule 2;
"Intellectual Property Rights" or "IPR"	means copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information; applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and all other rights having equivalent or similar effect in any country or jurisdiction;
"IPR Claim"	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR by a third party used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Dynamic Purchasing System Agreement;
"IPS Dedicated Service"	means the Service Type of that name as set out in the Customer's Statement of Requirements;
"IPS Integrated Service"	means the Service Type of that name as set out in the Customer's Statement of Requirements;
"Key Performance Indicators" or "KPIs"	means the performance measurements and targets in respect of the Supplier's performance of the Dynamic Purchasing System Agreement set out in Part B of DPS Schedule 2 (Services and Key Performance Indicators);

"Key Personnel"	means the individuals set out in Clause 23.8 or additionally (if any) identified as such in the Order Form;
"Key Role(s) "	has the meaning given to it in Clause 23.1 (Key Personnel);
"Key Sub-Contract"	means each Sub-Contract with a Key Sub-Contractor;
"Key Sub-Contractor"	means any Sub-Contractor: <ul style="list-style-type: none"> a) listed in the Supplier's SQ Response, and as updated by the Supplier from time to time in accordance with DPS Schedule 7 (Key Sub-Contractors); b) which, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten percent (10%) of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract; and/or d) is a Material Sub-Contractor;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;
"Licensed Software"	means all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Customer for the purposes of or pursuant to this Call Off Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;
"Live Operation"	means, in respect of a Service Instance: <ul style="list-style-type: none"> that the Go-Live Milestone in respect of that Service Instance has been Achieved; or in the event that there is no Go-Live Milestone in respect of that Service Instance on an Implementation Plan, when the Service Instance is, in the reasonable opinion of the Customer, in live operation;
"Losses"	means all losses, liabilities, damages, costs (including unrecovered amortised capital), expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether

	the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Managed Firewall Service"	means the Service Type of that name (with integrated and dedicated variants) as set out in the Customer's Statement of Requirements;
"Material Sub-Contractor"	means as defined in the CN-SP Deed
"Milestone"	means an event or task described in the Order Form or an Implementation Plan which, if applicable, must be completed by the relevant Milestone Date. Unless a Milestone is specified to be CPP it shall be deemed to be ATP;
"Milestone Achievement Certificate"	means the certificate materially in the form of the document contained in Annex 4 to Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;
"Milestone Date"	means the target date for Achievement of a Milestone as set out against the relevant Milestone in the Order Form or an Implementation Plan;
"Milestone Payment"	means a payment identified in the Order Form or an Implementation Plan;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"NIS Directive"	means Directive (EU) 2016/1148 of the European Parliament and of the Council concerning measures for a high common level of security of network and information systems across the Union;
"New Release"	means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Occasion of Tax Non Compliance"	<p>means:</p> <p>any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:</p> <p>a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or</p> <p>the Supplier's tax affairs give rise on or after 1 April 2013 to a conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a penalty for civil fraud or evasion;</p>

"Open Book Data "	<p>means complete and accurate financial and non-financial information which is sufficient to enable the Customer to verify the Call Off Contract Charges already paid or payable and Call Off Contract Charges forecast to be paid during the remainder of this Call Off Contract, including details and all assumptions relating to:</p> <p>the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;</p> <p>operating expenditure relating to the provision of the Services including an analysis showing:</p> <p>the unit costs and quantity of goods and any other consumables and bought-in services;</p> <p>manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;</p> <p>a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and</p> <p>Overheads;</p> <p>all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;</p> <p>the Supplier Profit achieved over the Call Off Contract Period and on an annual basis;</p> <p>confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and</p> <p>the actual Costs profile for each Service Period.</p>
"Open Source Software"	<p>means computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;</p>
"Operating Environment"	<p>means the Customer System and the Sites;</p>
"Order"	<p>means the order for the provision of the Services placed by the Customer with the Supplier in accordance with the Dynamic Purchasing System Agreement and under the terms of this Call Off Contract;</p>
"Order Form"	<p>means the form, as completed and forming part of this Call Off Contract, which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied;</p>

"Other Supplier"	means any Supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Out-Bound Internet Service"	means the Service Type of that name as set out in the Customer's Statement of Requirements;
"Overhead"	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Customer or the Supplier and "Parties" shall mean both of them;
"Performance Monitoring Reports"	has the meaning given to it in paragraph 3 of Part B of Schedule 6 (Service Level, Service Credit and Performance Monitoring);
"Person Day"	means 7.5 Person Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Person Hours"	means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Personal Data"	has the meaning given to it in the Data Protection Laws;
"Planned Downtime"	means the time agreed in advance in writing by the Supplier and Customer within the Agreed Service Time when a Service is not Available;
"Processing"	has the meaning given to it in the Data Protection Laws but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
"Provider Edge Router" or "PE Router"	means a router owned by the Supplier which is connected to the Customer Edge Router and performs a number of functions including but limited to: a point of control for network security, data concentration when multiple Contracting Bodies are connected to it, media and format conversions where necessary;
"Provisioning"	means the time taken from the placement of an Order for a Service or part thereof until the Service is Available to the Customer and Provision shall be construed accordingly;
"Prohibited Act"	means any of the following:

to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority or other Contracting Body or any other public body a financial or other advantage to:

induce that person to perform improperly a relevant function or activity; or

reward that person for improper performance of a relevant function or activity;

to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Call Off Contract;

committing any offence:

under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)

under legislation or common law concerning fraudulent acts; or

defrauding, attempting to defraud or conspiring to defraud the Customer; or

any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

"Project Specific IPR"

means:

Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or

IPR in or arising solely as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same;

but shall not include the Supplier Background IPR or the Specially Written Software;

"Public Services Network" or "PSN"

the network of networks delivered through multiple service providers, as further detailed in the PSN operating model; and described at <https://www.gov.uk/government/groups/public-services-network>;

"PSN Access Connectivity Service"

means the Service Type of that name as set out in the Customer's Statement of Requirements;

"PSN Service(s)"

means a service which is offered by a PSN service provider and for which PSN compliance certification has been achieved;

"PSN Standards"

means the PSN standards and processes, and mandatory supplemental terms as described on the website <https://www.gov.uk/government/groups/public-services-network>;

"PSN Terms"

means the PSN mandatory supplemental terms as described on the website <https://www.gov.uk/government/publications/psn->

[standard-terms-and-conditions/psn-standard-terms-and-conditions](#) and as incorporated to Schedule 10, as appropriate

"Quality Plans"	shall have the meaning given in Clause 7.2 (Standards and Quality);
"Recipient"	has the meaning given to it in Clause 30.4.1 (Confidentiality);
"Rectification Plan"	means the Rectification Plan pursuant to the Rectification Plan Process;
"Rectification Plan Process"	means the process set out in Clause 34.2 (Rectification Plan Process);
"Registers"	has the meaning given to in Call Off Schedule 9 (Exit Management);
"Regulations"	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
"Regulator Correspondence"	any correspondence from the Information Commissioner's Office, or any successor body, in relation to the Processing of Personal Data under this Call Off Contract;
"Regulatory Body"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Dynamic Purchasing System Agreement or any other affairs of the Authority or Other Contracting Body or the Supplier or its Parent Company;
"Related Supplier"	means any person who provides services to the Customer which are related to the Services from time to time;
"Relevant Conviction"	means a Conviction that is relevant to the nature of the Services to be provided or as specified by the Customer in the Order Form or elsewhere in this Call Off Contract;
"Relevant Requirements"	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return;
"Relief Notice"	has the meaning given to it in Clause 35.2.2 (Supplier Relief Due to Customer Cause);
"Replacement Services"	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the Call Off Expiry Date, whether those services are provided by the Customer internally and/or by any third party;
"Replacement Supplier"	means any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;

"Request for Information"	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
"Resolution"	means an action taken by or on behalf of the Supplier to fully repair the root cause of an Incident or to implement a workaround, such that the Services are returned to being Available. Resolve and Resolved shall be construed accordingly;
"Restricted Country or Restricted Countries"	means any country or countries that are not within the EEA and which have not been determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph 4 of Call Off Schedule 7 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 4 of Call Off Schedule 7 (Security) and as updated from time to time;
"Service Credits"	means any Service Credits specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Desk"	means the single point of contact set up and operated by the Supplier to log, monitor and escalate Incidents, Incident Resolutions and Service Requests;
"Service Desk Hours"	means the periods over which the Supplier must provide the Service Desk to the Customer as set out in the Customer's Statement of Requirements and which may vary by Service Instance and/or Customer Premises;
"Service Failure"	means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future;
"Service Failure Threshold"	means the level of performance of a Service which becomes unacceptable to the Customer, including as set out in each Service Level and where the Supplier fails to provide the Services in accordance with this Call Off Contract;
"Service Hours"	means the periods over which the Supplier must provide the Services as set out in the Customer's Statement of Requirements and which may vary by Service Instance and/or Customer Premises;
"Service Instance"	means one or more itemised Services as may be specified in the Order Form or an Implementation Plan;
"Service Instance Extension Period"	means an extension to the duration of the relevant Service Instance Period, which shall in no event extend beyond the Call Off Contract Period;
"Service Instance Period"	means the period of time during which the Supplier is required to ensure a Service Instance is in Live Operation during the Call Off Contract Period (as specified in Part B of Annex 1 of Call Off Schedule 2);

"Service Instance Unique ID"	means a number uniquely identifying each Service Instance;
"Service Level Failure"	means a failure to meet the Service Level Target in respect of a Service Level;
"Service Level Target"	shall be as set out against the relevant Service Level in Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Service Levels"	means any service levels applicable to the provision of the Services under this Call Off Contract specified in Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Service Period"	means a recurrent period of one (1) month during the Call Off Contract Period, unless otherwise specified in the Call for Competition Procedure;
"Service Type"	<p>means a category of Service identified on the Customer's Statement of Requirements that a Customer may purchase under this Call Off Agreement, for example, any of (but not limited to) the following:</p> <p>Cloud Service Access Service;</p> <p>Consultancy Services;</p> <p>HSCN Connectivity Service;</p> <p>IDS Dedicated Service;</p> <p>IDS Integrated Service;</p> <p>In-Bound Internet Service;</p> <p>IPS Dedicated Service;</p> <p>IPS Integrated Service;</p> <p>Managed Firewall Service;</p> <p>Out-Bound Internet Service;</p> <p>PSN Access Connectivity Service;</p> <p>Session Initiation Protocol Service; and</p> <p>VPN Service;</p>
"Services"	means the services to be provided by the Supplier to the Customer as referred to Call Off Schedule 2 (Services), including Service Instances;
"Session Initiation Protocol Service" or "SIP Service"	means the Service Type of that name as set out in the Customer's Statement of Requirements;
"Sites"	<p>means:</p> <p>any delivery point for the Services (including the Customer Premises, the Supplier's premises, third party premises, or any non-premises location, such as kerbside cabinets and bus shelters):</p> <p>from, to or at which:</p>

the Services are (or are to be) provided; or

the Supplier manages, organises or otherwise directs the provision or the use of the Services; or

where: any part of the Supplier System is situated; or

any physical interface with the Customer System takes place,

including (but not limited to) those sites described on the Order Form;

"Software"

means Specially Written Software, Supplier Software and Third Party Software;

"Software Supporting Materials"

has the meaning given to it in Clause 29.2.1(b) (Licences granted by the Supplier: Specially Written Software and Project Specific IPR);

"Source Code"

means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;

"Specially Written Software"

means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Call Off Contract;

"Specific Change in Law"

means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;

"SQ Response"

means the Supplier's response to the Authority's Selection Questionnaire ("SQ") in response to the OJEU Notice;

"Standalone Service Instance"

means a Service Instance that is not part of an Integrated Service Instance Set;

"Standards"

means:

- a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with when delivering Services to Contracting Bodies under this Call Off Contract;
- b) any standards that form part of the HSCN Compliance Document Set;
- c) any standards detailed in the specification in DPS Schedule 2 (Services and Key Performance Indicators);

- d) any standards detailed by the Contracting Body in the Call Off Agreement following a Call for Competition Procedure or agreed between the Parties from time to time;

any relevant Government codes of practice and guidance applicable from time to time that would apply to a supplier delivering Services to the Customer under this Call Off Contract.

"Sub-Contract"

means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the provision of the Services or any part thereof;

"Sub-Contractor"

means any third party engaged by the Supplier, including any Key Sub-Contractor, from time to time under a Sub-Contract permitted pursuant to the Dynamic Purchasing System Agreement and this Call Off Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;

"Supplier"

means the person, firm or company with whom the Customer enters into this Call Off Contract as identified in the Order Form;

"Supplier Assets"

means all assets and rights used by the Supplier to provide the Services in accordance with this Call Off Contract but excluding the Customer Assets;

**"Supplier
Background IPR"**

means

Intellectual Property Rights owned by the Supplier before the Call Off Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or

Intellectual Property Rights created by the Supplier independently of this Call Off Contract,

but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

**"Supplier Call Off
Solution"**

means the Supplier's solution in response to the Customer's invitation to Suppliers for formal offers to supply the Customer with the Services pursuant to a Call for Competition Procedure as set out in Annex 2 to Call Off Schedule 2 (Services);

**"Supplier
Personnel"**

means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Call Off Contract;

**"Supplier
Equipment"**

means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Call Off Contract;

"Supplier Non-Performance"	has the meaning given to it in Clause 35.1 (Supplier Relief Due to Customer Cause);
"Supplier Profit"	means, in relation to a period or a Milestone (as the context requires), the difference between the total Call Off Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
"Supplier Profit Margin"	means, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Call Off Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supplier Representative"	means the representative appointed by the Supplier named in the Order Form;
"Supplier Software"	means any software which is proprietary to the Supplier (or an Affiliate of the Supplier) and identified as such in the Order Form together with all other software which is not identified as such in the Order Form but which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for the Customer to receive the benefit of and/or make use of the Services;
"Supplier System"	means the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer System);
"Supplier's Confidential Information"	<p>means</p> <p>any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier;</p> <p>any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Call Off Contract;</p> <p>information derived from any of the above.</p>
"Template Call Off Terms"	means the template terms and conditions in Annex 2 of DPS Schedule 3 (Template Order Form and Template Call Off Terms);
"Template Order Form"	means the template order form in Annex 1 of DPS Schedule 3 (Template Order Form and Template Call Off Terms);
"Test" and "Testing"	means any tests required to be carried out pursuant to this Call Off Contract as set out in Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Testing) or elsewhere in this Call Off Contract and "Tested" shall be construed accordingly;

"Test Issue"	means any variance or non-conformity of the Services or Deliverables from their requirements as set out in this Call Off Contract;
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Call Off Contract on a specified date and setting out the grounds for termination;
"Third Party IPR"	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party Software"	means any software identified as such in the Order Form together with all other software which is not listed in the Order Form which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which is or will be used by the Supplier for the purposes of providing the Services);
"Unavailable"	in relation to a Service, means that the Service is not Available;
"Undelivered Services"	has the meaning given to it in Clause 6.4 (Supply of Services);
"Undisputed Sums Time Period"	has the meaning given to it Clause 38 (Supplier Termination Rights);
"Update"	means in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
"Upgrade"	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software Supplier (or any Affiliate of the Supplier or any third party) releases during the Call Off Contract Period;
"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph 6 (Invoicing Procedure) of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
"Variation"	has the meaning given to it in Clause 18.1 (Variation Procedure);
"Variation Form"	means the form set out in Call Off Schedule 12 (Variation Form);
"Variation Procedure"	means the procedure set out in Clause 18.1 (Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Verification Period"	means, in relation to an Allowable Assumption, the period from (and including) the Call Off Commencement Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in the Supplier Call Off Solution;
"VPN Service"	means the Service Type of that name (with integrated and dedicated variants) as set out in the Customer's Statement of Requirements;

"Working Day"

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

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CALL OFF SCHEDULE 2: SERVICES

1. INTRODUCTION

- 1.1 This Call Off Schedule specifies the Services to be provided under this Call Off Contract and the Supplier shall deliver the Services in accordance with this Call Off Contract.
- 1.2 Part A of Annex 1 of this Call Off Schedule sets out the Customer's Statement of Requirements. The Customer's Statement of Requirements sets out the scope of the services the Parties anticipate may be delivered pursuant to this Call Off Contract.
- 1.3 Part B of Annex 1 of this Call Off Schedule sets out the specific Service Instances ordered as at the Call Off Commencement Date. Any Variations to this list of Services ordered shall remain within scope of the Customer's Statement of Requirements.
- 1.4 Annex 2 specifies the Services that the Supplier will deliver to the Customer. If the Customer's Statement of Requirements is included at Annex 1, in the event of any conflict between Annex 1 and Annex 2, Annex 1 will take precedence over Annex 2.
- 1.5 In the event of any conflict between Annex 2 and Part B of DPS Schedule 2 (Services and Key Performance Indicators), Part B of DPS Schedule 2 (Services and Key Performance Indicators) will take precedence over Annex 2.

