



Veracity OSI UK Limited

9th Floor, Peninsular House
30-36 Monument Street
London
EC3R 8LJ

Letter of Appointment

28th December 2017

Our Ref: con_15211

Title of Contract: LAA Finance and IT Systems Support Work Package

Dear Sirs

1. Contract for the provision of financial consultancy services by Veracity OSI UK Ltd, 9th Floor, Peninsular House, 30-36 Monument Street, London EC3R 8LJ, as Supplier to the Ministry of Justice whose principal office is at 102 Petty France, London SW1H 9AJ as Customer pursuant to the Financial Services Framework (FSF). We refer to the above-mentioned FSF (the "Framework Agreement"). For the purposes of this Letter of Appointment:

capitalised terms and expressions used in this Letter of Appointment have the same meanings given to them in or pursuant to the Call-Off Terms attached to this Letter of Appointment unless the context otherwise requires;

references to Appendices are references to the appendices to this Letter of Appointment; and

the Appendices shall form part of this Letter of Appointment.

2. This Letter of Appointment constitutes an Order for the provision by you to us of the Contract Services.

3. The Customer's Representative for the purpose of the Contract are:

Senior Business Representative

Senior Commercial Representative



4. The Base Location from which the Contract Services will be performed is 102 Petty France, London, SW1H 9AJ.

5. For the purposes of the Contract, the address of each Party is:

for the Customer:

Ministry of Justice, 102 Petty France, London, SW1H 9AJ

• for the Supplier:

Veracity OSI UK Ltd, 9th Floor, Peninsular House, 30-36 Monument Street, London EC3R 8LJ

6. The Customer hereby confirms that the applicable law for this contract shall be the laws of England & Wales. Further this Letter of Appointment and the attached Call-Off Terms shall be construed as closely to the intention of the original wording as the chosen law so permits.

7. Please return the attached duplicate of this Letter of Appointment with the acknowledgement signed by the appropriate authorised signatory within your organisation.

By signing and returning this letter of appointment the Supplier agrees to enter into a legally binding contract with the Customer to provide the Services. The Parties hereby acknowledge and agree that they have read the Call-Off Terms and the Order Form and by signing below agree to be bound by the terms of this Call-Off Agreement.

Yours faithfully

For and on behalf of Secretary of State for Justice



Date;

Status: Head of Commercial Management – MoJ / ALB's

I hereby confirm receipt of the above Letter of Appointment and the agreement of Veracity Consultancy Ltd. to provide to Ministry of Justice the Contract Services as specified in the Letter of Appointment in accordance with its terms.

Signed:

Date:

Name:

Status:



FRAMEWORK SCHEDULE 5: ORDER AND CALL-OFF TERMS

Part 1

Pro Forma Order

Date	28 December 2017	Order Reference	con_15211
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FROM:

Contracting Body	Ministry of Justice " Customer "
Contracting Body's Address	102 Petty France London SW1H 9AJ
Invoice Address	The invoice should be addressed to MOJ, SSCL, PO Box 769, Newport, NP20 9BB
Principal Contact	

TO:

Supplier	Veracity OSI UK Ltd " Supplier "
Supplier's Address	9 th Floor, Peninsular House 30-36 Monument Street London EC3R 8LJ
Account Manager	

1. GENERAL	
1.1	This Order is entered into pursuant to the Framework Agreement.
1.2	This Order incorporates the Call-Off Terms (as amended herein) and constitutes a separate contract between the parties set out above.
1.3	In this Order (except where the context otherwise requires), words and phrases shall have the meaning set out in the Framework Agreement and this Call-Off Agreement or as otherwise defined in this Order.

2. TERM

2.1 Commencement Date

This Call-Off Agreement commences on **1 January 2018**

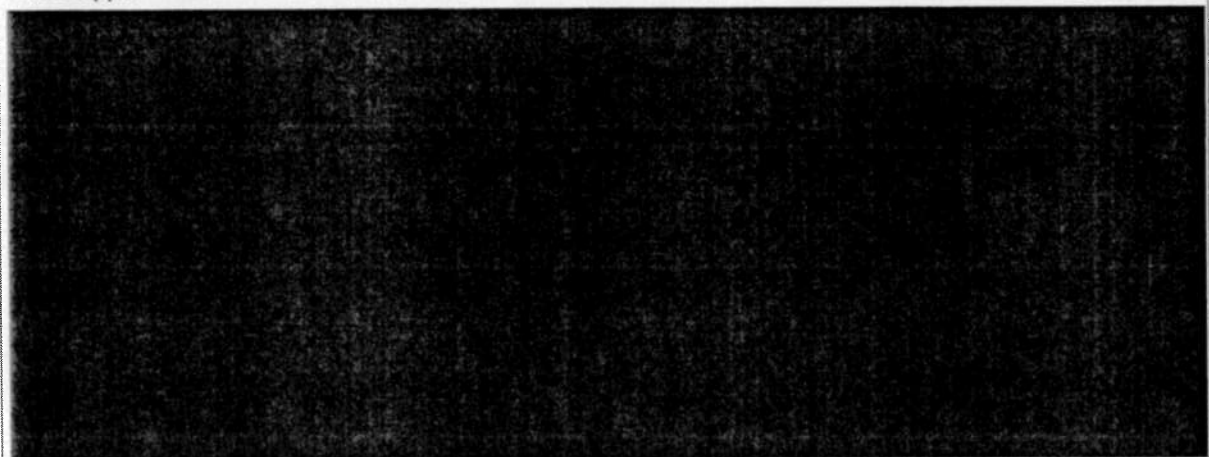
2.2 Expiry Date

This Call-Off Agreement shall expire on **31 August 2018** unless terminated earlier in accordance with the Call-Off Terms or otherwise at Law.

2.3 Services Requirements

2.3.1 This Order is for the provision of the Services by the Supplier to the Customer to meet the Customer's Service Requirements, such Service Requirements being set out below:

The Supplier shall



3. BASE LOCATION

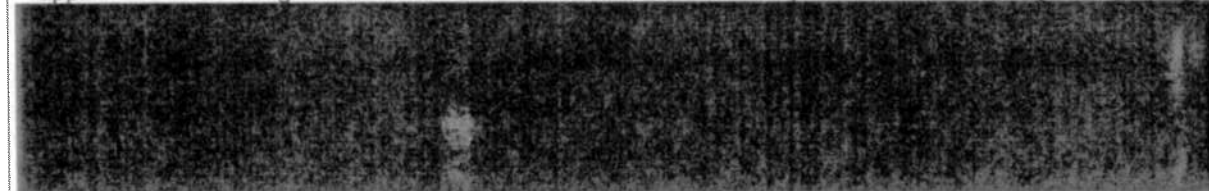
3.1 The Base Location at which the Services shall be performed is: 102 Petty France, London, SW1H 9AJ.