2. SERVICE INSTANCES

- 2.1 Services may be identified as separate Service Instances as set out in Annex 1 to this Call Off Schedule 2.
- 2.2 The Supplier shall ensure that each of the Service Instances are in Live Operation for the associated Service Instance Period as set out in Part B of Annex 1 from the relevant Go-Live Date.
- 2.3 The Supplier shall, at least six (6) months prior to the expiry of a Service Instance Period, provide notification to the Customer of such expiry to enable the Customer to decide if an extension is required. The Supplier shall include in the notification, details of any proposed reduction to the Charges which will apply during the Service Instance Extension Period, as applicable.
- 2.4 Where the Customer elects to extend the Service Instance Period, it shall give the Supplier no less than three (3) months written notice before the end of such Service Instance Period.

ANNEX 1: CUSTOMER'S STATEMENT OF REQUIREMENTS AND SERVICES ORDERED

[Guidance Note: where the Customer has conducted a further competition, insert the Customer's Statement of Requirements here]

PART A: CUSTOMER'S STATEMENT OF REQUIREMENTS

[Guidance Note: where the Customer has conducted a Call for Competition, insert the Customer's Statement of Requirements here. Statement of Requirement should represent a detailed description of the Services the Customer envisages it may require during the life of the Call Off Contract.]

PART B: SERVICES ORDERED

[Guidance Note: table to be inserted with specific order details in a format similar to that illustrated in the example below]

No.	Service Type	Service Instance - Unique ID	Order requirements	Integrated Service Instances Set unique ID	Service Instance Period
1	HSCN Connectivity Service (managed)	000001	[Note: this would include characteristics specified by the customer e.g. bandwidth, resilience level]	n/a	
2	HSCN Connectivity Service (managed)	000002	[Note: this would include characteristics specified by the customer e.g. bandwidth, resilience level]	I00001	
3	Firewall (managed)	000003	[Note: this would include characteristics specified by the customer]	I00001	

Each row in the above table represents a separate Standalone Service Instance which can be purchased under this Agreement. Where the 'Integrated Service Instance Set unique ID' column states n/a, the Service is a Standalone Service Instance only, for example row 1 below.

Rows 2 and 3 are each a Service Instance however together also represent an Integrated Service Instance Set with a shared Integrated Service Instance Set unique ID.]

ANNEX 2: SUPPLIER CALL OFF SOLUTION

[Guidance Note: where the Customer has conducted a Call for Competition, insert a copy of the Supplier's response/solution here]

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CALL OFF SCHEDULE 3: CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING

1. GENERAL PROVISIONS

1.1 This Call Off Schedule details:

- 1.1.1 the Call Off Contract Charges for the Services under this Call Off Contract; and
- 1.1.2 the payment terms/profile for the Call Off Contract Charges;
- 1.1.3 the invoicing procedure; and
- 1.1.4 the procedure applicable to any adjustments of the Call Off Contract Charges.

2. CALL OFF CONTRACT CHARGES

2.1 The Call Off Contract Charges which are applicable to this Call Off Contract are set out in Annex 1 of this Call Off Schedule.

2.2 Part A of Annex 1 of this Call Off Schedule sets out the Call Off Contract Charges provided by the Supplier in response to the Call for Competition Procedure and Part B of Annex 1 of this Call Off Schedule sets out the specific Call Off Contract Charges in respect of each Service Instance ordered under this Call Off Contract.

2.3 The Supplier acknowledges and agrees that subject to paragraph 7 of this Call Off Schedule (Adjustment of Call Off Contract Charges), the Call Off Contract Charges cannot be increased during the Call Off Contract Period.

3. COSTS AND EXPENSES

3.1 The Call Off Contract Charges include all costs and expenses relating to the Services and/or the Supplier's performance of its obligations under this Call Off Contract and no further amounts shall be payable by the Customer to the Supplier in respect of such performance, including in respect of matters such as:

- 3.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
- 3.1.2 any amount for any services provided or costs incurred by the Supplier prior to the Call Off Commencement Date.

4. PAYMENT TERMS/PAYMENT PROFILE

4.1 Only where the Customer has stipulated on the Order Form during a Call for Competition Procedure, the payment terms/profile which are applicable to this Call Off Contract are set out in Annex 2 of this Call Off Schedule.

5. PAYMENT OF WITHHELD CHARGES

5.1 Where a Milestone is stated to be a CPP Milestone in an Implementation Plan, any Charges specifically relating to that Service Instance due from the Achievement of the Go-Live Milestone may be withheld by the Customer until the Achievement of the CPP Milestone ("**Withheld Charges**"), upon which the

Supplier shall be entitled to invoice the Customer for an amount equal to the Withheld Charges that are payable in respect of that CPP Milestone and have not been paid before such CPP Milestone.

6. INVOICING PROCEDURE

6.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Customer in paragraph 6.5 of this Call Off Schedule and in accordance with the provisions of this Call Off Contract.

6.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Customer may specify):

6.2.1 contains:

- (a) all appropriate references, including the unique Order reference number appended to the Order Form; and
- (b) a detailed breakdown of the Services provided in the relevant Service Period, by Service Instance and including the Milestone(s) (if any) and Deliverable(s) within this Call Off Contract to which the delivered Services relate, against the applicable due and payable Call Off Contract Charges; and

6.2.2 shows separately:

- (a) any Service Credits due to the Customer;
- (b) any Delay Payments due to the Customer; and
- (c) the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 20.2.1 of this Call Off Contract (VAT) and the tax point date relating to the rate of VAT shown; and

6.2.3 is exclusive of any Management Charge (and the Supplier shall not attempt to increase the Call Off Contract Charges or otherwise recover from the Customer as a surcharge the Management Charge levied on it by the Authority); and

6.2.4 it is supported by any other documentation reasonably required by the Customer to substantiate that the invoice is a Valid Invoice.

6.3 The Supplier shall accept the Government Procurement Card as a means of payment for the Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.

6.4 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Call Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

6.5 The Supplier shall submit invoices directly to the Customer billing address identified on the Order Form.

7. ADJUSTMENT OF CALL OFF CONTRACT CHARGES

7.1 The Call Off Contract Charges shall only be varied:

7.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Call Off

Contract Charges in accordance with Clause 18.2 of this Call Off Contract (Legislative Change); or

7.1.2 where all or part of the Call Off Contract Charges are reduced as a result of a review of the Call Off Contract Charges in accordance with Clause 14 of this Call Off Contract (Continuous Improvement); or

7.1.3 where all or part of the Call Off Contract Charges are reduced in accordance with Clause 4.2 or paragraph 2.3 of Call Off Schedule 2; or

7.1.4 where the Parties agree that an Allowable Assumption is not accurate and subsequently agree a Variation to the Call Off Contract Charges further to paragraph 9.5.3 of this Call Off Schedule 3.

7.2 Subject to paragraph 7.1 of this Call Off Schedule, the Call Off Contract Charges will remain fixed for the Call Off Contract Period.

8. IMPLEMENTATION OF ADJUSTED CALL OFF CONTRACT CHARGES

8.1 Variations in accordance with the provisions of this Call Off Schedule to all or part the Call Off Contract Charges (as the case may be) shall be made by the Customer to take effect:

8.1.1 in accordance with Clause 18.2.2 of this Call Off Contract (Legislative Change) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 7.1.1 of this Call Off Schedule;

8.1.2 in accordance with Clause 14 (Continuous Improvement) of this Call Off Contract where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 7.1.2 of this Call Off Schedule;

8.1.3 from the start of the Call Off Extension Period or Service Instance Extension Period where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 7.1.3 of this Call Off Schedule,

and the Parties shall amend the Call Off Contract Charges shown in Annex 1 to this Call Off Schedule to reflect such variations.

9. ALLOWABLE ASSUMPTIONS

9.1 The Supplier shall determine whether each Allowable Assumption is accurate within its Verification Period.

9.2 During each Verification Period, the Customer shall provide the Supplier with reasonable assistance and access to information within its possession or reasonable control and which the Customer deems is relevant to the Allowable Assumption being verified.

9.3 Within ten (10) Working Days of the end of each Verification Period, the Supplier shall provide the Customer with a written report setting out the results of the Supplier's verification activity for the relevant Allowable Assumption, including whether the Allowable Assumption is accurate or whether the Implementation Plan and/or the Call Off Contract Charges for any Service Instances require adjustment.

9.4 Each Allowable Assumption shall be deemed accurate unless adjusting for the relevant Allowable Assumption has an impact on an Implementation Plan (as identified in column 3 of the table in Annex 3) and/or the Call Off Contract Charges for any Service Instances (as identified in column 7 of the table in Annex 3), in which case paragraph 9.5 shall apply.

9.5 Where the Parties agree that an Allowable Assumption is not accurate and the Implementation Plan and/or the Call Off Contract Charges for any Service Instances require adjusting:

9.5.1 the Supplier shall take all reasonable steps to mitigate the impact of the Allowable Assumption on the Implementation Plan;

9.5.2 the Supplier may (subject to paragraph 9.5.3) propose a Variation to take account of the impact of the adjustment of the Allowable Assumption and such Variation request shall be considered in accordance with the Variation Procedure; and

9.5.3 where the Supplier proposes a Variation to the Charges under paragraph 9.5.2, the Variation request shall reflect the requirements of the table in Annex 3, including the requirement that any proposed adjustment to the Charges shall not exceed the maximum impact on the relevant Charges as specified in column 7 of the table in Annex 3.

ANNEX 1: CALL OFF CONTRACT CHARGES

PART A - SUPPLIER'S TENDERED CALL OFF CONTRACT CHARGES

[Guidance Note: Prior to the commencement of this Call Off Contract, the Customer will incorporate here the Supplier's tendered Call Off Contract Charges including any discounts e.g. volume discounts. Where there has been a Call for Competition, it shall be the charging structure and Supplier rates and amounts from the General Tender Response]

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PART B - CALL OFF CONTRACT CHARGES APPLICABLE TO THE SERVICE INSTANCES

[Guidance Note: Prior to the commencement of this Call Off Contract, the Customer will incorporate here the Charges applicable in respect of the Service Instances ordered as at the Call Off Commencement Date. Where subsequent Service Instances are ordered following the Call Off Commencement Date this Part B should be updated via the Variation Procedure so that it reflects the up to date position.]

The table below contains the relevant topics which need to be addressed in this Annex – the below template need not be used and can be substituted by a more granular form to capture per Service Type/line detail however any replacement form should include as a minimum the detail required by this template]

Service Instance Unique ID(s)	Milestone Payments	Operational charges	Service Instance Period	Service Instance Period commencement date
00001	M1 - £5,000 M2 - £2,000	£100 per Service Period in Service Instance Period	3 years	Go-Live Date [(DD/MM/YY)]
00002	M1 - nil M2 - £5,000 M3 - £5,000	£10 per GB consumption per Service Period in Service Instance Period	3 years	Go-Live Date [(DD/MM/YY)]

ANNEX 2: PAYMENT TERMS/PROFILE

[Guidance Note: Where the Customer has stipulated on the Order Form during a General Further Competition Procedure, insert details of the agreed payment terms/payment profile]

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ANNEX 3: ALLOWABLE ASSUMPTIONS

[Guidance Note: Where Allowable Assumptions are included in the Supplier Call Off Solutions following a Call for Competition Procedure, insert details of these in the table below- where agreed]

[illegible]

CALL OFF SCHEDULE 4: IMPLEMENTATION PLAN, CUSTOMER RESPONSIBILITIES AND TESTING

1. INTRODUCTION

1.1 This Call Off Schedule specifies:

- 1.1.1 In Part A, the Implementation Plan(s) in accordance with which the Supplier shall provide the Services or Service Instances and the Customer Responsibilities in respect of facilitating the Supplier's achievement of the Implementation Plan(s); and
- 1.1.2 In Part B, the approach to Testing and the different Testing activities to be undertaken.

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PART A: IMPLEMENTATION PLAN AND CUSTOMER RESPONSIBILITIES

1. GENERAL

1.1 Each Implementation Plan shall be set out as an Annex to this Part A of Schedule 4 (Implementation Plan, Customer Responsibilities and Testing).

1.2 An Implementation Plan shall include, as a minimum, the content required by the following table:

Milestone	Service Instance Unique ID	Deliverables	Milestone Date	Customer Responsibilities	Milestone Payments	Delay Payments	ATP/CP P
[]	[]	[]	[]	[]	[]	[]	[]

1.3 The Milestone Achievement Criteria for each Milestone are set out in Annex 1 of Part B of this Call Off Schedule 4 and the Supplier shall demonstrate Achievement of the same for each Milestone.

1.4 The Customer Responsibilities associated with the Milestones identified in the Implementation Plan(s) are set out within the Implementation Plan.

[Guidance Note: The table above contains the relevant topics which need to be addressed in an Implementation Plan – the above template need not be used and can be substituted by a more granular form to capture per Service Type/line detail however any replacement form should include as a minimum the detail required by this template]

[Guidance Note: Include in each Implementation Plan details of any specific responsibilities of the Customer, for example, the granting of access to the Customer Sites, use of the Customer System, provision of Property, Customer Assets or information (e.g. copies of the Security Policy and the ICT Policy) etc.]

ANNEX 1 – EXAMPLE IMPLEMENTATION PLAN A

Milestone ID	Service Instance Unique ID(s)	Deliverables	Milestone Date	Customer Responsibilities	Milestone Payments	Delay Payments	ATP/CPP
M1 (Go-Live Milestone)	00001	HSCN Access Connection	DD/MM/YYYY	[For example, the granting of access to the Customer Sites.]	£5,000	n/a	ATP
	00002	Cloud Access Service		[For example, the granting of access to the Customer Sites.]			
M2 (Service Stable)	00001	HSCN Access Connection - demonstration of service stability	DD/MM/YYYY	n/a	nil	n/a	CPP
	00002	Cloud Access Service - demonstration of service stability		n/a			

[Guidance Note: The table is an example of the minimum content required in any Implementation Plan and the Parties should amend to reflect their requirements prior to the Call Off Contract Commencement Date. Where any additional Services are ordered after the Call Off Contract Commencement Date and an Implementation Plan is required in respect of those Services, a separate Implementation Plan should be inserted as a new Annex to this Part A of Schedule 4 (Implementation Plan, Customer Responsibilities and Testing) i.e. Annex 2 – Implementation Plan B, Annex 3 – Implementation Plan C etc.]

PART B: TESTING

1. DEFINITIONS

1.1 In this Part B to Call Off Schedule 4, the following definitions shall apply:

"Component"	means any constituent parts of the Services, bespoke or COTS, hardware or software;
"Commissioning Testing"	means the Test described at paragraph 5.1.1 of this Part B to Call Off Schedule 4, the minimum requirements for which are included in Annex 2 of this Schedule 4;
"COTS"	means commercially available off the shelf software, being software that is commonly used and is provided in a standard form and on standard licence terms which are not typically negotiated by the licensor;
"Customer Acceptance Testing"	means the Test described at paragraph 5.1.2 of this Part B to Call Off Schedule 4 the minimum requirements for which may be specified in the Order Form;
"Material Test Issue"	means a Test Issue of Severity Level 1 or Severity Level 2;
"Service Acceptance Testing"	means the Test described at paragraph 5.1.3 of this Part B to Call Off Schedule 4 the minimum requirements for which are included in Annex 2 of this Schedule 4;
"Severity Level"	means the level of severity of a Test Issue, the criteria for which are described in Annex 3;
"Test Issue Management Log"	means a log for the recording of Test Issues as described further in paragraph 6 of this Part B to Call Off Schedule 4;
"Test Reports"	means the reports to be produced by the Supplier setting out the results of Tests;
"Test Success Criteria"	means, in relation to a Test, the criteria that define the successful outcome of the Test; and
"Test Witness"	means any person appointed by the Customer pursuant to paragraph 7 of this Part B to Call Off Schedule 4.

2. INTRODUCTION

2.1 This Part B to Call Off Schedule 4 (Testing) sets out the approach to Testing and the different Testing activities to be undertaken to Achieve Milestones in relation to each Deliverable.

3. RISK

3.1 The issue of a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:

- 3.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Customer's requirements for that Deliverable or Milestone; or
- 3.1.2 affect the Customer's right subsequently to reject any Milestone to which the Milestone Achievement Certificate relates.

3.2 Notwithstanding the issuing of any Milestone Achievement Certificate, the Supplier shall remain solely responsible for ensuring that:

3.2.1 the Services are implemented in accordance with this Call Off Contract; and

3.2.2 each Service Level is met.

4. TESTING OVERVIEW

4.1 All Tests conducted by the Supplier shall be conducted in accordance with this Part B to Call Off Schedule 4.

4.2 The Supplier shall use reasonable endeavours to conduct Testing by or before the date set out in the Implementation Plan.

4.3 Prior to the issue of a Milestone Achievement Certificate, the Customer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

4.4 Any Disputes between the Supplier and the Customer regarding this Testing shall be referred to the Dispute Resolution Procedure.

5. TESTING

5.1 Testing shall comprise three (3) distinct phases as described in this paragraph 5.1 and in further detail in Annex 2 of Part B of this Schedule 4:

5.1.1 Commissioning Testing (mandatory): The Supplier will certify to the Customer that the Service Instance has been commissioned in accordance with Good Industry Practice and that all applicable minimum requirements have been successfully Tested. The certification will include written evidence of the Tests conducted and the results of that Testing;

5.1.2 Customer Acceptance Testing (optional): Where the Customer states on the Order Form or elsewhere in this Call Off Contract that it requires Customer Acceptance Testing in addition to Commissioning Testing and Service Acceptance Testing:

(a) the Supplier may apply Charges for Customer Acceptance Testing (based on the Person Days effort of the Supplier and the rate card included in Call Off Schedule 3) and where applied in respect of HSCN Connectivity Services shall report occurrences of this, including the amounts, to the HSCN Authority in accordance with its obligations under the HSCN Compliance Document Set; and

(b) the Supplier and / or Customer (according to the Approved Implementation Plan) shall conduct the Customer Acceptance Testing.

5.1.3 Service Acceptance Testing (mandatory): The Supplier shall conduct the Service Acceptance Testing for each Service Instance.

5.2 The Supplier shall manage and conduct the progress of Testing in accordance with this Part B to Call Off Schedule 4. Tests may be witnessed by the Test Witnesses in accordance with paragraph 7 of this Part B to Call Off Schedule 4.

5.3 The Supplier shall notify the Customer at least ten (10) Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Customer shall ensure that the Test

Witnesses attend the Tests, except where the Customer has specified in writing that such attendance is not necessary.

5.4 The Customer may raise and close Test Issues during the Test witnessing process.

5.5 Each party shall bear its own costs in respect of the Testing except under paragraph 5.1.2(a). However, if a Milestone is not Achieved the Customer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.

6. TEST ISSUES

6.1 Where Testing identifies a Test Issue, the classification of the Test Issue shall be determined using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.

6.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Customer upon request.

6.3 The Parties may agree that a Service may progress into Live Operation with an unresolved Test Issue, provided a classification of such Test Issue can be determined by the Parties (such agreed classification to be carried forward into Live Operation). If the Parties are unable to agree the classification of such unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

7. TEST WITNESSING

7.1 The Customer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Customer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.

7.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.

7.3 The Test Witnesses:

7.3.1 shall actively review the Test documentation;

7.3.2 will attend and engage in the performance of the Tests on behalf of the Customer so as to enable the Customer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;

7.3.3 shall not be involved in the execution of any Test;

7.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and this Part B to Call Off Schedule 4;

7.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Customer to assess whether the Tests have been Achieved;

7.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and

- 7.3.7 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

8. TEST QUALITY AUDIT

8.1 Without prejudice to its rights pursuant to Clause 17 of this Call Off Contract (Records, Audit Access and Open Book Data), the Customer or an agent or contractor appointed by the Customer may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**") subject to the provisions set out in the agreed Quality Plan (if applicable).

8.2 The focus of the Testing Quality Audits shall be on:

- 8.2.1 adherence to an agreed methodology;
- 8.2.2 adherence to the agreed Testing process;
- 8.2.3 adherence to the Quality Plan (if applicable);
- 8.2.4 review of status and key development issues; and
- 8.2.5 identification of key risk areas.

8.3 The Supplier shall allow sufficient time in Testing to ensure that adequate responses to a Testing Quality Audit can be provided.

8.4 The Customer will give the Supplier at least five (5) Working Days' written notice of the Customer's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Customer will materially and adversely impact the Implementation Plan.

8.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Customer witnessing Tests and demonstrations of the Deliverables to the Customer. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Customer on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Customer to enable it to carry out the Testing Quality Audit.

8.6 If the Testing Quality Audit gives the Customer concern in respect of the testing procedures or any Test, the Customer shall:

- 8.6.1 discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
- 8.6.2 subsequently prepare a written report for the Supplier detailing its concerns,

and the Supplier shall, within a reasonable timeframe, respond in writing to the Customer's report.

8.7 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Milestone Achievement Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

9. ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

- 9.1 The Customer shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following demonstration by the Supplier that all of the applicable Milestone Achievement Criteria have been Achieved.
- 9.2 The Customer may, at their sole discretion, issue a Milestone Achievement Certificate conditional upon the remediation of any failure to Achieve all of the associated Milestone Achievement Criteria.
- 9.3 Where the failure to satisfy the Milestone Achievement Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone Date, then without prejudice to the Customer's other rights and remedies, such failure shall constitute a material Default.
- 9.4 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the payments associated with that specific Milestone as set out in Call Off Schedule 3 (Call Off Contract Charging, Payment and Invoicing).
- 9.5 Where the Customer issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1 – MILESTONE ACHIEVEMENT CRITERIA

[Guidance Note to Customer: The Milestone Achievement Criteria for each Milestone must be set out in the Order Form and inserted here when the Call Off Contract is confirmed.]

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ANNEX 2 – MINIMUM TESTING REQUIREMENTS

1. MINIMUM TESTING REQUIREMENTS

The minimum testing requirements for each Deliverable are as specified in this Annex 2 of Part B to Call Off Schedule 4.

2. HSCN CONNECTIVITY SERVICE (UNMANAGED AND MANAGED)

Commissioning Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Availability (primary and secondary as applicable)
- b) Latency (primary and secondary as applicable)
- c) Jitter (primary and secondary as applicable)
- d) Packet loss (primary and secondary as applicable)
- e) Security
- f) Bandwidth provision (as applicable to static, burstable, flexible, multi-tenancy, dynamic or bonded options)
- g) Bandwidth consumption measurement (as applicable to pay as you go, flexible, multi-tenancy, dynamic or bonded options)
- h) Failover (to Secondary and back to Primary as applicable)
- i) Monitoring and alerting
- j) Routing
- k) DNS / NTP
- l) HSCN VRF configuration
- m) QOS policy (standard as in the HSCN Obligations Framework and where applicable as adapted by the Customer)
- n) CPE IPfix data provision to the HSCN Network Analytics Service
- o) Service Management capabilities, including asset management, CRM access, Service portal access, monitoring and reporting, remote management.

Service Acceptance Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Outbound connectivity to the relevant NHS national applications (as specified by the Customer e.g. Spine, ERS, GPSOC etc), other locally defined services (as specified by the Customer e.g. Path Lab), other HSCN connected customers, the HSCN Transition Network
- b) Inbound connectivity from other CNSPs, the HSCN Transition Network, other relevant third party support providers (as specified by the Customer e.g. access to local PAS)

- c) Cutover from the HSCN Transition Network connection (where applicable).
- d) Live access to the Supplier's CRM and Service portal.

3. PSN connectivity service

Commissioning Testing minimum requirements

As specified by the Customer in the Statement of Requirements.

Service Acceptance Testing minimum requirements

As specified by the Customer in the Statement of Requirements.

4. VPN (INTEGRATED AND STAND-ALONE)

Commissioning Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Availability
- b) Routing
- c) Failover (to Secondary and back to Primary as applicable)
- d) Establishment of the VPN connection in accordance with defined standards and encryption algorithms
- e) Monitoring and alerting
- f) Service Management capabilities, including asset management, CRM access, Service portal access, monitoring and reporting, remote management, where not already proven as part of a separate implementation for the Customer.

Service Acceptance Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Outbound connectivity to the relevant end points (as specified by the Customer)
- b) Inbound connectivity from other end points (as specified by the Customer)
- c) Cutover from the existing capability (where applicable).
- d) Live access to the Supplier's CRM, Service portal and monitoring and reporting solutions, where not already proven as part of a separate implementation for the Customer.

5. MANAGED FIREWALL (INTEGRATED AND STAND-ALONE)

Commissioning Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Availability (primary and secondary as applicable)
- b) Security requirements as applicable
- c) Capacity provision
- d) Failover (to Secondary and back to Primary as applicable)

- e) Audit logging, monitoring and alerting
- f) Service Management capabilities, including asset management, CRM access, Service portal access, monitoring and reporting, remote management, where not already proven as part of a separate implementation for the Customer.

Service Acceptance Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Outbound connectivity to the relevant NHS national applications (as specified by the Customer), other HSCN connected customers, the HSCN peering exchange, the HSCN Transition Network
- b) Inbound connectivity from other CNSPs, the HSCN Transition Network, other relevant third party support providers (as specified by the Customer)
- c) Cutover from the capability it is replacing (where applicable)
- d) Live access to the Supplier's CRM, Service portal and monitoring and reporting solutions, where not already proven as part of a separate implementation for the Customer.

Service Acceptance Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Outbound connectivity to the relevant NHS national applications (as specified by the Customer), other HSCN connected customers, the HSCN peering exchange, the HSCN Transition Network
- b) Inbound connectivity from other CNSPs, the HSCN Transition Network, other relevant third party support providers (as specified by the Customer)
- c) Cutover from the capability it is replacing (where applicable)
- d) Live access to the Supplier's CRM, Service portal and monitoring and reporting solutions, where not already proven as part of a separate implementation for the Customer.

6. IPS/IDS (INTEGRATED AND STAND-ALONE)

Commissioning Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Availability (primary and secondary as applicable)
- b) Security requirements as applicable
- c) Threat detection and prevention capabilities
- d) Capacity provision
- e) Failover (to Secondary and back to Primary as applicable)
- f) Audit logging, monitoring and alerting
- g) Automated updating of threat related information

- h) Service Management capabilities, including asset management, CRM access, Service portal access, monitoring and reporting, remote management, where not already proven as part of a separate implementation for the Customer.

Service Acceptance Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Security threats are detected and prevented as appropriate
- b) Cutover from the capability it is replacing (where applicable)
- c) Live access to the Supplier's CRM, Service portal and monitoring and reporting solutions, where not already proven as part of a separate implementation for the Customer.

7. INTERNET (IN-BOUND AND OUT-BOUND)

Commissioning Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Availability (primary and secondary as applicable)
- b) Latency (primary and secondary as applicable)
- c) Jitter (primary and secondary as applicable)
- d) Packet loss (primary and secondary as applicable)
- e) Security requirements as applicable
- f) Bandwidth provision
- g) Failover (to Secondary and back to Primary internet connection as applicable)
- h) Monitoring and alerting
- i) Routing
- j) Bandwidth consumption measurement (where pay as you go selected)
- k) Service Management capabilities, including asset management, CRM access, Service portal access, monitoring and reporting, remote management, where not already proven as part of a separate implementation for the Customer.

Service Acceptance Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Connectivity from/to internet locations (as specified by the Customer)
- b) Connectivity to the NHS Advanced Network Monitoring Service
- c) Cutover from the capability it is replacing (where applicable)
- d) Live access to the Supplier's CRM, Service portal and monitoring and reporting solutions, where not already proven as part of a separate implementation for the Customer.

8. CLOUD ACCESS SERVICES

Commissioning Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Availability (primary and secondary as applicable)
- b) Latency (primary and secondary as applicable)
- c) Jitter (primary and secondary as applicable)
- d) Packet loss (primary and secondary as applicable)
- e) Security requirements as applicable
- f) Bandwidth provision
- g) Failover (to Secondary and back to Primary cloud service connection as applicable)
- h) Monitoring and alerting
- i) Routing / QOS / VRF requirements
- j) Service Management capabilities, including asset management, CRM access, Service portal access, monitoring and reporting, remote management, where not already proven as part of a separate implementation for the Customer.

Service Acceptance Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Connectivity to the relevant cloud services
- b) Cutover from the capability it is replacing (where applicable)
- c) Live access to the Supplier's CRM, Service portal and monitoring and reporting solutions, where not already proven as part of a separate implementation for the Customer.

9. SESSION INITIATION PROTOCOL (SIP)

Commissioning Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Availability (primary and secondary as applicable)
- b) Security requirements as applicable
- c) Bandwidth provision
- d) Failover (to Secondary and back to Primary SIP capability as applicable)
- e) Monitoring and alerting
- f) Routing between the telephony services that are in-scope
- g) Service Management capabilities, including asset management, CRM access, Service portal access, monitoring and reporting, remote management, where not already proven as part of a separate implementation for the Customer.

Service Acceptance Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Routing between the telephony services that are in-scope
- b) Cutover from the capability it is replacing (where applicable)
- c) Live access to the Supplier's CRM, Service portal and monitoring and reporting solutions, where not already proven as part of a separate implementation for the Customer.

10. ADDITIONAL CUSTOMER DEFINED VRFS

Commissioning Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Availability (primary and secondary as applicable)
- b) Security requirements as applicable
- c) Monitoring and alerting
- d) Accurate and resilient routing

Service Acceptance Testing minimum requirements

The Supplier shall Test that, where applicable, the following features of the service meet the associated requirements:

- a) Routing between relevant end points (as specified by the Customer)
- b) Cutover from the capability it is replacing (where applicable)
- c) Live access to the Supplier's CRM, Service portal and monitoring and reporting solutions, where not already proven as part of a separate implementation for the Customer.

ANNEX 3: TEST ISSUES – SEVERITY LEVELS

1. SEVERITY 1 ERROR (CRITICAL)

- 1.1 This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, the required resilience levels are not being achieved, the required latency is not being achieved.

2. SEVERITY 2 ERROR (MAJOR)

- 2.1 This is an error for which, as reasonably determined by the Customer, there is no practicable workaround available, and which:

- 2.1.1 causes a Component to become unusable;
- 2.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
- 2.1.3 has an adverse impact on any other Component(s) or any other area of the Services.

3. SEVERITY 3 ERROR (MODERATE)

- 3.1 This is an error which:

- 3.1.1 causes a Component to become unusable;
- 3.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
- 3.1.3 has an impact on any other Component(s) or any other area of the Services;

but for which, as reasonably determined by the Customer, there is a practicable workaround available.

4. SEVERITY 4 ERROR (MINOR)

- 4.1 This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services.