4. PAYMENT

4.1 Payment Profile

Payments shall be made on a time and materials basis against the following rates:

4.1.1 The table below summarises the Supplier's expected resource model necessary for delivering the Service Requirements, along with its expected cost, exclusive of any discounts (noting that the working days shown are an indicative estimate only, with actual working days to be agreed between the parties). The Supplier reserves the right to revise this model should the Service Requirements be varied by the Authority.



4.1.2 The overall contract value shall not exceed **£1,000,000** (excluding VAT).

4.1.3 To take account of the potential for external factors outside of the Supplier's control impacting delivery of the Service Requirement, and to provide the Authority with flexibility of service, the Authority reserves the right to work with the Supplier to flex resources as required, providing a minimum of 20 working days' notice to the Supplier, however the contract value shall not exceed **£1,000,000** (excluding VAT).

4.1.4 Travel and subsistence in relation to the Base Location is included in the day rate.

4.2 Invoicing

The Supplier shall raise its invoice for the Charges Monthly in arrears.

4.3 Invoice format

The invoice shall contain the following information and shall be agreed by MoJ Group Finance prior to dispatch.

- Title of the work
- The reference (con_15211) and purchase order number (*to follow*)
- The grade of each of the financial consultant/s
- The days worked, daily rate and total cost on the assignment per consultant
- The net balance to be settled by the MoJ.

4.4 Payment Terms



5. LIABILITY

5.1 The Supplier's Limit on Liability

Subject to provisions of Clauses 34.1 and 34.5 of the Call-Off Terms, the Supplier's total aggregate liability under and in connection with this Call-Off Agreement whether those liabilities are expressed as an indemnity or otherwise (whether in contract, tort (including negligence), breach of statutory duty or howsoever arising) shall be limited to 125% of the contract value.

For the avoidance of doubt, the Parties acknowledge and agree that this Clause shall not limit the Supplier's liability under the Framework Agreement which liability shall be governed by the terms of the Framework Agreement.

5.2 The Customer's Limit on Liability

Subject to provisions of Clauses 34.1 and 34.5 of the Call-Off Terms, the Customer's total aggregate liability under and in connection with this Call-Off Agreement whether those liabilities are expressed as an indemnity or otherwise (whether in contract, tort (including negligence), breach of statutory duty or howsoever arising) shall be limited to £100,000.

6. INSURANCE

6.1 Minimum Insurance Period and Insurance Requirements

The Supplier shall maintain the following insurances throughout the duration of this Call-Off Agreement and for a period of six (6) years following the expiration or earlier termination of this Call-Off Agreement:

- **professional indemnity insurance** with a minimum limit of indemnity of £10,000,000 for each individual claim;
- **employers' liability insurance** with a minimum limit of £10,000,000.

7. SPECIAL TERMS

The supplier will comply with the customer's security requirements.

Part 2

Call-Off Terms

TABLE OF CONTENTS

1	DEFINITIONS AND INTERPRETATIONS	1
2	INITIAL CONTRACT PERIOD	4
3	SUPPLIER'S OBLIGATIONS	4
4	CUSTOMER'S OBLIGATIONS	6
5	SCOPE OF CALL-OFF AGREEMENT	6
6	NOTICES	6
7	MISTAKES IN INFORMATION	7
8	CONFLICTS OF INTEREST	8
9	PREVENTION OF BRIBERY AND CORRUPTION AND TAX NON-COMPLIANCE	8
9A	SAFEGUARD AGAINST FRAUD	9
9B	THE SERVICES	10
9C	TRANSITION	13
10	CALL-OFF AGREEMENT PRICE	14
11	PAYMENT AND VAT	14
12	RECOVERY OF SUMS DUE	15
13	PRICE ADJUSTMENT ON EXTENSION OF THE INITIAL CALL-OFF PERIOD	15
14	EURO	15
15	DISCRIMINATION	16
16	THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	16
17	CUSTOMER DATA	16
18	PROTECTION OF PERSONAL DATA	17
19	FREEDOM OF INFORMATION	18
20	CONFIDENTIALITY	19
21	OFFICIAL SECRETS ACTS	21
22	PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES	21
23	INTELLECTUAL PROPERTY RIGHTS	21
24	MONITORING	23
25	AUDIT	23
26	ASSIGNMENT AND SUB-CONTRACTING	25

27	WAIVER AND CUMULATIVE REMEDIES	26
28	VARIATION	27
29	SEVERABILITY	27
30	NOT USED	27
31	EXTENSION OF INITIAL CALL-OFF PERIOD	27
32	ENTIRE AGREEMENT	27
33	COUNTERPARTS	28
34	INDEMNITY AND INSURANCE	28
35	WARRANTIES AND UNDERTAKINGS	29
36	DEFAULT, DISRUPTION AND TERMINATION	30
37	TERMINATION FOR CONVENIENCE	34
38	CONSEQUENCES OF EXPIRY OR TERMINATION	34
39	DISRUPTION	35
40	RECOVERY UPON TERMINATION	35
41	FORCE MAJEURE	36
42	GOVERNING LAW	36
43	DISPUTE RESOLUTION	37
	SPECIFICATION SCHEDULE	39
	TRANSFER OF UNDERTAKINGS SCHEDULE	40
	INFORMATION SECURITY SCHEDULE	43

STANDARD TERMS

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In these Call-Off Terms words and phrases shall have the meaning set out in the Framework Agreement unless otherwise defined below or otherwise in these Call-Off Terms:

"Approval" means the written consent of the Customer.

"Base Location" means the location set out in the Order forming part of this Call-Off Agreement, at which the majority of the Services shall be delivered;

"Call-Off Agreement Price" means the amount (exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call-Off Agreement, as set out in the Order forming part of this Call-Off Agreement, before taking into account the effect of any price adjustment, for the full and proper performance by the Supplier of its obligations under this Call-Off Agreement.

"Call-Off Commencement Date" means the date specified in the Order forming part of this Call-Off Agreement.

"Call-Off Period" means the period commencing on the Call-Off Commencement Date and expiring on:

- (a) the date of expiry set out in Clause 2 (Initial Call-Off Period); or
- (b) following an extension pursuant to Clause 31 (Extension of Initial Call-Off Period), the date of expiry of the extended period;

or such earlier date of termination or partial termination of this Call-Off Agreement in accordance with the Law or the provisions of this Call-Off Agreement.

"Condition" means a condition of this Call-Off Agreement.

"Confidential Information" means the Customer Confidential Information and/or the Supplier's Confidential Information but does not include any information which relates to:

- (a) the Supplier's performance under this Call-Off Agreement; or
- (b) the Supplier's failure to pay any sub-contractor as required pursuant to Clause 11.7 .

"Contractors' Personnel Vetting Procedure" means the Customer's procedures for the vetting of Supplier Staff, as advised to the Supplier by the Customer.

"Control" means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of another person (whether through the ownership of voting shares, by contract or otherwise) and **"Controls"** and **"Controlled"** shall be interpreted accordingly.

"Customer" means the Contracting Body identified as such in the Order forming part of this Call-Off Agreement.

"Customer Confidential Information" means all Customer Personal Data and any information, however it is conveyed, that relates to the business affairs, developments, trade secrets, Know-How, personnel, and suppliers of the Customer, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information of the Customer clearly designated as being confidential or which ought reasonably to be considered to be confidential (whether or not it is marked "confidential").

"Customer Data" means:

- (c) 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, and which are:
 - (i) supplied to the Supplier by or on behalf of the Customer;
 - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Call-Off Agreement; or
- (d) any Personal Data for which the Customer is the Data Controller.

"Customer Personal Data" means the Personal Data supplied by the Customer to the Supplier for the purposes of or in connection with this Call-Off Agreement.

"Customer Representative" means the representative appointed by the Customer from time to time in relation to this Call-Off Agreement.

"Data Subject" has the meaning given under the Data Protection Act 1998.

"Default" means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or in the case of the Supplier, the Supplier Staff or in the case of the Customer, its Personnel, in connection with or in relation to the subject matter of this Call-Off Agreement and in respect of which such Party is liable to the other.

"Deliverable" means a deliverable required by the Customer to be provided by the Supplier as part of the Transition Activities.

"Equalities Provisions" means the provisions set out in Clause 12 of the Framework Agreement.

"Equipment" means the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under this Call-Off Agreement.

"Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (e) any industrial action occurring within the Supplier's or any sub-contractor's organisation; or
- (f) the failure by any sub-contractor to perform its obligations under any sub-contract.

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Call-Off Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown;

"Information" has the meaning given under section 84 of the FOIA.

"Information Security Schedule" means the Schedule setting out the Customer's security requirements.

"Initial Call-Off Period" means the period commencing on the Call-Off Commencement Date and expiring on the date of expiry set out in Clause 2 (Initial Call-Off Period), or such earlier date of termination of this Call-Off Agreement in accordance with the Law or the provisions of this Call-Off Agreement.

"Key Personnel" means those members of the Supplier Staff identified as such in the Specification.

"Know-How" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services or any part thereof but excluding know-how already in the Supplier's or the Customer's possession before the Call-Off Commencement Date.

"Long Stop Date" means the date described as such in the Order forming part of this Call-Off Agreement.

"Order" means the order entered into between the Parties pursuant to the Framework Agreement for the provision of Services under these Call-Off Terms.

"Party" means a party to this Call-Off Agreement and **"Parties"** shall be interpreted accordingly.

"Personal Data" shall have the same meaning as set out in the Data Protection Act 1998.

"Personnel" means all employees, agents, consultants and sub-contractors of either Party (as the context requires).

"Property" means the property, other than the real property, issued or made available to the Supplier by the Customer in connection with this Call-Off Agreement.

"Quality Standards" means the quality standards published by the British Standards Institute, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (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, together with any quality standards further detailed in the Specification.

"Receipt" means the physical or electronic arrival of the invoice at the address of the Customer detailed at Clause 6.4 or at any other address given by the Customer to the Supplier for the submission of invoices.

"Relevant Conviction" means other than for minor road traffic offences, any previous conviction (excluding any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 subject to the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023)) that is relevant to the nature of the Services and/or relevant to the work of the Customer including conviction for dishonesty, deception, fraud, money laundering, violence, assault or harassment;

"Replacement Contractor" means any third party service provider appointed by the Customer to supply any Services which are substantially similar to any of the Services or any part thereof, and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of this Call-Off Agreement.

"Schedule" means a schedule attached to these Call-Off Terms, and forming part of, this Call-Off Agreement.

"Services" means the services to be supplied as detailed in the Specification Schedule.

"Specification" means the description of the Services to be supplied under this Call-Off Agreement as set out in the Specification Schedule including, where appropriate, the Key Personnel and the Quality Standards.

"Supplier" means the entity identified as such in the Order forming part of this Call-Off Agreement and who is also a party to the Framework Agreement.

"Supplier Representative" means the representative appointed by the Supplier from time to time in relation to this Call-Off Agreement.

"Supplier's Confidential Information" means any information, however it is conveyed, that relates to the business affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably to be considered to be confidential (whether or not it is marked as "confidential").

"Transition Activities" means the activities required by the Customer to be conducted by the Supplier pursuant to Clause 9C.1.1.

"Transition Plan" means the plan to be created by the Supplier in accordance with Clause 9C.1.2.

1.2 Interpretation

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter and vice versa;
- 1.2.3 the words "include", "includes", "including", "for example" and "in particular" and words of similar effect shall be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced from time to time by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of this Call-Off Agreement);
- 1.2.6 headings are included in this Call-Off Agreement for ease of reference only and shall not affect the interpretation or construction of this Call-Off Agreement;
- 1.2.7 references in this Call-Off Agreement to any Clause, sub-Clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause of, or schedule to, this Call-Off Agreement so numbered;
- 1.2.8 references in a Schedule to any paragraph or further designation shall be construed as a reference to the paragraph of the relevant Schedule so numbered;
- 1.2.9 a reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.10 in the event and to the extent only of any conflict between the Clauses and the Schedules, the following order of precedence shall apply:
 - (a) the Clauses;
 - (b) the Schedules; and
 - (c) any documents referred to in the Schedules.