5. SEVERITY 5 ERROR (COSMETIC)

- 5.1 This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.

ANNEX 4: MILESTONE ACHIEVEMENT CERTIFICATE

To: [insert name of Supplier]

From: [insert name of Customer]

[insert Date dd/mm/yyyy]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone:

[Guidance Note to Customer: Insert description of the relevant Milestones]

We refer to the agreement ("Call Off Contract") relating to the provision of the Services between the [insert Customer name] ("Customer") and [insert Supplier name] ("Supplier") dated [insert Call Off Commencement Date dd/mm/yyyy].

The definitions for terms capitalised in this certificate are set out in this Call Off Contract.

[We confirm that all the Deliverables relating to Milestone [number] have been tested successfully in accordance with the Testing relevant to this Milestone [or that a conditional Milestone Achievement Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]*

[OR]

[This Milestone Achievement Certificate is granted pursuant to paragraph 13.1 of Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Testing) on the condition that any Test Issues are remedied in accordance with the rectification plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)]*

[*Guidance Note: delete as appropriate]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

CALL OFF SCHEDULE 5: FINANCIAL DISTRESS

1. DEFINITIONS

1. In this Call Off Schedule 5, the following definitions shall apply:

“Credit Rating Threshold”	means the minimum credit rating level for the Rated Organisation as set out in the Order Form;
“Financial Distress Event”	means the occurrence or one or more of the events listed in paragraph 3 of this Call Off Schedule 5 (Financial Distress);
“Financial Distress Service Continuity Plan”	means a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Call Off Contract in the event that a Financial Distress Event occurs;
“Rated Organisation(s)”	means the Supplier and/or the DPS Guarantor as set out in the Order Form;
“Rating Agencies”	means the rating agencies listed in the Order Form;

2. CREDIT RATING AND DUTY TO NOTIFY

- 2.1 The Supplier warrants and represents to the Customer for the benefit of the Customer that as at the Call Off Commencement Date the long term credit ratings issued for the Rated Organisation(s) by each of the Rating Agencies are as set out in the Order Form.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Customer in writing if there is any downgrade in the credit rating issued by any Rating Agency for any Rated Organisation (and in any event within five (5) Working Days of the occurrence of the downgrade).
- 2.3 If there is any downgrade credit rating issued by any Rating Agency for any Rated Organisation, the Supplier shall ensure that the relevant Rated Organisation auditors thereafter provide the Customer within ten (10) Working Days of the end of each Call Off Contract Year and within ten (10) Working Days of written request by the Customer (such requests not to exceed four (4) in any Call Off Contract Year) with written calculations of the quick ratio for the relevant Rated Organisation as at the end of each Call Off Contract Year or such other date as may be requested by the Customer. For these purposes the “quick ratio” on any date means:

$$\frac{A + B + C}{D}$$

where:

- | | |
|---|---|
| A | is the value at the relevant date of all cash in hand and at the bank of the Rated Organisations(s); |
| B | is the value of all marketable securities held by the Rated Organisation(s) determined using closing prices on the Working Day preceding the relevant date; |

- C is the value at the relevant date of all account receivables of the Rated Organisation(s); and
- D is the value at the relevant date of the current liabilities of the Rated Organisation(s).

2.4 The Supplier shall:

- 2.4.1 regularly monitor the credit ratings of the Rated Organisation(s) with the Rating Agencies; and
- 2.4.2 promptly notify (or shall procure that its auditors promptly notify) the Customer and the HSCN Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).

2.5 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of paragraph 3.1.1, the credit rating of the Rated Organisation(s) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Rated Organisation(s) at or below the applicable Credit Rating Threshold.

3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1 In the event of:

- 3.1.1 the credit rating of the Rated Organisation(s) dropping below the applicable Credit Rating Threshold;
- 3.1.2 the Rated Organisation(s) issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- 3.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Rated Organisation(s);
- 3.1.4 the Rated Organisation(s) committing a material breach of covenant to its lenders;
- 3.1.5 a Key Sub-Contractor notifying the Customer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or
- 3.1.6 any of the following:
- (a) commencement of any litigation against the Rated Organisation(s) with respect to financial indebtedness or obligations under a service contract;
 - (b) non-payment by the Rated Organisation(s) of any financial indebtedness;
 - (c) any financial indebtedness of the Rated Organisation(s) becoming due as a result of an event of default; or
 - (d) the cancellation or suspension of any financial indebtedness in respect of the Rated Organisation(s),

in each case which the Customer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Call Off Contract;

then, immediately upon notification of the Financial Distress Event (or if the Customer becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Customer shall have the rights and remedies as set out in paragraphs 3.3 to 3.6.

3.2 In the event of a late or non-payment of a Key Sub-Contractor pursuant to paragraph 3.1.5, the Customer shall not exercise any of its rights or remedies under paragraph 3.3 without first giving the Supplier ten (10) Working Days to:

3.2.1 rectify such late or non-payment; or

3.2.2 demonstrate to the Customer's reasonable satisfaction that there is a valid reason for late or non-payment.

3.3 The Supplier shall and shall procure that any Rated Organisation shall:

3.3.1 at the request of the Customer meet the Customer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Customer may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Call Off Contract; and

3.3.2 where the Customer reasonably believes (taking into account the discussions and any representations made under paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Call Off Contract:

- (a) submit to the Customer for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Customer may permit and notify to the Supplier in writing); and
- (b) provide such financial information relating to the Rated Organisation(s) as the Customer may reasonably require.

3.4 The Customer shall not withhold its Approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Customer does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Customer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by the Customer or referred to the Dispute Resolution Procedure pursuant to paragraph 3.5.

3.5 If the Customer considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may

either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

3.6 Following Approval of the Financial Distress Service Continuity Plan by the Customer, the Supplier shall:

- 3.6.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Call Off Contract;
- 3.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 3.6.1, submit an updated Financial Distress Service Continuity Plan to the Customer for its Approval, and the provisions of paragraphs 3.5 and 3.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
- 3.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Customer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under paragraph 3.6.

4. TERMINATION RIGHTS

4.1 The Customer shall be entitled to terminate this Call Off Contract for material Default if:

- 4.1.1 the Supplier fails to notify the Customer of a Financial Distress Event in accordance with paragraph 2.4;
- 4.1.2 the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 3.3 to 3.5; and/or
- 4.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.6.3.

5. PRIMACY OF CREDIT RATINGS

5.1 Without prejudice to the Supplier's obligations and the Customer's rights and remedies under paragraph 3, if, following the occurrence of a Financial Distress Event pursuant to Paragraphs 3.1.1 to 3.1.6, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

- 5.1.1 the Supplier shall be relieved automatically of its obligations under paragraphs 3.3 to 3.6; and
- 5.1.2 the Customer shall not be entitled to require the Supplier to provide financial information in accordance with paragraph 3.3.2(b).

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CALL OFF SCHEDULE 6: SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING

1. SCOPE

- 1.1 This Call Off Schedule 6 sets out the service levels which the Supplier is expected to achieve when providing the Services, the mechanism by which Service Level Failures and Critical Service Level Failures will be managed and the method by which the Supplier's performance in the provision by it of the Services will be monitored.
- 1.2 Service Levels and Service Credits are applied to each Integrated Service Instance Set and each Standalone Service Instance that are in Live Operation.
- 1.3 This Call Off Schedule comprises:
- 1.3.1 Part A: Service Levels and Service Credits;
 - 1.3.2 Annex 1 to Part A: Service Levels and Service Credit Tables
 - 1.3.3 Annex 2 to Part A: Critical Service Level Failure;
 - 1.3.4 Annex 3 to Part A: Service Levels and Service Credits examples; and
 - 1.3.5 Part B: Performance Monitoring.

2. SERVICE HOURS AND SERVICE DESK HOURS

- 2.1 The Services shall be provided by the Supplier to the Customer during the Service Hours.
- 2.2 The Supplier shall provide the Service Desk during the Service Desk Hours.
- 2.3 Service Desk Hours shall be 08:00 to 18:00 on Working Days unless specified otherwise in the Customer's Statement of Requirements.

3. INCIDENTS

- 3.1 Whenever an Incident is identified by the Customer or by the Supplier the relevant Party must report the same to the Service Desk.
- 3.2 Incidents must be classified to one of the following five (5) severity levels:

Severity 1	<p>an Incident which, in the reasonable opinion of the Customer;</p> <ul style="list-style-type: none">(a) constitutes a loss of the Service which prevents any traffic from routing correctly; or(b) has a critical impact on the activities of the Customer; or(c) causes significant financial loss and/or disruption to the Customer; or(d) constitutes a critical security risk. <p><i>Non-exhaustive examples:</i></p> <ul style="list-style-type: none">• a loss of power to a data centre causing failure of Services; or
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	<ul style="list-style-type: none"> • connectivity to the Peering exchange is lost; or • HSCN traffic cannot be routed to the Internet; or • Service Failure Thresholds are at risk of not being achieved.
Severity 2	<p>an Incident which, in the reasonable opinion of the Customer has the potential to:</p> <p>(a) have a major (but not critical) adverse impact on the activities of the Customer and no workaround acceptable to the Customer is available; or</p> <p>(b) cause a financial loss and/or disruption to the Customer which is more than trivial but less severe than the significant financial loss described in the definition of a Severity 1 Incident; or</p> <p>(c) constitute a serious but non-critical security risk.</p> <p>Non-exhaustive examples:</p> <ul style="list-style-type: none"> • Resilience reduced • Service Level Thresholds are at risk of not being achieved.
Severity 3	<p>an Incident which, in the reasonable opinion of the Customer has the potential to:</p> <p>(a) have a major adverse impact on the activities of the Customer which can be reduced to a moderate adverse impact due to the availability of a workaround acceptable to the Customer; or</p> <p>(b) have a moderate adverse impact on the activities of the Customer; or</p> <p>(c) constitute a non-serious / non-critical security risk.</p> <p>Non-exhaustive example:</p> <p>Reporting capability is not available or is inaccurate.</p>
Severity 4	<p>an Incident which, in the reasonable opinion of the Customer has the potential to have a minor adverse impact on the provision of the Services to the Customer.</p> <p>Non-exhaustive example:</p> <p>Information available the Customer is incorrect, but will only cause a minor adverse impact.</p>

Severity 5	<p>an Incident which, in the reasonable opinion of the Customer has the potential to have a very minor adverse impact on the provision of the Services to the Customer.</p> <p>Non-exhaustive example:</p> <p>Information available to Customers is cosmetically incorrect.</p>
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3.3 The Supplier shall ensure it associates each Incident with every Standalone Service Instance and/or Integrated Service Instance Set which are impacted by such an Incident, and shall provide evidence of the same to the Customer on request.

3.4 The Supplier shall manage each Incident to resolution in accordance with this Call Off Schedule and shall meet the Incident Fix Times, Incident Response Times and Incident Update Times, each measured only during the Service Hours applicable to each Service Instance, as set out in the table below.

Severity 1	Incident Fix Time	5 hours maximum
	Incident Response Time	20 minutes
	Incident Update Time	60 minutes
Severity 2	Incident Fix Time	8 hours maximum
	Incident Response Time	20 minutes
	Incident Update Time	60 minutes
Severity 3	Incident Fix Time	24 hours maximum
	Incident Response Time	60 minutes
	Incident Update Time	Not required
Severity 4	Incident Fix Time	2 weeks maximum
	Incident Response Time	120 minutes
	Incident Update Time	Not required
Severity 5	Incident Fix Time	4 weeks maximum
	Incident Response Time	240 minutes
	Incident Update Time	Not required

PART A: SERVICE LEVELS AND SERVICE CREDITS

1. GENERAL PROVISIONS

- 1.1 The Supplier accepts and acknowledges that failure to meet the Service Level Targets set out in this Part A of this Call Off Schedule will result in Service Credits being due to the Customer.

2. PRINCIPAL POINTS

- 2.1 The objectives of the Service Levels and Service Credits are to:
- 2.1.1 incentivise the Supplier to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously;
 - 2.1.2 ensure that the Services are of a consistently high quality and meet the requirements of the Customer; and
 - 2.1.3 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of service for which it has contracted to deliver.
- 2.2 The Parties acknowledge that:
- 2.2.1 The Customer will, in all cases, prefer to receive the Services within the Service Levels in preference to receiving the Service Credits; and
 - 2.2.2 the Supplier shall, in all cases, seek to deliver the Services within the Service Levels in preference to accepting a liability for Service Credits.
- 2.3 Examples of the application of such Service Levels and Service Credits are set out in Annex 3 to Part A of this Call Off Schedule.

3. SERVICE LEVELS

- 3.1 The Supplier shall monitor its performance under this Call Off Contract by reference to the relevant Service Level and shall send the Customer a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Call Off Schedule.
- 3.2 The Supplier shall, at all times, provide the Services in such a manner that the Service Level Targets are achieved.
- 3.3 If the level of performance of the Supplier of any element of the provision by it of the Services during the Call Off Contract period:
- 3.3.1 is likely to fail or fails to meet any Service Level Target; or
 - 3.3.2 is likely to cause or causes a Critical Service Level Failure to occur,
- the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights howsoever arising, including under Clause 9 of this Call Off Contract (Service Levels and Service Credits), may:
- (A) require the Supplier to immediately take all remedial action that is reasonable to mitigate the

impact on the Customer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and

- (B) if the action taken under paragraph (A) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Customer shall be entitled to instruct the Supplier to comply with the Rectification Plan Process.

3.4 Approval and implementation by the Customer of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Customer.

3.5 The Customer may enhance or otherwise modify the Service Levels required during a Call for Competition Procedure.

4. SERVICE CREDITS

4.1 Service Credits are calculated each Service Period and are applied separately to each Integrated Service Instance Set and Standalone Service Instance.

4.2 This section sets out the basic agreed formula used to calculate a Service Credit payable to the Customer as a result of a Service Level Failure in a given Service Period.

4.3 Annex 1 to this Part A of this Call Off Schedule sets out the Service Level Targets applicable to each Integrated Service Instance Set or Standalone Service Instance.

4.4 The Customer shall use the Performance Monitoring Reports supplied by the Supplier under Part B (Performance Monitoring) of this Call Off Schedule to verify the calculation and accuracy of any Service Credits applicable to each Service Period.

4.5 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate Invoice in accordance with the agreed formula in Annex 1 of Part A of this Call Off Schedule.

4.6 Within each Service Period, for each Integrated Service Instance Set and/or Standalone Service Instance where one or more Service Level Failures occur a Service Credit will accrue as fifteen percent (15%) of the Call Off Contract Charges specific to that Integrated Service Instance Set or Standalone Service Instance as applicable.

ANNEX 1 TO PART A: SERVICE LEVELS AND SERVICE LEVEL MEASUREMENT

This Annex 1 to Part A sets out the Service Levels in paragraph 1 and the Service Level measurements in paragraph 2.

1. SERVICE LEVELS

1.1 HSCN Connectivity Service (managed and unmanaged) (ref 1-SL)

The Service Levels in the table below are applicable to each Standalone Service Instance of a managed or unmanaged HSCN Connectivity Service and Integrated Service Instance Set which includes a managed or unmanaged HSCN Connectivity Service.