2. INITIAL CALL-OFF PERIOD

- 2.1 This Call-Off Agreement shall take effect on the Call-Off Commencement Date and shall expire automatically on the date specified in the Order forming part of this Call-Off Agreement, unless it is terminated earlier or extended under Clause 31.

3. SUPPLIER'S OBLIGATIONS

- 3.1 The Supplier shall employ at all times a sufficient number of Supplier Staff to fulfil its obligations under this Call-Off Agreement. If and when so directed in writing by the Customer the Supplier shall within seven (7) days provide details of the qualifications and competence of any person employed or proposed to be employed by the Supplier in connection with this Call-Off Agreement and shall provide a copy of any certificate or qualification or competence that has been issued in respect of any such person.

- 3.2 The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Services has not been specified in this Call-Off Agreement, the Supplier shall agree the relevant standard of the Services with the Customer prior to the supply of the Services and, in any event, the Supplier shall perform its obligations under this Call-Off Agreement in accordance with the Law and Good Industry Practice. The Supplier shall ensure that all Supplier Staff supplying the Services shall do so with all due skill, care and diligence as are necessary for the proper supply of the Services.
- 3.3 The Customer, whose decision shall be final and conclusive, reserves the right under this Call-Off Agreement to refuse to admit to, or to withdraw permission to remain on, any Base Location occupied by or on behalf of the Customer in respect of:
- 3.3.1 any member of the Supplier Staff; or
- 3.3.2 any person employed or engaged by a sub-contractor, agent or servant of the Supplier, whose admission or continued presence would be, in the opinion of the Customer, undesirable.
- 3.4 If and when directed by the Customer, the Supplier shall provide a list of the names and addresses, National Insurance numbers, periods of employment, immigration status and tax exemption certificates of all persons who it is expected may require admission in connection with this Call-Off Agreement to any premises occupied by or on behalf of the Customer, specifying the capacities in which they are concerned with this Call-Off Agreement and giving such other particulars as the Customer may reasonably desire.
- 3.5 The Supplier Staff, engaged within the boundaries of a Government establishment, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Supplier Staff when at that establishment and when outside that establishment.
- 3.6 If the Supplier fails to comply with Clause 3.4 above the Customer, (whose decision shall be final and conclusive), may decide that such failure is prejudicial to the interests of the Crown; and if the Supplier does not comply with the provisions of Clause 3.4 within two (2) Months of the date of a written notice from the Customer so to do then the Customer may terminate this Call-Off Agreement, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 3.7 The Supplier shall bear the cost of complying with any requirement of this Clause.
- 3.8 The Supplier shall promptly inform and keep informed the Customer in writing of any industrial relations problems or other matters relating to the Supplier Staff which may affect the performance of this Call-Off Agreement.
- 3.9 The Supplier shall not employ any person where the Supplier knows, or by reason of the circumstances might reasonably be expected to know, that the person concerned is involved in any unlawful procurement of Social Security benefits or tax exemptions in connection with his employment by the Supplier. The Supplier shall not make, facilitate or participate in the procurement of any unlawful payments to any person employed by the Supplier, whether in the nature of Social Security fraud, evasion of tax or otherwise.
- 3.10 The Supplier shall comply with the Customer's procedures for the vetting of Supplier Staff in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Contractors' Personnel Vetting Procedures.
- 3.11 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with this Call-Off Agreement to the Base Location, specifying the capacities in which they are concerned with this Call-Off Agreement and giving such other particulars as the Customer may reasonably request.

- 3.12 The Customer may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check as per the Contractors' Personnel Vetting Procedures. The Supplier shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check or through the Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of the Services.
- 3.13 The Customer may in its sole discretion refuse any member of the Supplier Staff who has not been subjected to the necessary checks by the Disclosure and Barring Service access to its Base Location.
- 3.14 The Supplier shall be subject to the provisions of the Schedules to this Call-Off Agreement.

4. CUSTOMER'S OBLIGATIONS

- 4.1 Subject to reasonable notification by the Supplier of its requirements, the Customer shall give to the Supplier such instructions and/or decisions as pursuant to this Call-Off Agreement are required to be given by the Customer at such a time and in such a manner as shall enable the Supplier properly to perform its obligations under this Call-Off Agreement.
- 4.2 The Customer shall supply or make available to the Supplier, without charge, such information as it is required to provide in accordance with the Specification in such time so as not to delay or disrupt the performance of the Supplier's duties under this Call-Off Agreement.
- 4.3 Subject to Clauses 3.3, 3.13 and 9B.3, the Customer shall provide reasonable access to the Base Location (including details of any restrictions) to enable the Supplier to carry out this Call-Off Agreement.
- 4.4 The Customer may provide site facilities to the Supplier for the carrying out of this Call-Off Agreement, which, if required, shall be as detailed and on such terms as set out in the Specification.
- 4.5 The Customer shall be subject to the provisions of the Schedules to this Call-Off Agreement as applicable.

5. SCOPE OF CALL-OFF AGREEMENT

- 5.1 At all times during the Call-Off Period the Supplier shall be an independent contractor and nothing in this Call-Off Agreement shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Customer and the Supplier and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Call-Off Agreement.
- 5.2 Other than as set out in this Call-Off Agreement, the Supplier agrees and acknowledges that it has not been given any rights of exclusivity or any volume guarantees whatsoever in relation to the volume of the Services provided under this Call-Off Agreement.

6. NOTICES

- 6.1 Any notices given under or in relation to this Call-Off Agreement shall be in writing by letter, (signed by or on behalf of the Party giving it) sent by hand, post, or recorded signed for delivery service, by facsimile transmission or by electronic mail (confirmed by letter) to the address or facsimile number and for the attention of the relevant Party set out in Clause 6.4 or to such other address or facsimile number as that Party may have stipulated in accordance with Clause 6.4.
- 6.2 A notice shall be deemed to have been received:
- 6.2.1 if delivered personally, at the time of delivery;
- 6.2.2 in the case of pre-paid first class post, special or other recorded delivery two (2) Working Days from the date of posting; and

6.2.3 in the case of electronic communication, two (2) Working Days after posting of a confirmation letter.