Ref	Service Level	Service Level Target % (a)	Service Failure Threshold % (b)
1-SL-1	HSCN Connection Availability Non-Resilient Resilient Resilient Diverse Routing Fully Resilient Diverse Routing	99.95% 99.97% 99.99% 99.999%	99% 99.2% 99.5% 99.9%
1-SL-2	HSCN WAN Availability Non-Resilient Resilient	99.95% The greater of 99.99% or the applicable Service Level Threshold for 1-SL-1.	99% The greater of 99.5% or the applicable Service Failure Threshold for 1-SL-1.
1-SL-3	HSCN Connection Latency DSL connection Non DSL connection	Average of <10ms and Peak <20ms Average of <5ms and Peak <15ms	Average of >=20ms or a Peak of >30ms Average of >=10ms or a Peak of >25ms
1-SL-4	HSCN Connection Jitter DSL connection Non DSL connection	Average of <1ms and Peak <1.5ms Average of <1ms and Peak <1.5ms	Average of >=1.5ms or a Peak of >2.5ms Average of >=1.5ms or a Peak of >2.5ms
1-SL-5	HSCN Connection Packet loss DSL connection Non DSL connection	Packet loss of < 0.005% Packet loss of < 0.005%	Packet loss of >=0.01% Packet loss of >=0.01%
1-SL-6	HSCN WAN Latency	Average of <= 30ms	Average of >= 40ms
1-SL-7	HSCN WAN Jitter	Average of <20ms and Peak <30ms	Average of >=30ms or a Peak of >40ms

1-SL-8	HSCN WAN Packet loss	Packet loss of < 0.5%	Packet loss of >=1%
1-SL-9	Incident Fix Times (all Severity Levels included)	100% Fixed within the target Incident Fix Time	Less than 90% Fixed within the target Incident Fix Time

1.2 PSN Access connectivity (ref 2-SL)

The Service Levels applicable to each Standalone Service Instance of a PSN Access Connectivity Service and Integrated Service Instance Set which includes a PSN Access Connectivity Service will be specified in the Customer's Statement of Requirement.

1.3 Internet (In-Bound) (ref 3-SL)

The Service Levels in the table below are applicable to each Standalone Service Instance of an In-bound Internet Service and Integrated Service Instance Set which includes an In-bound Internet Service.

Ref	Service Level	Service Level Target % (a)	Service Failure Threshold % (b)
3-SL-1	HSCN WAN Availability Non-Resilient Resilient	99.95% 99.99%	99% 99.5%
3-SL-2	HSCN WAN Latency	Average of <= 30ms	Average of >= 40ms
3-SL-3	HSCN WAN Jitter	Average of <20ms and Peak <30ms	Average of >=30ms or a Peak of >40ms
3-SL-4	HSCN WAN Packet loss	Packet loss of < 0.5%	Packet loss of >=1%
3-SL-5	Incident Fix Times (all Severity Levels included)	100% Fixed within the target Fix time	Less than 90% Fixed within the target Fix time

1.4 Internet (Out-Bound) (ref 4-SL)

The Service Levels in the table below are applicable to each Standalone Service Instance of an Out-bound Internet Service and Integrated Service Instance Set which includes an Out-bound Internet Service.

Ref	Service Level	Service Level Target % (a)	Service Failure Threshold % (b)
4-SL-1	HSCN WAN Availability Non-Resilient Resilient	99.95% 99.99%	99% 99.5%
4-SL-2	HSCN WAN Latency	Average of <= 30ms	Average of >= 40ms
4-SL-3	HSCN WAN Jitter	Average of <20ms and Peak <30ms	Average of >=30ms or a Peak of >40ms
4-SL-4	HSCN WAN Packet loss	Packet loss of < 0.5%	Packet loss of >=1%

4-SL-5	Incident Fix Times (all Severity Levels included)	100% Fixed within the target Fix time	Less than 90% Fixed within the target Fix time
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1.5 Cloud Access service (ref 5-SL)

The Service Levels in the table below are applicable to each Standalone Service Instance of Cloud Access Service and Integrated Service Instance Set which includes a Cloud Access Service.

Ref	Service Level	Service Level Target % (a)	Service Failure Threshold % (b)
5-SL-1	HSCN WAN Availability Non-Resilient Resilient	99.95% 99.99%	99% 99.5%
5-SL-2	HSCN WAN Latency	Average of <= 30ms	Average of >= 40ms
5-SL-3	HSCN WAN Jitter	Average of <20ms and Peak <30ms	Average of >=30ms or a Peak of >40ms
5-SL-4	HSCN WAN Packet loss	Packet loss of < 0.5%	Packet loss of >=1%
5-SL-5	Incident Fix Times (all Severity Levels included)	100% Fixed within the target Fix time	Less than 90% Fixed within the target Fix time

1.6 Session Initiation Protocol Service (ref 6-SL)

The Service Levels in the table below are applicable to each Standalone Service Instance of Session Initiation Protocol Service and Integrated Service Instance Set which includes a Session Initiation Protocol Service.

Ref	Service Level	Service Level Target % (a)	Service Failure Threshold % (b)
6-SL-1	HSCN WAN Availability Non-Resilient Resilient	99.95% 99.99%	99% 99.5%
6-SL-2	HSCN SIP Latency	Average of <= 5ms and Peak of <15ms	Average of >= 20ms or a Peak of >25ms
6-SL-3	HSCN SIP Jitter	Average of <1ms and Peak <1.5ms	Average of >=1.5ms or a Peak of >2ms
6-SL-4	HSCN SIP Packet loss	Packet loss of < 0.005%	Packet loss of >=0.01%
6-SL-5	Incident Fix Times (all Severity Levels included)	100% Fixed within the target Fix time	Less than 90% Fixed within the target Fix time

1.7 VPN (Standalone Service) (ref 7-SL)

The Service Levels in the table below are applicable to each Standalone Service Instance of a VPN Service.

Ref	Service Level	Service Level Target % (a)	Service Failure Threshold % (b)
7-SL-1	Availability Non-Resilient Dual VPN in Resilient Mode	99% 99.99%	98.5% 99.5%
7-SL-2	Incident Fix Times (all Severity Levels included)	100% Fixed within the target Fix time	Less than 90% Fixed within the target Fix time

1.8 Managed Firewall (Standalone Service) (ref 8-SL)

The Service Levels in the table below are applicable to each Standalone Service Instance of a Managed Firewall Service.

Ref	Service Level	Service Level Target % (a)	Service Failure Threshold % (b)
8-SL-1	Availability Non-Resilient Dual VPN in Resilient Mode	99% 99.99%	98.5% 99.5%
8-SL-2	Incident Fix Times (all Severity Levels included)	100% Fixed within the target Fix time	Less than 90% Fixed within the target Fix time

1.9 Intrusion Detection / Intrusion Prevention System (Standalone Service) (ref 9-SL)

The Service Levels in the table below are applicable to each Standalone Service Instance of an Intrusion Detection / Intrusion Prevention System.

Ref	Service Level	Service Level Target % (a)	Service Failure Threshold % (b)
9-SL-1	Availability Non-Resilient Dual VPN in Resilient Mode	99% 99.99%	98.5% 99.5%
9-SL-2	Incident Fix Times (all Severity Levels included)	100% Fixed within the target Fix time	Less than 90% Fixed within the target Fix time

2. SERVICE LEVEL MEASUREMENT

The Service Levels for each Standalone Service Instance and Integrated Service Instance Set are measured only over the duration of the Service Hours associated with each.

The performance against each Service Level shall be calculated by the Supplier in accordance with this paragraph 2.

2.1 Availability Measurement

The availability measurement methodology for the following Service Level references is as set out in section 3.3.1.2 of the service management addendum to the HSCN Obligations Framework.

- 1-SL-1
- 1-SL-2
- 3-SL-1
- 4-SL-1
- 5-SL-1
- 6-SL-1.

The availability measurement methodology for the following Service Level references is via polling of the device at a minimum frequency of every one (1) minute to determine its Availability.

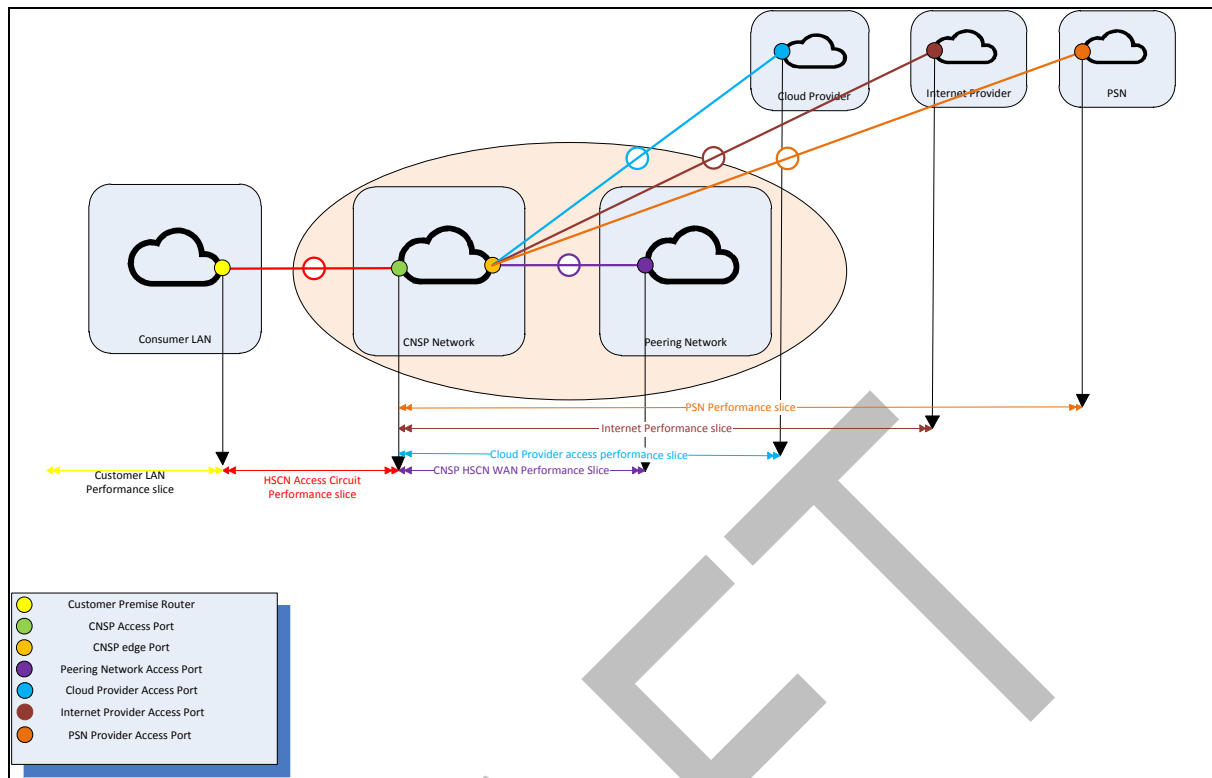
- 7-SL-1
- 8-SL-1
- 9-SL-1.

2.2 Network Performance Measurement

The measurement methodologies for latency, jitter and packet loss set out in this paragraph are applicable to Service Level references below.

- 1-SL-3
- 1-SL-4
- 1-SL-5
- 1-SL-6
- 1-SL-7
- 1-SL-8
- 3-SL-2
- 3-SL-3
- 3-SL-4
- 4-SL-2
- 4-SL-3
- 4-SL-4
- 5-SL-2
- 5-SL-3
- 5-SL-4
- 6-SL-2
- 6-SL-3
- 6-SL-4.

The simple topology diagram below illustrates the boundaries of service components and is used to support the definition of the latency, jitter and packet loss Service Level definitions.



2.2.1 For In-bound Internet Services, Out-bound Internet Services and Cloud Access Services

Quality metrics measurements will be collected using the following methodology:

Test messages of two hundred (200) packets should be sent every fifteen (15) minutes, for each pair of end-points being monitored (Provider Edge and Internet boundary router). In total, 19200 packets should be sent in a 24-hour period during Service Hours for each pair of end-points being monitored. Where measurements are taken over QoS service classes then the results should be aggregated. The mean average should be achieved, which provides figures for:

- Network latency and Jitter Performance; and
- Packet delivery

Reporting traffic utilisation per Class of Service and logical connection in accordance with TOPs3 WAN-QOS.

2.2.2 HSCN Access Connectivity and SIP Services

Quality metrics measurements will be collected using the following methodology:

Test messages of two hundred (200) packets should be sent every fifteen (15) minutes, for each pair of end-points being monitored (Customer Edge and Supplier Provider Edge). In total, 19200 packets should be sent in a 24-hour period during Service Hours for each pair of end-points being monitored. Where measurements are taken over QoS service classes then the results should be aggregated. The mean average should be achieved, which provides figures for:

- Network latency and Jitter Performance; and
- Packet delivery

Reporting traffic utilisation per Class of Service and logical connection in accordance with TOPs3 WAN-QOS.

2.2.3 HSCN WAN

Network latency and Jitter Performance

Two-way Active Measurement Protocol (TWAMP) shall be used when measuring WAN performance.

In line with TOPS9 / TOPS10, network latency and jitter shall be:

- The two-way latency for that 24-hour period in Service Hours
- The jitter for that 24-hour period in Service Hours.

Packet delivery

In line with TOPS11, packet delivery shall be:

- The packet loss for that 24-hour period in Service Hours

All daily figures will be aggregated to a complete month; this will then be divided by the total number of days within that monthly period to provide an average figure.

2.3 Incident Fix Time Measure

The measurement methodologies for Incident fix times set out in this section are applicable to Service Level references below.

- 1-SL-9
- 3-SL-5
- 4-SL-5
- 5-SL-5
- 6-SL-5
- 7-SL-2
- 8-SL-2
- 9-SL-2.

Each Severity Level is described in paragraph 3 of this Call Off Schedule 6.

Severity 1 to 5 Incidents are encompassed by this Service Level measurement.

The Fix Times for each Severity Level which are subject to this Service Level measurement are as set out in paragraph 3.4 of this Call Off Schedule.

The "Fix Time" of an Incident is the period from the earlier of the time that the Incident has been reported to the Supplier, or has been identified by the Supplier's Performance Monitoring System, or that the Supplier becomes aware of the Incident by any other method, or the time at which the Supplier could reasonably have been expected to have identified it; to the point of its Resolution and "Resolution" means in relation to an Incident either:

- the root cause of the Incident has been removed and the Services are being provided in accordance with the Service Requirements and Service Levels; or

- the relevant Customer has been provided with a workaround in relation to the Incident, and the workaround has been accepted by the relevant End User.

For the avoidance of doubt, where the Supplier was notified of an Incident via email or, for example via a web-portal, the Supplier shall be deemed to have been notified of the Incident from the point the email or web-portal submission was received by the Supplier's Help Desk mailbox or web-portal tool, and not the point at which the Supplier logs the Incident or responds to the submission.

The % for this Service Level will be calculated as follows for all Severity Level 1 to 5 Incidents which impact the service instance against which the Service Level is being measured:

- Each Incident will either be Fixed within the Incident Fix Time, or it will not; and will be reported as such by the Supplier.
- The Service Level achieved is calculated as a percentage of the total number of Incidents in a Service Period that should have been Fixed within the Incident Fix Time using the following formula:

$$\text{Service Level achieved \%} = \frac{(TI - FI) \times 100}{TI}$$

Where:

TI means the total number of Incidents raised by the Customer during the Service Period for the service instance; and

FI means the total number of Incidents raised by the Customer during the Service Period for the service instance that were not Fixed within the Incident Fix Time.

Where an Incident is reported outside the Service Hours, the Incident will be treated as if it has been reported at the beginning of the Service Hours for the next Working Day.

The Incident will only be deemed to be Fixed once the relevant service instances are performing to the required standards. However, the Supplier shall not formally close any Incident until the Customer has confirmed that the Incident can be closed.

ANNEX 2 TO PART A: CRITICAL SERVICE LEVEL FAILURE

1. CRITICAL SERVICE LEVEL FAILURE

- 1.1 For each Standalone Service Instance or Integrated Service Instance Set a Critical Service Level Failure will be deemed to have occurred if one or more Service Failure Thresholds are breached on three (3) occasions in any six (6) consecutive Service Periods.

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ANNEX 3 TO PART A: SERVICE LEVEL FAILURE AND SERVICE CREDIT CALCULATION EXAMPLES

The table below provides an example of a range of Standalone Service Instances and Integrated Service Instance Sets that may be purchased by a Customer. The information in the first three columns will be included in the purchasing information set out in Annex 1 of Call Off Schedule 2 (Services) and the charges in the last two (2) columns are provided to support the example of the Service Credit calculation.

Where two or more Service Instances have the same ID in the “Integrated Service Instance Set unique ID” column it means they are part of the same Integrated Service Instance Set and where “n/a” is stated it means the Service Instance is a Standalone Service Instance.

Unique ID	Service Type	Integrated Service Instance Set unique ID	Set up charges	Monthly operational charges
00001	HSCN Access Connectivity (managed)	n/a	£100	£10
00002	HSCN Access Connectivity (managed)	I0001	£100	£20
00003	Managed Firewall (integrated)	I0001	£100	£10
00004	HSCN Access Connectivity (managed)	I0002	£200	£20
00005	Virtual Private Network (integrated)	I0002	£100	£10
00006	In-bound Internet	n/a	£100	£10
00007	Virtual Private Network (Standalone)	n/a	£100	£10

Service Credit calculation examples

Service Instance 00001 is subject to the 1-SL Service Levels as it is a standalone HSCN Connectivity Service. If one or more of the 1-SL prefixed Service Levels is the subject of a Service Level Failure for this Standalone Service Instance in a Service Period then Service Credits of £1.50 will be applicable (i.e. £10 x 15%).

Service Instance 00002 and 00003 together comprise the Integrated Service Instance Set I0001 and are subject to the 1-SL Service Levels as they include an HSCN Connectivity Service. If one or more of the 1-SL prefixed Service Levels is the subject of a Service Level Failure for any component of this Integrated Service Instance Set in a Service Period then Service Credits of £4.50 will be applicable (i.e. (£20+£10) x 15%).

Service Instance 00004 and 00005 together comprise the Integrated Service Instance Set I0002 and are subject to the 1-SL Service Levels as they include an HSCN Connectivity Service. If one or more of the 1-SL prefixed Service Levels is the subject of a Service Level Failure for any component of this Integrated Service Instance Set in a Service Period then Service Credits of £4.50 will be applicable (i.e. (£20+£10) x 15%).

Service Instance 00006 is subject to the 3-SL Service Levels as it is a standalone In-bound Internet Service. If one or more of the 3-SL prefixed Service Levels is the subject of a Service Level Failure for this Standalone Service Instance in a Service Period then Service Credits of £1.50 will be applicable (i.e. £10 x 15%).

Service Instance 00007 is subject to the 7-SL Service Levels as it is a standalone In-bound Internet Service. If one or more of the 7-SL prefixed Service Levels is the subject of a Service Level Failure for this Standalone Service Instance in a Service Period then Service Credits of £1.50 will be applicable (i.e. £10 x 15%).

Service Level failure examples

Example 1

If the Availability of the HSCN Connectivity Service for Standalone Service Instance 00001 falls to 99% for a Service Period then a Service Level Failure has occurred for Service Level Reference 1-SL-1 and a fifteen percent (15%) Service Credit will apply to that Standalone Service Instance.

Example 2

If the Availability of the WAN underpinning the Services falls to ninety-nine percent (99%) for a Service Period then a Service Level Failure has occurred for the following Service Level references.

- 1-SL-1
- 1-SL-2
- 3-SL-1
- 4-SL-1
- 5-SL-1
- 6-SL-1.

As a result fifteen percent (15%) Service Credits will be applied to all of the below:

- Standalone Service Instance 00001
- Integrated Service Instance Set I0001
- Integrated Service Instance Set I0002
- Standalone Service Instance 00006.

PART B: PERFORMANCE MONITORING

1. PRINCIPAL POINTS

Part B to this Call Off Schedule provides the methodology for monitoring the provision of the Services:

- 1.1 to ensure that the Supplier is complying with the Service Levels; and
- 1.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services.

2. REPORTING OF SERVICE FAILURES

The Supplier shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Customer in accordance with the processes specified in Paragraph 3.1 of Part B of this Call Off Schedule.

3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

3.1 The Supplier shall provide the Customer with performance monitoring reports ("**Performance Monitoring Reports**") within five (5) Working Days of the start of each Service Period which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:

- 3.1.1 for each Standalone Service Instance and Integrated Service Instance Set, the actual performance achieved for each applicable Service Level for the relevant Service Period;
- 3.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
- 3.1.3 any Critical Service Level Failures and details in relation thereto;
- 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
- 3.1.5 for each Standalone Service Instance and Integrated Service Instance Set, the Service Credits to be applied in respect of the relevant Service Period indicating the failures and Service Levels to which the Service Credits relate; and
- 3.1.6 such other details as the Customer may reasonably require from time to time.

3.2 Meetings between the Parties to discuss Performance Monitoring Reports (which may also be referred to as "**Performance Review Meetings**") shall only be required where one (1) or more Service Level Targets have not been met in the preceding Service Period (unless otherwise agreed) and the Customer requests such a meeting and shall:

- 3.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
- 3.2.2 take place at such location and time (within normal business hours on Working Days) as the Customer shall reasonably require unless otherwise agreed in advance;

3.2.3 be attended by the Supplier's representative and the Customer's representative; and

3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's representative and any other recipients agreed at the relevant meeting.

3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.

3.4 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits.

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ANNEX 1 TO PART B: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS

[Guidance Note: Where the Customer has stipulated during a Call for Competition Procedure, insert details of any *additional performance monitoring requirements* here.]

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CALL OFF SCHEDULE 7: SECURITY

1. DEFINITIONS

1.1 In this Call Off Schedule 7, the following definitions shall apply:

"Breach of Security"	means the occurrence of: any unauthorised access to or use of the Services, the Sites and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Call Off Contract; and/or the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Call Off Contract in either case as may be more particularly set out in this Call Off Schedule 7;
"ISMS"	the information security management system developed by the Supplier in accordance with paragraph 3 (ISMS) as updated from time to time in accordance with this Schedule 7;
"Security Policy"	means the Customer's security policy, as updated from time to time, and appended as Annex 1 of this Call Off Schedule 7 (Security);
"Security Policy Framework"	the HMG Security Policy Framework (available from the Cabinet Office); and
"Security Tests"	has the meaning given in paragraph 6.1 of this Call Off Schedule (Testing of the ISMS).

2. SECURITY POLICY

- 2.1 If a Customer has conducted a Call for Competition Procedure and, during that procedure, declared to the Supplier on the Order Form (attached as Annex 1 to Call Off Schedule 2 (Services)) that the Supplier must comply with the Security Policy, then the Supplier shall be required to comply with the Security Policy in all applicable aspects of delivery of the Services. For the avoidance of doubt, in such circumstances, any references in this Call Off Contract to compliance with this Call Off Schedule 7 (Security) will implicitly require the Supplier to be compliant with the Security Policy.
- 2.2 Where the Security Policy applies, the Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 2.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may propose a Variation to the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call Off Contract Charges shall then be subject to the Variation Procedure.

2.4 Until and/or unless a change to the Call Off Contract Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Services in accordance with its existing obligations.

3. ISMS

3.1 By the date specified in the first Implementation Plan produced under this Call Off Contract, the Supplier shall develop and submit to the Customer an ISMS for the purposes of this Call Off Contract, which shall comply with this Call Off Schedule 7 (Security).

3.2 The Supplier acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.

3.3 The Customer acknowledges that

3.3.1 if the Customer has not stipulated on the Order Form during a Call for Competition Procedure that it requires a bespoke ISMS, the ISMS provided by the Supplier may be an extant ISMS covering the Services and their implementation across the Supplier's estate; and

3.3.2 where the Customer has stipulated on the Order Form during a Call for Competition Procedure that it requires a bespoke ISMS, the Supplier shall be required to present the ISMS for the Customer's Approval.

3.4 The ISMS shall:

3.4.1 if the Customer has stipulated on the Order Form during a Call for Competition Procedure that it requires a bespoke ISMS:

(a) be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites, the Supplier System and any ICT, information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract; and/or

(b) comply with the Customer's ICT policies where required; and

3.4.2 meet the relevant standards in ISO/IEC 27001 (or equivalent); and

3.4.3 at all times provide a level of security which:

(a) is in accordance with Good Industry Practice, Law and this Call Off Contract;

(b) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework;

(c) meets any specific security threats to the ISMS; and

(d) complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 7 (Compliance of the ISMS With ISO/IEC 27001).

3.5 Subject to Clause 30 of this Call Off Contract (Security And Protection of Information) the references to standards, guidance and policies set out in paragraph 3.4 of this Call Off Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

- 3.6 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 3.4 of this Call Off Schedule, the Supplier shall immediately notify the Customer Representative of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
- 3.7 If the Customer has stipulated on the Order Form during a Call for Competition Procedure that it requires a bespoke ISMS then the following provisions will apply:
- 3.7.1 if the ISMS submitted to the Customer pursuant to paragraph 3.1 of this Call Off Schedule is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule;
 - 3.7.2 if the ISMS is not Approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Customer. If the Customer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph 2 of this Call Off Schedule may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 3.4 to 3.6 of this Call Off Schedule shall be deemed to be reasonable; and
 - 3.7.3 Approval by the Customer of the ISMS pursuant to paragraph 3.7 of this Call Off Schedule or of any change or amendment to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

4. SECURITY MANAGEMENT PLAN

- 4.1 By the date specified in the first Implementation Plan produced under this Call Off Contract, the Supplier shall prepare and submit to the Customer for Approval in accordance with paragraph 4 of this Call Off Schedule a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 4.2 of this Call Off Schedule.
- 4.2 The Security Management Plan must:
- 4.2.1 be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan) (where applicable);
 - 4.2.2 comply with this Call Off Schedule 7;
 - 4.2.3 unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites, the Supplier System and any ICT, information and data (including the Customer's Confidential

Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract;

- 4.2.4 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Call Off Schedule 7 (including the requirements set out in paragraph 3.4 of this Call Off Schedule);
- 4.2.5 set out the plans for transiting all security arrangements and responsibilities from those in place at the Call Off Commencement Date to those incorporated in the Supplier's ISMS at the date set out in an Implementation Plan for the Supplier to meet the full obligations of the security requirements set out in Schedule Annex 1 (Security Policy) to this Schedule 7.
- 4.2.6 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
- 4.2.7 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall reference only documents which are in the possession of the Customer or whose location is otherwise specified in this Call Off Schedule 7.

4.3 If the Security Management Plan submitted to the Customer pursuant to paragraph 3.1 of this Call Off Schedule is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule. If the Security Management Plan is not approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the Customer of the Security Management Plan. If the Customer does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 of this Call Off Schedule shall be deemed to be reasonable.

4.4 Approval by the Customer of the Security Management Plan pursuant to paragraph 4.3 of this Call Off Schedule or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Call Off Schedule.

5. AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN

5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier prior to any Service Instances (other than those Service

Instances identified on the first Implementation Plan produced under this Call Off Contract) going into Live Operation and at least annually to reflect:

- 5.1.1 emerging changes in Good Industry Practice;
- 5.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;
- 5.1.3 any new perceived or changed security threats; and
- 5.1.4 any reasonable request by the Customer.

5.2 The Supplier shall provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Customer. The results of the review shall include, without limitation:

- 5.2.1 suggested improvements to the effectiveness of the ISMS;
- 5.2.2 updates to the risk assessments;
- 5.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
- 5.2.4 suggested improvements in measuring the effectiveness of controls.

5.3 Subject to paragraph 5.4 of this Call Off Schedule, any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 5.1 of this Call Off Schedule, a Customer request, change to Annex 1 (Security Policy) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Customer.

5.4 The Customer may, where it is reasonable to do so, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Call Off Contract.

6. TESTING OF THE ISMS

6.1 The Supplier shall conduct tests of the ISMS ("**Security Tests**") from time to time and at least annually and additionally after any change or amendment to the ISMS or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Service Level Targets, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.

6.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such Security Tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.

- 6.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Call Off Contract, the Customer and/or its authorised representatives shall be entitled, at any time by giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Customer may notify the Supplier of the results of such tests after completion of each such test.
- 6.4 Where any Security Test carried out pursuant to paragraphs 6.2 or 6.3 of this Call Off Schedule reveals any actual or potential breach of security, the Supplier shall promptly notify the Customer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Customer's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Security Policy) to this Call Off Schedule) or the requirements of this Call Off Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Customer.
- 6.5 If any repeat Security Test carried out pursuant to paragraph 6.4 of this Call Off Schedule reveals an actual or potential breach of security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Call Off Contract.

7. COMPLIANCE OF THE ISMS WITH ISO/IEC 27001

- 7.1 The Customer shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.
- 7.2 If, on the basis of evidence provided by such security audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Supplier, then the Customer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Supplier does not become compliant within the required time then the Customer shall have the right to obtain an independent audit against these standards in whole or in part.
- 7.3 If, as a result of any such independent audit as described in paragraph 7.2 of this Call Off Schedule the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

8. BREACH OF SECURITY

- 8.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted breach of security.

8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 8.1 of this Call Off Schedule, the Supplier shall:

8.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Customer) necessary to:

- (a) remedy such breach of security or any potential or attempted breach of security or protect the integrity of the ISMS against any such breach of security or any potential or attempted breach of security; and
- (b) prevent a further breach of security or any potential or attempted breach of security in the future exploiting the same root cause failure; and

8.2.2 as soon as reasonably practicable provide to the Customer full details (using such reporting mechanism as defined by the ISMS) of the breach of security or the potential or attempted breach of security, including a root cause analysis where required by the Customer.

8.3 In the event that such action is taken in response to a breach of security or potential or attempted breach of security that demonstrates non-compliance of the ISMS with the Security Policy or security requirements (as set out in Annex 1 (Security Policy) to this Call Off Schedule) or the requirements of this Call Off Schedule, then any required change to the ISMS shall be at no cost to the Customer.

ANNEX 1: SECURITY POLICY

[REDACTED]

[Guidance Note: Where the Customer conducts a Call for Competition Procedure, the Customer may require the Supplier to comply with their Security Policy. In such circumstances, the Customer must append their Security Policy to this Annex 1 of Call Off Schedule 7 (Security)]

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ANNEX 2: SECURITY MANAGEMENT PLAN

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CALL OFF SCHEDULE 8: BUSINESS CONTINUITY AND DISASTER RECOVERY

1. BCDR POLICY

- 1.1 The Supplier's BCDR policy (as included at Annex 1 to this Call Off Schedule 8) shall apply to the provision of Services under this Call Off Contract.
- 1.2 Where required by the Customer in a Call for Competition the Supplier's BCDR Plan (as included at Annex 2 to this Call Off Schedule 8) shall apply to the provision of Services under this Call Off Contract.

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ANNEX 1: BCDR TENDER POLICY

[Guidance Note: Append the Supplier's submitted BCDR policy from the SQ Response. This will be available as part of the Supplier's evidence pack]

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ANNEX 2: BCDR PLAN

[Guidance Note: Where applicable, append the Supplier's BCDR Plan from the Call for Competition.]

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CALL OFF SCHEDULE 9: EXIT MANAGEMENT

1. DEFINITIONS

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

"Exclusive Assets"	means those Supplier Assets used by the Supplier or a Key Sub-Contractor which are used exclusively in the provision of the Services;
"Exit Information"	has the meaning given to it in paragraph 3.1 of this Call Off Schedule;
"Exit Plan"	means the plan described in paragraph 4 of this Call Off Schedule;
"Net Book Value"	means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Customer of even date with this Call Off Contract;
"Non-Exclusive Assets"	means those Supplier Assets (if any) which are used by the Supplier or a Key Sub-Contractor in connection with the Services but which are also used by the Supplier or Key Sub-Contractor for other purposes including ducts, cabinets, cabling and shared routers;
"Registers"	means the register and configuration database referred to in paragraphs 1.1.1 and 1.1.2 of Part B of this Call Off Schedule;
"Termination Assistance"	means: <ul style="list-style-type: none">a) the provision of any configuration information reasonably required to effect the implementation of the Replacement Services;b) any activity required to facilitate the transition from the Live Operation of an existing Service to the live operation of a Replacement Service; andc) the activities to be performed by the Supplier pursuant to the Exit Plan, required by the provisions of this Call Off Contract and any other assistance required by the Customer pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in paragraph 5.1 of this Call Off Schedule;

"Termination Assistance Period"	has the meaning given to it in paragraph 5.1.4 of this Call Off Schedule;
"Transferable Assets"	means those of the Exclusive Assets which are capable of legal transfer to the Customer;
"Transferable Contracts"	means the Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Customer or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation;

2. OBLIGATIONS DURING THE CALL OFF CONTRACT PERIOD TO FACILITATE EXIT

2.1 During the Call Off Contract Period, the Supplier shall:

2.1.1 create and maintain a Register of all:

(a) Supplier Assets, detailing their:

- (A) make, model and asset number;
- (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
- (C) Net Book Value;
- (D) condition and physical location; and
- (E) use (including technical specifications); and

(b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

2.1.2 create and maintain a configuration database or document detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Customer and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption; and

2.1.3 at all times keep the Registers up to date, in particular in the event that Supplier Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.