6.3 In proving service, it shall be sufficient to prove that personal delivery was made, or (including for the purposes of electronic mail confirmation letter) that the envelope containing the notice was addressed to the relevant Party set out in Clause 6.4 (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as prepaid first class post, recorded signed-for delivery or pre-paid airmail letter and in the case of facsimile, that a transmission report generated from a facsimile machine evidences that the facsimile was transmitted to the relevant facsimile number.

6.4 For the purposes of Clause 6.1, the postal address, facsimile number and email address of each Party shall be:

6.4.1 for the Supplier:

Veracity OSI UK Limited

Address: 9th Floor, Peninsular House, 30-36 Monument Street, London EC3R 8LJ



6.4.2 for the Customer:

Ministry of Justice

Address: 102 Petty France, London SW1H 9AJ



6.5 Either Party may change its address for service by serving a notice in accordance with this Clause 6.

6.6 For the avoidance of doubt, any notice given under this Call-Off Agreement shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

7. MISTAKES IN INFORMATION

7.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.

7.2 The Supplier shall be deemed to have satisfied itself as regards the nature and extent of the Services required by the Customer, the means of communication and access to the Base Location, the supply and conditions affecting labour, the suitability of the Base Location and the equipment necessary for the performance of this Call-Off Agreement, subject to all such matters being discoverable by the Supplier.

7.3 The Supplier acknowledges that it has:

7.3.1 made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;

- 7.3.2 raised all relevant due diligence questions with the Customer before the Call-Off Commencement Date;
 - 7.3.3 satisfied itself that it has sufficient information to ensure that it can provide the Services; and
 - 7.3.4 entered into this Call-Off Agreement in reliance on its own due diligence alone.
- 7.4 Without prejudice to Clause 7.3, the Supplier shall:
- 7.4.1 use its reasonable endeavours to check and verify that the data, information, plans, drawings, documents, handbooks and codes of practice supplied by the Customer are accurate; and
 - 7.4.2 notify the Customer immediately if it discovers errors or discrepancies in the data, information, plans, drawings, documents, handbooks and codes of practice supplied by the Customer.

8. CONFLICTS OF INTEREST

- 8.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Supplier Staff is placed in a position where, in the reasonable opinion of the Customer:
- 8.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of this Call-Off Agreement; or
 - 8.1.2 the behaviour of the Supplier or the Supplier Staff is not in the Customer's best interest or might adversely affect the Customer's reputation.

The Supplier will as soon as reasonably practicable disclose to the Customer full particulars of any behaviour which might give rise to the acts complained of in sub-Clauses 8.1.1 or 8.1.2.

- 8.2 The Customer reserves the right to terminate this Call-Off Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict or potential conflict, between the financial or personal interests of the Supplier or the Supplier Staff and the duties owed to the Customer under the provisions of this Call-Off Agreement. The actions of the Customer pursuant to this Clause shall not prejudice or affect any right of action or remedy which has accrued or will accrue to the Customer.

9. PREVENTION OF BRIBERY AND CORRUPTION AND TAX NON-COMPLIANCE

Bribery and Corruption

- 9.1 The Supplier shall not:
- 9.1.1 offer or give, or agree to offer or give, any gift or other consideration of any kind to any employee, agent, servant or representative of the Customer, which gift or consideration could act as an inducement or a reward for any act or failure to act in relation to this Call-Off Agreement or any other contract with the Customer; or
 - 9.1.2 engage in and shall procure that all Supplier Staff or any person acting on the Supplier's behalf shall not commit, in connection with this Call-Off Agreement or any other contract with the Customer or any other Contracting Body, a Prohibited Act.
- 9.2 The Supplier warrants and undertakes to the Customer that it has not:
- 9.2.1 in entering into this Call-Off Agreement breached the undertakings in Clause 9.1;

- 9.2.2 paid commission or agreed to pay commission to the Customer, any other Contracting Body or any other Public Body or any person employed by or on behalf of the Customer, in connection with this Call-Off Agreement; or
 - 9.2.3 entered into this Call-Off Agreement with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer in connection with this Call-Off Agreement, or any other Contracting Body, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer before execution of this Call-Off Agreement.
- 9.3 The Supplier shall:
- 9.3.1 in relation to this Call-Off Agreement, act in accordance with the Ministry of Justice Guidance;
 - 9.3.2 immediately notify the Customer if it suspects or becomes aware of any breach of this Clause 9; and
 - 9.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 9 and the Supplier shall co-operate with any investigation and allow the Customer to audit the Supplier's books, records and any other relevant documentation in connection with the breach.
- 9.4 If the Supplier, the Supplier Staff or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge, breaches Clause 9.1 the Customer shall be entitled to terminate this Call-Off Agreement by serving on the Supplier notice in writing with effect from the date specified in that notice.
- 9.5 Without prejudice to its other rights and remedies under this Clause 9, the Customer shall be entitled to recover the amount of value of any such gift, consideration or commission in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from and against any other loss sustained by the Customer in consequence of any breach of this Clause 9.

Promoting Tax Compliance

- 9.6 If, at any point during the Call-Off Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 9.6.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
 - 9.6.2 promptly provide to the Customer:
 - (a) details of the steps which 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.

9A SAFEGUARD AGAINST FRAUD

- 9A.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier or the Supplier Staff.
- 9A.2 The Supplier shall immediately notify the Customer in writing if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur save where complying with this provision would cause the Supplier or its employees to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

9A.3 If the Supplier or the Supplier Staff commits Fraud, the Customer may:

- 9A.3.1 terminate this Call-Off Agreement in accordance with Clause 36.2 and recover from the Supplier the amount of any loss suffered by the Customer resulting from such termination, including the costs reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Call-Off Period; or
- 9A.3.2 recover in full from the Supplier, and the Supplier shall on demand indemnify in full and hold the Customer harmless from and against, any other loss sustained by the Customer in consequence of any breach of this Clause 9A.

9B THE SERVICES

9B.1 General

- 9B.1.1 In consideration of the payment of the Call-Off Agreement Price, the Supplier shall supply the Services during the Call-Off Period in accordance with the Customer's requirements as set out in the Specification and the Tender and the provisions of this Call-Off Agreement.
- 9B.1.2 Without prejudice to the Customer's rights in Clause 9C.2, if the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of this Call-Off Agreement or differ in any way from those requirements, and this is other than as a result of a Default by the Customer, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Call-Off Agreement within such reasonable time as may be specified by the Customer.
- 9B.1.3 Timely supply of the Services shall be required, and the Supplier shall meet the requirements stated in the Specification, and in relation to commencing the supply of the Services within the time agreed or on any specified date.

9B.2 Key Personnel

- 9B.2.1 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer.
- 9B.2.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 9B.2.3 Any replacements of the Key Personnel shall be subject to the agreement of the Customer. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 9B.2.4 The Customer shall not unreasonably withhold its agreement under Clause 9B.2.2 or Clause 9B.2.3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on this Call-Off Agreement which could be caused by a change in Key Personnel.

9B.3 Licence to Occupy Base Location

- 9B.3.1 Any land or Base Location made available to the Supplier by the Customer in connection with this Call-Off Agreement, 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 Agreement. The Supplier shall have the use of such land or Base Location as licensee and shall vacate the same on completion, termination or abandonment of this Call-Off Agreement.

9B.3.2 The Supplier shall limit access to the land or Base Location to such Supplier Staff as is necessary to enable it to perform its obligations under this Call-Off Agreement and the Supplier shall co-operate (and ensure that Supplier Staff co-operate) with such other persons working concurrently on such land or Base Location as the Customer may reasonably request.

9B.3.3 The Supplier shall (and shall ensure that Supplier Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Base Location as determined by the Customer, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or Supplier Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

9B.3.4 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 Supplier Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Call-Off Agreement, the Customer retains the right at any time to use any premises owned or occupied by it in any manner the Customer sees fit.

9B.4 Offers of Employment

For the Call-Off Period and for a period of twelve (12) Months thereafter neither the Customer nor the Supplier shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that Party's prior written consent unless the employment pertained to an advertised position where appointment was made following fair and open competition.

9B.5 Environmental Requirements

The Supplier shall, when working on the Base Location, perform its obligations under this Call-Off Agreement in accordance with the Customer's environmental policy, which is 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.

9B.6 Health and Safety

9B.6.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of this Call-Off Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Base Location and which may affect the Supplier in the performance of this Call-Off Agreement.

9B.6.2 While on the Base Location, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Staff and other persons working on the Base Location.

9B.6.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of this Call-Off Agreement on the Base Location where that incident causes any personal injury or damage to property which could give rise to personal injury.

9B.6.4 The Supplier shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc., Act 1974 and any other Law relating to health and safety, which may apply to the Supplier Staff and other persons working on the Base Location in the performance of this Call-Off Agreement.

9B.6.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc., Act 1974) is made available to the Customer on request.

9B.7 Remedies in the Event of Inadequate Performance

- 9B.7.1 Where a complaint is received about the standard of the Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under this Call-Off Agreement, then the Customer shall notify the Supplier, and where considered appropriate by the Customer, investigate the complaint. The Customer may, in its sole discretion, uphold the complaint and take further action in accordance with Clause 36.7.
- 9B.7.2 In the event that the Customer is of the reasonable opinion that the Supplier is in Default in relation to the performance of the Services in accordance with this Call-Off Agreement, then the Customer may withhold from payment or recover from the Supplier any payment attributable to the Default or non conforming Services, which shall be paid or reimbursed on rectification of the Default to the reasonable satisfaction of the Customer.
- 9B.7.3 In the event that the Customer is of the reasonable opinion that there has been a material Default of this Call-Off Agreement by the Supplier, then the Customer may, without prejudice to its rights under Clause 36 or otherwise at Law, do any of the following:
- 9B.7.3.1 without terminating this Call-Off Agreement, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Services in accordance with this Call-Off Agreement and for such duration that the Services are being supplied by the Customer or a third party on its behalf, the Customer shall not be liable to pay the Call-Off Agreement Price to the Supplier;
- 9B.7.3.2 without terminating the whole of this Call-Off Agreement, terminate this Call-Off Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Call-Off Agreement Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Services; and/or
- 9B.7.3.3 terminate, in accordance with Clause 36, the whole of this Call-Off Agreement.
- 9B.7.4 Without prejudice to its rights under Clause 12, the Customer may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Customer or a third party under Clause 9B.7.3.1 to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 9B.7.5 If the Supplier fails to supply any of the Services in accordance with the provisions of this Call-Off Agreement and such failure is capable of remedy, then the Customer shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Customer may direct.
- 9B.7.6 In the event that:
- 9B.7.6.1. the Supplier fails to comply with Clause 9B.7.5 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- 9B.7.6.2. the Supplier persistently fails to comply with Clause 9B.7.5 above;
- the Customer may terminate this Call-Off Agreement (or that part of this Call-Off Agreement) with immediate effect by notice in writing.
- 9B.7.7 The remedies of the Customer under this Clause 9B.7 may be exercised successively in respect of any one or more failures by the Supplier.

9B.8 Care of Property

- 9B.8.1 Where the Customer issues Property free of charge to the Supplier such 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 remove any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and the Supplier shall at all times possess the Property as fiduciary agent and bailee of the Customer. The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all Supplier Staff and shall, at the Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.
- 9B.8.2 The 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.
- 9B.8.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with this Call-Off Agreement and for no other purpose without prior Approval.
- 9B.8.4 The Supplier shall ensure the security of all the Property whilst in its possession, either on the Base Location or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- 9B.8.5 The Supplier shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Customer's Default. The Supplier shall inform the Customer within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

9C TRANSITION

9C.1 Transition Planning

- 9C.1.1 If the Customer requires the Supplier to supply Services which, immediately prior to the commencement of this Call-Off Agreement, were provided to the Customer by a third party supplier the Customer may require the Supplier to conduct activities to ensure a smooth transition of those Services from that third party supplier to the Supplier. The Supplier shall conduct any such Transition Activities in accordance with the Transition Plan and the timescales set out therein.
- 9C.1.2 The Supplier shall deliver a draft Transition Plan in accordance with any timescales reasonably requested by the Customer for the Customer's approval. The draft Transition Plan shall be sufficiently detailed as is necessary to manage and conduct the Transition Activities effectively.
- 9C.1.3 Once approved, the Supplier shall monitor the completion of the Transition Activities against the Transition Plan.