2.2 The Supplier shall:

2.2.1 procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Call Off Contract.

3. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES OR SERVICE INSTANCES

3.1 On reasonable notice at any point during the Call Off Contract Period, the Supplier shall provide to the Customer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

- 3.1.1 detailed descriptions of the Services or the Service Instances to which the Exit Information applies;
- 3.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
- 3.1.3 an inventory of Customer Data in the Supplier's possession or control;
- 3.1.4 details of any key terms of any material third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- 3.1.5 a list of on-going and/or threatened material disputes in relation to the provision of the Services;
- 3.1.6 all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Call Off Contract; and
- 3.1.7 such other material and information as the Customer shall reasonably require,

(together, the “**Exit Information**”).

3.2 The Supplier shall:

- 3.2.1 notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Customer regarding such proposed material changes; and
- 3.2.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.

3.3 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- 3.3.1 prepare an informed offer for the Services or Service Instance; and
- 3.3.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4. EXIT PLAN

4.1 The Supplier shall, throughout the Call Off Contract Period, act in accordance with the Exit Plan in Annex 1 to this Call Off Schedule which sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Customer and/or its Replacement Supplier on the expiry or termination of this Call Off Contract.

5. TERMINATION ASSISTANCE

5.1 The Customer shall be entitled to require the provision of Termination Assistance in respect of one or more Service Instances at any time during the Call Off Contract Period by giving written notice to the Supplier (a **"Termination Assistance Notice"**) at least six (6) months prior to the Call Off Expiry Date, at least one (1) month prior to the end of any Service Instance Period or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

- 5.1.1 the date from which Termination Assistance is required;
- 5.1.2 further details of the specific Termination Assistance required;
- 5.1.3 whether the Customer requires any additional services to assist with exit beyond what is required by this Schedule, which may be chargeable by the Supplier; and
- 5.1.4 the period during which it is anticipated that Termination Assistance will be required (the **"Termination Assistance Period"**), which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Services.

5.2 The Customer shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

5.3 Where the Customer indicates in a Termination Assistance Notice that it requires any additional services to assist with exit in accordance with paragraph 5.1.3, the Supplier shall provide to the Customer within ten (10) Working Days of receipt of such Termination Assistance Notice a quotation in the form of an itemised list of costs (in line with the day rates specified on the rate card in Schedule 3) for each line of the additional services that the Customer requires. Within five (5) Working Days of receipt of such quotation the Customer shall confirm to the Supplier which of those itemised services it requires and the Supplier shall provide those services as part of the Termination Assistance at the Charges provided in the quotation.

6. TERMINATION ASSISTANCE PERIOD

6.1 Throughout each Termination Assistance Period, or such shorter period as the Customer may require, the Supplier shall:

- 6.1.1 continue to provide the Services (as applicable) and, if required by the Customer, provide the Termination Assistance;
- 6.1.2 in addition to providing the Services and the Termination Assistance, provide to the Customer any reasonable assistance requested by the Customer to allow the Services to continue without interruption following the termination or expiry of this Call Off Contract and to facilitate the orderly transfer of responsibility

for and conduct of the Services to the Customer and/or its Replacement Supplier;

- 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 4.1.2 of this Call Off Schedule without additional costs to the Customer;
- 6.1.4 provide the Services and the Termination Assistance at no detriment to the Service Level Thresholds, save to the extent that the Parties agree otherwise in accordance with paragraph 6.2; and
- 6.1.5 at the Customer's request and on reasonable notice, deliver up-to-date Registers to the Customer.

6.2 If the Supplier demonstrates to the Customer's reasonable satisfaction that transition of the Services and provision of the Termination Assistance during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Level Threshold(s), the Parties shall vary the relevant Service Level Threshold(s) and/or the applicable Service Credits to take account of such adverse effect.

7. TERMINATION OBLIGATIONS

7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.

7.2 The Supplier shall:

7.2.1 at the end of a Termination Assistance Period; and

7.2.2 where no Termination Assistance Periods extend beyond termination or expiry of this Call Off Contract, upon termination or expiry of this Call Off Contract

in relation to all relevant Service Instance(s):

- (a) cease to use the Customer Data;
- (b) provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the Customer);
- (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Customer Data and promptly certify to the Customer that it has completed such deletion;
- (d) return to the Customer such of the following as is in the Supplier's possession or control:
 - (A) all copies of the Customer Software and any other software licensed by the Customer to the Supplier under this Call Off Contract;
 - (B) all materials created by the Supplier under this Call Off Contract in which the IPRs are owned by the Customer;
 - (C) any parts of the IT Environment and any other equipment which belongs to the Customer;
 - (D) any items that have been on-charged to the Customer, such as consumables; and

- (E) all Customer Property issued to the Supplier under Clause 27 of this Call Off Contract (Customer Property). Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);
- (F) any sums prepaid by the Customer in respect of Services not Delivered by the Call Off Expiry Date;
- (e) vacate any Customer Premises;
- (f) remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;
- (g) provide access during normal working hours to the Customer and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:
 - (A) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (B) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.

7.3 Each Party shall:

7.3.1 at the end of a Termination Assistance Period; and

7.3.2 where no Termination Assistance Periods extend beyond termination or expiry of this Call Off Contract, upon termination or expiry of this Call Off Contract,

in relation to all relevant Service Instance(s), return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

7.4 Except where this Call Off Contract provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

8. ASSETS, SUB-CONTRACTS AND SOFTWARE

8.1 Following notice of termination of this Call Off Contract and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent, in relation to all relevant Service Instance(s):

- 8.1.1 terminate, enter into or vary any Sub-Contract;
 - 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
 - 8.1.3 terminate, enter into or vary any licence for software in connection with the provision of Services.
- 8.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 6.1.5 of this Call Off Schedule, the Customer shall provide written notice to the Supplier setting out:
- 8.2.1 which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Supplier ("**Transferring Assets**");
 - 8.2.2 which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,the Customer and/or the Replacement Supplier requires the continued use of; and
 - 8.2.3 which, if any, of the Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Supplier (the "**Transferring Contracts**") in order for the Customer and/or its Replacement Supplier to provide the Replacement Services from the expiry of the relevant Termination Assistance Period. Where requested by the Customer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Customer and/or its Replacement Supplier to enable it to:
 - (a) determine which Transferable Assets and Transferable Contracts the Customer and/or its Replacement Supplier requires to provide the Services or the Replacement Services; and/or
 - (b) effect the transfer of any relevant user accounts and/or user access permissions.
- 8.3 With effect from the expiry of the relevant Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Customer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Call Off Contract Charges at the Call Off expiry Date, in which case the Customer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Call Off Contract Charges.
- 8.4 Risk in the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) at the end of the relevant Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) on payment for the same.
- 8.5 Where the Supplier is notified in accordance with paragraph 8.2.2 of this Call Off Schedule that the Customer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

- 8.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Customer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - 8.5.2 procure a suitable alternative to such assets and the Customer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Customer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.
- 8.7 The Customer shall:
 - 8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - 8.7.2 once a Transferring Contract is novated or assigned to the Customer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 8.8 The Supplier shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has been effected.
- 8.9 The Supplier shall indemnify the Customer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Customer (and/or Replacement Supplier) pursuant to paragraph 8.6 of this Call Off Schedule in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

9. SUPPLIER PERSONNEL

- 9.1 The Supplier shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Customer and/or the Replacement Supplier.
- 9.2 During each Termination Assistance Period, the Supplier shall give the Customer and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Customer and/or the Replacement Supplier.
- 9.3 The Supplier shall immediately notify the Customer or, at the direction of the Customer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 9.4 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, Suppliers or Sub-Contractors whose employment or engagement is transferred to the Customer and/or the Replacement Supplier.

10. CHARGES

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

11. APPORTIONMENTS

- 11.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- 11.1.1 the amounts shall be annualised and divided by three hundred and sixty-five (365) to reach a daily rate;
 - 11.1.2 the Customer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - 11.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 11.2 Each Party shall pay (and/or the Customer shall procure that the Replacement Supplier shall pay) any monies due under paragraph 11.1 of this Call Off Schedule as soon as reasonably practicable.

ANNEX 1: SUPPLIER'S EXIT PLAN

[Guidance Note: Append the Supplier's submitted standard Exit Plan from the SQ Response. This will be available as part of the Supplier's evidence pack]

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CALL OFF SCHEDULE 10: PSN TERMS

[Guidance Note: Where PSN Services are ordered, the Supplier shall append here the PSN mandatory supplemental terms that are current on the date of tender submission.]

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CALL OFF SCHEDULE 11: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this Call Off Schedule 11, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Counter Notice”	has the meaning given to it in paragraph 6.2 of this Call Off Schedule 11;
“Exception”	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Services;
“LCIA”	means the London Court of International Arbitration;
“Mediation Notice”	has the meaning given to it in paragraph 3.2 of this Call Off Schedule 11;
“Mediator”	the independent third party appointed in accordance with paragraph 4.2 of this Call Off Schedule 11;
"Multi-Party Dispute Representatives"	means the parties listed under paragraph 8.6 of this Call Off Schedule 11;
"Multi-Party Dispute Resolution Board"	means the board described at paragraph 8.6 of this Call Off Schedule 11;
"Multi-Party Dispute Resolution Procedure"	means the procedure set out at paragraph 8 of this Call Off Schedule 11;
"Multi-Party Procedure Initiation Notice"	means the notice described at paragraph 8.2 of this Call Off Schedule 11;
“Related Third Party”	means a party to: (a) another contract with the Customer or the Supplier which is relevant to this Call Off Contract; or (b) a Sub-Contract;
“Supplier Request”	means a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2. INTRODUCTION

2.1 If a Dispute arises then:

- 2.1.1 the representative of the Customer and the Supplier Representative shall attempt in good faith to resolve the Dispute;
- 2.1.2 either the Customer or the Supplier may choose to invite a representative from the HSCN Authority to aid in the resolution of the Dispute; and

- 2.1.3 if such attempts are not successful within a reasonable time either Party may serve a Dispute Notice to the other Party.
- 2.2 The Dispute Notice shall set out:
- 2.2.1 the material particulars of the Dispute;
 - 2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - 2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this Call Off Schedule, the reason why.
- 2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Call Off Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.
- 2.4 Subject to paragraph 3.2 of this Call Off Schedule, the Parties shall seek to resolve Disputes:
- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Call Off Schedule);
 - 2.4.2 then by mediation (as prescribed in paragraph 4 of this Call Off Schedule); and
 - 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Call Off Schedule) or litigation (in accordance with Clause 54 of this Call Off Contract (Governing Law and Jurisdiction)).
- 2.5 Specific issues shall be referred to Expert determination (as prescribed in paragraph 5 of this Call Off Schedule) where specified under the provisions of this Call Off Contract and may also be referred to Expert determination where otherwise appropriate as specified in paragraph 5 of this Call Off Schedule.
- 2.6 In exceptional circumstances where the use of the times in this Call Off Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- 2.7.1 in paragraph 3.2.3, ten (10) Working Days;
 - 2.7.2 in paragraph 4.2, ten (10) Working Days;
 - 2.7.3 in paragraph 5.2.3, ten (10) Working Days; and
 - 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of

delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

3.1 Following the service of a Dispute Notice, the Customer and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Customer's **[insert role]** and the Supplier's **[insert role]**.

3.2 If:

- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
- 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Call Off Schedule; or
- 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Call Off Schedule within thirty (30) Working Days of service of the Dispute Notice,

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

4. MEDIATION

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

4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.

4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

5. EXPERT DETERMINATION

5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to an ICT technical, financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.

5.2 The Expert shall act on the following basis:

- 5.2.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- 5.2.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- 5.2.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 5.2.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
- 5.2.5 the process shall be conducted in private and shall be confidential; and
- 5.2.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6. ARBITRATION

6.1 The Customer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Call Off Schedule.

6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a Counter Notice on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 54 of this Call Off Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

6.3 If:

- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Call Off Schedule shall apply;
- 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 61 of this Call Off Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
- 6.3.3 the Customer does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Call Off Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Call Off Schedule or commence court proceedings in the courts in accordance with Clause 54 of this Call Off Contract (Governing

Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Call Off Schedule, the Parties hereby confirm that:

- 6.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the LCIA (subject to paragraphs 6.4.5 to 6.4.7 of this Call Off Schedule);
- 6.4.2 the arbitration shall be administered by the LCIA;
- 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 6.4.5 the chair of the arbitral tribunal shall be British;
- 6.4.6 the arbitration proceedings shall take place in [London] and in the English language; and
- 6.4.7 the seat of the arbitration shall be [London].

[Guidance Note: Customer to consider whether London is an appropriate seat for the needs of the Parties]

7. URGENT RELIEF

7.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

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

8. MULTI-PARTY DISPUTES

8.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this paragraph 8.

8.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a Multi-Party Procedure Initiation Notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure.

- 8.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with paragraphs 5 or 6, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 8.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within five Working Days whether the Dispute is:
- 8.4.1 a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - 8.4.2 not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with paragraphs 2 to 7.
- 8.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 8.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a Multi-Party Dispute Resolution Board comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- 8.6.1 the Authority;
 - 8.6.2 the Supplier;
 - 8.6.3 each Related Third Party involved in the Multi-Party Dispute; and
 - 8.6.4 any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary.
- 8.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
- 8.7.1 the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - 8.7.2 the Multi-Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five (5) Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - 8.7.3 in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any

apportionment of costs should reflect the separate components of the Multi-Party Dispute.

8.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within twenty five (25) Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

- 8.8.1 either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case paragraph 4 shall apply;
- 8.8.2 either Party may request that the Multi-Party Dispute is referred to an expert in which case paragraph 5 shall apply; and/or
- 8.8.3 subject to paragraph 8.9, paragraph 6 shall apply to the Multi-Party Dispute,

and in each case references to the "Supplier" or the "Parties" in such provisions shall include a reference to all Related Third Parties.

8.9 If a Multi-Party Dispute is referred to arbitration in accordance with paragraph 6 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

CALL OFF SCHEDULE 12: VARIATION FORM

No of Order Form being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Customer] ("the Customer")

and

[insert name of Supplier] ("the Supplier")

1. This Call Off Contract is varied as follows and shall take effect on the date signed by both Parties:

[Guidance Note: Insert details of the Variation. NB where adjusting provisions use the same format as within the Call Off Contract e.g. for additional Service Instances replicate the table in Part B of Annex 1 to Call Off Schedule 2 and for Call Off Contract Charges for Service Instances replicate the table in Part B of Annex 1 to Call Off Schedule 3]

2. Words and expressions in this Variation shall have the meanings given to them in this Call Off Contract.
3. This Call Off Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Customer

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

.....

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CALL OFF SCHEDULE 13: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION

1.1 This Call Off Schedule 13 specifies the range of Alternative Clauses and Additional Clauses that may be requested in the Order Form and, if requested in the Order Form, shall apply to this Call Off Contract.

2. CLAUSES SELECTED

2.1 The Customer may, in the Order Form, request the following Alternative Clauses:

- 2.1.1 Scots Law (see paragraph 4.1 of this Call Off Schedule); or
- 2.1.2 Northern Ireland Law (see paragraph 4.2 of this Call Off Schedule); or
- 2.1.3 Non-Crown Bodies (see paragraph 4.3 of this Call Off Schedule); or
- 2.1.4 Non-FOIA Public Bodies (see paragraph 4.4 of this Call Off Schedule).

2.2 The Customer may, in the Order Form, request the following Additional Clauses should apply:

- 2.2.1 Security Measures (see paragraph 5 of this Call Off Schedule);
- 2.2.2 Access to MoD Sites (see paragraph 6 of this Call Off Schedule);

3. IMPLEMENTATION

3.1 The appropriate changes have been made in this Call Off Contract to implement the Alternative Clauses specified in paragraph 2.1 of this Call Off Schedule and the Additional Clauses specified in paragraphs 2.2 of this Call Off Schedule shall be deemed to be incorporated into this Call Off Contract.

4. ALTERNATIVE CLAUSES

4.1 Scots Law

Governing Law and Jurisdiction (Clause 54)

References to "England and Wales" in the original Clause 54 of this Call Off Contract (Governing Law and Jurisdiction) shall be replaced with "Scotland".

Where legislation is expressly mentioned in this Call Off Contract, the adoption of paragraph 4.1 shall have the effect of substituting the equivalent Scots legislation.

4.2 Northern Ireland Law

Governing Law and Jurisdiction (Clause 54)

References to "England and Wales" in the original Clause 54 of this Call Off Contract (Governing Law and Jurisdiction) shall be replaced with "Northern Ireland".

Where legislation is expressly mentioned in this Call Off Contract the adoption of paragraph 4.2 shall have the effect of substituting the equivalent Northern Ireland legislation.

Insolvency Event

In Call Off Schedule 1 (Definitions), reference to "section 123 of the Insolvency Act 1986" in limb f) of the definition of Insolvency Event shall be replaced with "Article 103 of the Insolvency (NI) Order 1989".

4.3 Non-Crown Bodies

Clause 42.3.1(a) of this Call Off Contract (Official Secrets Act and Finance Act) shall be deleted.

4.4 Non-FOIA Public Bodies

Replace Clause 30.6 of this Call Off Contract (Freedom of Information) with "The Customer has notified the Supplier that the Customer is exempt from the provisions of FOIA and EIR."

5. ADDITIONAL CLAUSE: SECURITY MEASURES

5.1 The following definitions to be added to Call Off Schedule 1 (Definitions) to the Call Off Form and the Call Off Terms:

"Document" includes specifications, plans, drawings, photographs and books;

"Secret Matter" means any matter connected with or arising out of the performance of this Call Off Contract which has been, or may hereafter be, by a notice in writing given by the Customer to the Supplier be designated 'top secret', 'secret', or 'confidential';

"Servant" where the Supplier is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.

5.2 The following new Clause [58] shall apply:

[Guidance Note: the intention is for this clause to follow immediately after the final clause in the T&Cs]

58. SECURITY MEASURES

58.1. The Supplier shall not, either before or after the completion or termination of this Call Off Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a secret matter being:

58.1.1. without the prior consent in writing of the Customer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;

58.1.2. disclosed to or acquired by a person as respects whom the Customer has given to the Supplier a notice in writing which has not been cancelled stating that the Customer requires that secret matters shall not be disclosed to that person;

58.1.3. without the prior consent in writing of the Customer, disclosed to or acquired by any person who is not a servant of the Supplier; or

- 58.1.4. disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Call Off Contract that such person shall have the information.
- 58.2. Without prejudice to the provisions of Clause 58.1, the Supplier shall, both before and after the completion or termination of this Call Off Contract, take all reasonable steps to ensure:
- 58.2.1. no such person as is mentioned in Clauses 58.1, 58.1.1 or 58.1.2 hereof shall have access to any item or document under the control of the Supplier containing information about a secret matter except with the prior consent in writing of the Customer;
- 58.2.2. that no visitor to any premises in which there is any item to be supplied under this Call Off Contract or where Services are being supplied shall see or discuss with the Supplier or any person employed by him any secret matter unless the visitor is authorised in writing by the Customer so to do;
- 58.2.3. that no photograph of any item to be supplied under this Call Off Contract or any portions of the Services shall be taken except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;
- 58.2.4. that all information about any secret matter and every document, model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and
- 58.2.5. that if the Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such document, model or item as is mentioned in Clause 58.2.3, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
- 58.3. The decision of the Customer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 58 shall be final and conclusive.

- 58.4. If and when directed by the Customer, the Supplier shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 58.5. If and when directed by the Customer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Call Off Contract.
- 58.6. If, at any time either before or after the expiry or termination of this Call Off Contract, it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Call Off Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Customer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.
- 58.7. The Supplier shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by Clauses 58.1 and 58.2 and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause 58 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.
- 58.8. The Supplier shall, if directed by the Customer, include in the Sub-Contract provisions in such terms as the Customer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Clause 58, but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:
- 58.8.1. give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this Clause 58 into

operation in such cases and to such extent as the Customer may direct;

58.8.2. if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Clause 58, notify such breach forthwith to the Customer; and

58.8.3. if and when so required by the Customer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause 58.11.

58.9. The Supplier shall give the Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer that the obligations imposed by or under the foregoing provisions of this Clause 58 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Customer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Call Off Contract or in which there is or will be any item to be supplied under this Call Off Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Call Off Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

58.10. Nothing in this Clause 58 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

58.11. If the Customer shall consider that any of the following events has occurred:

58.11.1. that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause 58; or

58.11.2. that the Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Customer, or with any department or person acting on behalf of the Crown; or

58.11.3. that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in 58.11.2, information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the Customer, ought not to have such information;

and shall also decide that the interests of the State require the termination of this Call Off Contract, the Customer may by notice in writing terminate this Call Off Contract forthwith.

58.12. A decision of the Customer to terminate this Call Off Contract in accordance with the provisions of Clause 58.11 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Customer's decision is based.

58.13. Supplier's notice

58.13.1. The Supplier may within five (5) Working Days of the termination of this Call Off Contract in accordance with the provisions of Clause 58.11, give the Customer notice in writing requesting the Customer to state whether the event upon which the Customer's decision to terminate was based is an event mentioned in Clauses 58.11, 58.11.1 or 58.11.2 and to give particulars of that event; and

58.13.2. the Customer shall within ten (10) Working Days of the receipt of such a request give notice in writing to the Supplier containing such a statement and particulars as are required by the request.

58.14. Matters pursuant to termination

58.14.1. The termination of this Call Off Contract pursuant to Clause 58.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;

58.14.2. The Supplier shall be entitled to be paid for any work or thing done under this Call Off Contract and accepted but not paid for by the Customer at the date of such termination either at the price which would have been payable under this Call Off Contract if this Call Off Contract had not been terminated, or at a reasonable price;

58.14.3. The Customer may take over any work or thing done or made under this Call Off Contract (whether completed or not) and not accepted at the date of such termination which the Customer may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of this Clause 58 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Customer, deliver any work or thing taken over under this Clause, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this Clause; and

58.14.4. Save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination of this Call Off Contract

58.15. If, after notice of termination of this Call Off Contract pursuant to the provisions of 58.11:

58.15.1. the Customer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in Clause 58.13.1; or

58.15.2. the Customer shall state in the statement and particulars detailed in Clause 58.13.2. that the event upon which the Customer's decision to terminate this Call Off Contract was based is an event mentioned in Clause 58.11.3,

the respective rights and obligations of the Supplier and the Customer shall be terminated in accordance with the following provisions:

58.15.3. the Customer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Supplier upon the termination of this Call Off Contract under the provisions of Clause 58.11 and properly provided by or supplied to the Supplier for the performance of this Call Off Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Customer, elect to retain;

58.15.4. the Supplier shall prepare and deliver to the Customer within an agreed period or in default of agreement within such period as the Customer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Customer and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;

58.15.5. the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Call Off Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract;

58.15.6. if hardship to the Supplier should arise from the operation of this Clause 58.15 it shall be open to the Supplier to refer the circumstances to the Customer who, on being satisfied that such hardship exists shall make such allowance, if

any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this Clause shall be final and conclusive; and

subject to the operation of Clauses 58.15.3, 58.15.4, 58.15.5 and 58.15.6 termination of this Call Off Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

6. ACCESS TO MOD SITES

6.1 The definition of Call Off Contract in Call Off Schedule 1 (Definitions) to the Call Off Terms shall be replaced with the following:

6.1.1 **"Call Off Contract"** means this written agreement between the Customer and the Supplier consisting of the Order Form and the Call Off Terms and the MoD Terms and Conditions.

6.2 The following definitions shall be inserted into in Call Off Schedule 1 (Definitions) to the Call Off Terms:

6.2.1 **"MoD Terms and Conditions"** means the contractual terms and conditions listed in Schedule [...] which form part of the Call Off Terms **[Guidance Note: read with the Guidance Note below]**

6.2.2 **"Site"** shall include any of Her Majesty's Ships or Vessels and Service Stations.

6.2.3 **"Officer in charge"** shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.

6.3 The following clauses shall be inserted into Clause 2 of this Call Off Contract (Due Diligence):

6.3.1 The Supplier confirms that it has had the opportunity to review the MoD Terms and Conditions and has raised all due diligence questions in relation to those documents with the Customer prior to the Commencement Date.

6.3.2 Where required by the Customer, the Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Supplier.

6.4 The following new Clause [59] shall apply:

[Guidance Note: the intention is for this clause to follow after the final clause in the T&Cs and/or the Additional Clause "Security Measures"]

59. ACCESS TO MOD SITES

59.1. In this Clause 59:

59.1.1. The Customer shall issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the

property of the Customer and shall be surrendered on demand or on completion of the supply of the Services.

- 59.1.2. The Supplier's representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.
- 59.1.3. The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Customer wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Call Off Contract where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Customer and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Customer with other evidence relating to the costs of this Call Off Contract.
- 59.1.4. Where the Supplier's representatives are required by this Call Off Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Supplier shall make such arrangements through the Technical Branch named for this purpose in this Call Off Contract. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Customer shall reimburse the Supplier's reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Call Off Contract shall be provided wherever possible by the

Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.

- 59.1.5. Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.
- 59.1.6. Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 59.1.7. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 59.1.8. The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Customer shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Customer shall be recovered from the Supplier.

6.5 Ministry of Defence (MoD) DEFCON 129J shall apply and will form part of this Call Off Contract.

6.6 The following new Call Off Schedule [17] shall apply:

CALL OFF SCHEDULE [17]: MOD DEFCONS AND DEFFORMS

The following MOD DEFCONS and DEFFORMs form part of this Call Off Contract:

DEFCONS

DEFCON No	Version	Description

DEFFORMs (Ministry of Defence Forms)

DEFFORM No	Version	Description

[Guidance Note: the above documents can be found at <http://www.aof.mod.uk/>]

[Guidance Note for the Ministry of Defence: Upon placing of an Order the Ministry of Defence shall select and refine the DEFCONS or DEFFORMs from the tables above, in accordance with the DEFCONS and DEFFORMs which are appropriate to the specific Call Off Contract, and set them out in Call Off Schedule [11].]

CALL OFF SCHEDULE 14: HSCN MANDATORY SUPPLEMENTAL TERMS

1. DEFINITIONS

1.1 In this Call Off Schedule 14, the following definitions shall apply:

CN-SP Deed	means the deed required by the HSCN Authority to be signed by any CN-SP in order for it or its subcontractor to deliver HSCN Connectivity Services;
Connection Agreement	means the agreement setting out the obligations and requirements for organisations wanting to connect to the HSCN, together with all documents annexed to it and referenced within it;
Consumer Network Service Providers or CN-SP	means an organisation that is supplying or is approved to supply HSCN Connectivity Services having achieved the appropriate HSCN Compliance;
Good Industry Practice	means the standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
Health and Social Care Network or HSCN	means the government's network for health and social care, which helps all organisations involved in health and social care delivery to work together and interoperate;
HSCN Connectivity Services	means any service which is offered by a CN-SP to provide access to and routing over the HSCN;
HSCN Consumer	means a recipient of HSCN Connectivity Services;
HSCN Consumer Contract	means any agreement pursuant to which a CN-SP (or Sub-contractor of a CN-SP) agrees to supply HSCN Connectivity Services to a HSCN Consumer;
HSCN Solution Overview	means the document containing the architecture and technical solution for HSCN (the latest version can be accessed at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers);
Material Sub-Contractor	means a sub-contractor (including any affiliate or group company) of a CN-SP in relation to HSCN Connectivity Services which, in the reasonable opinion of the HSCN Authority, performs (or would perform if appointed) a substantive role in the provision of all or any part of the HSCN Connectivity Services; and
NHS Digital CareCERT	means the NHS Digital Care Computing Emergency Response Team, that provide cyber security intelligence and advice to the Health and

Care System using links across the public sector and with partners in industry.

2. KEY OBLIGATIONS

- 2.1 The Supplier shall ensure that any HSCN Connectivity Services that it supplies pursuant to this agreement shall have been awarded HSCN Compliance and shall retain at all times HSCN Compliance.
- 2.2 The Supplier shall ensure that any HSCN Connectivity Services that it supplies pursuant to this agreement are delivered in accordance with the HSCN Obligations Framework.
- 2.3 The HSCN Consumer shall ensure that any HSCN service consumer environment used to consume HSCN Connectivity Services supplied pursuant to this agreement, shall be provided and maintained in accordance with the Connection Agreement;
- 2.4 Each of the parties warrants and undertakes that they shall throughout the term, immediately disconnect their HSCN Connectivity Services, or consumer environment (as the case may be) from all other HSCN Connectivity Services and consumer environments where specifically requested in writing by the NHS Digital CareCERT (or the HSCN Authority acting on behalf of NHS Digital CareCERT) where there is an event affecting national security, or the security of the HSCN.
- 2.5 The parties acknowledge and agree that the HSCN Authority shall not be liable to them or any other party for any claims, proceedings, actions, damages, costs, expenses and any other liabilities of any kind which may arise out of, or in consequence of any notification pursuant to clause 2.4 above.
- 2.6 Each of the parties acknowledges and agrees that clauses 2.4 and 2.5 are for the benefit of and may be enforced by the HSCN Authority, notwithstanding the fact that the HSCN Authority is not a party to this agreement, pursuant to the Contracts (Rights of Third Parties) Act 1999. For the avoidance of doubt such appointment shall not increase any liability of the Supplier beyond the scope of their existing liabilities under this agreement, the CN-SP Deed or the HSCN Obligations Framework.
- 2.7 The Supplier shall procure that any Material Sub-contractor shall comply with the terms of this agreement in relation to their provision of HSCN Connectivity Services.
- 2.8 Where any level of standard, practice or requirement associated with any Supplier obligation referenced in these terms and conditions, the HSCN Obligations Framework, the HSCN CN-SP Service Management Requirement Addendum or the HSCN Consumer Contract conflicts with another level of standard, practice or requirement associated with any supplier obligation or with Good Industry Practice, then the higher standard or requirement or best practice shall be adopted by the Supplier. In the event that the Supplier cannot determine which represents the higher standard or requirement or best practice, the Supplier shall seek guidance from the HSCN Authority which shall reasonably determine which is the level of standard, practice or requirement that is the most favourable from a HSCN Consumer perspective, and thus with which standard or best practice to comply.
- 2.9 If the Supplier fails to provide any part of the HSCN Connectivity Services as required under this HSCN Consumer Contract, it shall, in accordance with the guidance documentation published at <https://www.digital.nhs.uk/health-social->

care-network/connectivity-suppliers, be directly liable to the HSCN Consumer in respect of such HSCN Connectivity Services.

- 2.10 The HSCN Consumer shall share all records and information with the HSCN Authority as are reasonably requested by the HSCN Authority in connection with the monitoring and operation of the HSCN network described in the HSCN Solution Overview Document.

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