9C.2 Delays to Transition

- 9C.2.1 If the Supplier becomes aware that there is or there is likely to be a delay ("**Delay**") in the conducting of the Transition Activities or the provision of Deliverables, the Supplier shall notify the Customer promptly upon becoming aware and the Supplier shall, when required by the Customer, take such steps as may be reasonably necessary and as the Customer approves, to mitigate any delay in the conducting of the Transition Activities and/or the provision of Deliverables by the dates set out in the Transition Plan. The Supplier shall not be entitled to any additional payment for taking such steps.
- 9C.2.2 If there is a Delay, the Customer may elect at its sole discretion to do any of the following:

- (a) revise any timescales set out in the Transition Plan to a later timescale;
 - (b) claim liquidated damages in the amounts set out in the Order forming part of this Call-Off Agreement until the Long Stop Date; or
 - (c) terminate this Call-Off Agreement.
- 9C.2.3 The Parties agree that liquidated damages set out in the Order forming part of this Call-Off Agreement represent a genuine pre-estimate of loss which may be incurred by the Customer for any Delay. Such liquidated damages may be recovered by the Customer in its sole discretion either as a sum of money payable by the Supplier or as a credit against any sum of money which is or may subsequently become due to the Supplier under this Call-Off Agreement.
- 9C.2.4 Liquidated damages will accrue on a daily basis from the relevant date set out in the Transition Plan until either the Long Stop Date or the date on which the Transition Activity or Deliverable is met, whichever is the earlier.
- 9C.2.5 Nothing in this Call-Off Agreement shall be construed as preventing or limiting the exercise by the Customer of any rights and remedies which it may have under this Call-Off Agreement or otherwise at Law (whether in contract, tort or otherwise) in addition to its right to claim liquidated damages.
- 9C.2.6 If a Delay is attributable in part to a Default by the Supplier and in part to a Default by the Customer, the Parties shall negotiate in good faith with a view to agreeing, in writing, a fair and reasonable apportionment of responsibility to the Delay, a proportionate amount of any liquidated damages set out in the Order forming part of this Call-Off Agreement and any revisions to the timescales set out in the Transition Plan.

PAYMENT AND CONTRACT PRICE

10. CALL-OFF AGREEMENT PRICE

- 10.1 In consideration of the performance by the Supplier of the Supplier's obligations under this Call-Off Agreement, the Customer shall pay the Call-Off Agreement Price in accordance with Clause 11 below.
- 10.2 The Customer shall, in addition to this Call-Off Agreement Price and following Receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with this Call-Off Agreement.

11. PAYMENT AND VAT

- 11.1 The Supplier shall ensure that each invoice contains all appropriate references, including the date of the invoice, the Supplier's name and address, the Supplier's banking details, the relevant purchase order number supplied by the Customer, the agreed payment and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- 11.2 The Supplier shall add VAT to the Call-Off Agreement Price at the prevailing rate as applicable.
- 11.3 The Customer shall pay all sums due to the Supplier within thirty (30) days of Receipt of a valid undisputed invoice, submitted in accordance with the requirements set out in the Order forming part of this Call-Off Agreement. The Customer shall make payment by BACS to the bank account details set out in the Order forming part of this Call-Off Agreement.
- 11.4 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call-Off Agreement. Any amounts due under this Clause 11.4 shall be paid 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.

- 11.5 The Customer may reduce payment in respect of any Services which the Supplier has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Customer.
- 11.6 The Customer shall pay Interest on the late payment of any undisputed sums of money properly invoiced.
- 11.7 The Supplier shall pay any undisputed sums which are due from it to a sub-contractor within thirty (30) days from receipt of a valid invoice.

12. RECOVERY OF SUMS DUE

- 12.1 Whenever under this Call-Off Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any Default), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier from the Customer under this Call-Off Agreement or under any other agreement or contract with the Customer or the Crown.
- 12.2 Any overpayment by either Party, whether of this Call-Off Agreement Price or of VAT, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 12.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

13. PRICE ADJUSTMENT ON EXTENSION OF THE INITIAL CALL-OFF PERIOD

- 13.1 The Call-Off Agreement Price shall be firm for the Initial Call-Off Period. In the event that the Customer agrees to extend the Initial Call-Off Period pursuant to Clause 31 the Customer shall, in the six (6) Month period prior to the expiry of the Initial Call-Off Period, enter into good faith negotiations with the Supplier (for a period of not more than thirty (30) Working Days) to agree a variation in the Call-Off Agreement Price.
- 13.2 If the Parties are unable to agree a variation in the Call-Off Agreement Price in accordance with Clause 13.1, this Call-Off Agreement shall terminate at the end of the Initial Call-Off Period.
- 13.3 If a variation in the Call-Off Agreement Price is agreed between the Customer and the Supplier, the revised Call-Off Agreement Price will take effect from the first day of any period of extension and shall apply during such period of extension.
- 13.4 Any increase in the Call-Off Agreement Price pursuant to Clause 13.1 shall not exceed the increase in RPIX between the Call-Off Commencement Date and the date six (6) Months before the end of the Initial Call-Off Period.

14. EURO

- 14.1 Any legislative requirement to account for the Services in Euro (or to prepare for such accounting), instead of and/or in addition to Pounds Sterling £, shall be implemented by the Supplier at nil charge to the Customer.
- 14.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 14.1 by the Supplier.

STATUTORY OBLIGATIONS AND REGULATIONS

15. DISCRIMINATION

- 15.1 The Supplier shall provide such information as the Customer may reasonably require for the purpose of assessing the Supplier's compliance with the Equalities Provisions.
- 15.2 The Supplier shall notify the Customer immediately in writing upon becoming aware of any investigation or legal proceedings brought against the Supplier or its sub-contractors in respect of any aspect of the subject matter of the Equalities Provisions.
- 15.3 In the event of any finding of unlawful discrimination being made against the Supplier or its sub-contractors in respect of any aspect of the subject matter of the Equalities Provisions during the period of this Call-Off Agreement, the Supplier shall inform the Customer of this finding forthwith and shall (but, in the event of an appeal, only after the final and unsuccessful outcome of the appellate process) take appropriate steps to the reasonable satisfaction of the Customer to prevent repetition of the unlawful discrimination.
- 15.4 In the event of repeated findings of unlawful discrimination against the Supplier during the period of this Call-Off Agreement (whether arising from the same or different acts or omissions, and regardless of any steps it has taken in accordance with Clause 15.3 above) the Customer shall be entitled to terminate this Call-Off Agreement with immediate effect.
- 15.5 If requested to do so by the Customer, the Supplier shall fully co-operate with the Customer at its own expense in connection with any investigation, legal proceedings, ombudsman inquiries or arbitration in which the Customer may become involved arising from any breach of any of the Customer's duties in respect of any aspect of the subject matter of the Equalities Provisions due to the alleged acts or omissions of the Supplier.

16. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a Party to this Call-Off Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This Clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

INFORMATION

17. CUSTOMER DATA

- 17.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 17.2 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 Agreement or as otherwise expressly authorised in writing by the Customer.
- 17.3 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer in the format specified in the Specification.
- 17.4 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 17.5 If at any time the Supplier suspects or has reason to believe that Customer Data has or may become 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.

18. **PROTECTION OF PERSONAL DATA**

- 18.1 With respect to the Parties' rights and obligations under this Call-Off Agreement, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor in relation to the Customer Personal Data. The Supplier shall (and shall procure that Supplier Staff) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with this Call-Off Agreement.
- 18.2 Notwithstanding the general obligation in Clause 18.1, where the Supplier is Processing Customer Personal Data for the Authority the Supplier shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Customer Personal Data (and to guard against unauthorised or unlawful Processing of the Customer Personal Data and against accidental loss or destruction of, or damage to, the Customer Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA and in any event the measures shall not be of a lesser standard than that set out in the Information Security Schedule.
- 18.3 The Supplier shall:
- 18.3.1 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;
 - 18.3.2 promptly notify the Customer of any breach of the security measures to be put in place pursuant to this Clause;
 - 18.3.3 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of its obligations under the DPA;
 - 18.3.4 Process the Customer Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Call-Off Agreement or as otherwise notified by the Customer to the Supplier during the Call-Off Period) and the Supplier shall comply with the provisions of the Information Security Schedule;
 - 18.3.5 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
 - 18.3.6 take reasonable steps to ensure the reliability of any Supplier Staff who have access to the Personal Data;
 - 18.3.7 obtain prior written consent from the Customer in order to transfer the Customer Personal Data to any sub-contractors or affiliates for the provision of the Services;
 - 18.3.8 ensure that all Supplier Staff who are required to access the Customer Personal Data are informed of the confidential nature of the Customer Personal Data and comply with the obligations set out in this Clause 18;
 - 18.3.9 ensure that none of the Supplier Staff publish, disclose or divulge any of the Customer Personal Data to any third party unless directed in writing to do so by the Customer;
 - 18.3.10 notify the Customer (within five (5) Working Days) if it receives:
 - (a) a request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
 - 18.3.11 provide the Customer with full co-operation and assistance in relation to any complaint or request made, including by:
 - (a) providing the Customer with full details of the complaint or request;

- (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
 - (c) providing the Customer with any Personal Data it holds in relation to a Data Subject, within the timescales required by the Customer; and
 - (d) providing the Customer with any information requested by the Customer;
- 18.3.12 permit the Customer (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 25, the Supplier's data Processing activities (and/or those of Supplier Staff) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Call-Off Agreement;
- 18.3.13 provide a written description of the technical and organisational methods employed by the Supplier for processing Customer Personal Data (within the timescales required by the Customer); and
- 18.3.14 not Process Customer Personal Data outside the European Economic Area without the prior written consent of the Customer and, where the Customer consents to such a transfer, to comply with:
 - (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred;
 - (b) any reasonable instructions notified to it by the Customer; and/or
 - (c) enter into the EU Model Clauses if required by the Customer.
- 18.4 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Call-Off Agreement in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
- 18.5 The provisions of this Clause shall apply during the Call-Off Period and indefinitely after the termination or expiry of this Call-Off Agreement.
- 18.6 The Supplier shall indemnify and keep indemnified the Customer from and against any and all liabilities, losses, demands, damages, costs, claims, expenses (including without limitation legal expenses), fines, penalties and interest which the Customer may incur (directly or indirectly), including without limitation in relation to any third party claim and the Customer's expenses in defending and/or settling such third party claim, arising from any breach by the Supplier of any of its obligations under this Clause 18.
- 19. **FREEDOM OF INFORMATION**
- 19.1 The Supplier acknowledges that the Customer is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and co-operate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 19.2 The Supplier shall and shall procure that its sub-contractors shall:
 - 19.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 19.2.2 provide the Customer with a copy of all Information that is relevant to a Request for Information and in its control, possession or power, in the form that the Customer requests within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and

- 19.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 19.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Call-Off Agreement or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 19.4 In no event shall the Supplier respond directly to a Request for Information without prior Approval.
- 19.5 The Supplier acknowledges that (notwithstanding the provisions of this Clause 19) the Customer may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
- 19.5.1 in certain circumstances without consulting the Supplier; or
- 19.5.2 following consultation with the Supplier and having taken their views into account,
- provided always that where Clause 19.5 applies the Customer shall take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 19.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
20. **CONFIDENTIALITY**
- 20.1 Except to the extent set out in this Clause 20 or where disclosure is expressly permitted elsewhere in this Call-Off Agreement, each Party shall:
- 20.1.1 treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- 20.1.2 not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Call-Off Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Call-Off Agreement or is a requirement of Law.
- 20.2 The Supplier shall ensure that the Supplier Staff are aware of, and shall ensure that the Supplier Staff comply with, the Supplier's confidentiality obligations under this Call-Off Agreement.
- 20.3 The Supplier shall not, and shall procure that the Supplier Staff do not, use any of the Customer Confidential Information received otherwise than for the purposes permitted by this Call-Off Agreement.
- 20.4 The provisions of Clauses 20.1 to 20.3 shall not apply to any Confidential Information received by one Party from the other which:
- 20.4.1 is or becomes public knowledge (otherwise than by breach of this Clause 20);
- 20.4.2 is provided to professional advisers for the purpose of obtaining professional advice;
- 20.4.3 was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- 20.4.4 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

- 20.4.5 is information independently developed without access to the Confidential Information; or
- 20.4.6 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under Clause 20A and/or the FOIA or the Environmental Information Regulations pursuant to Clause 19.
- 20.5 Nothing in this Call-Off Agreement shall prevent the Customer from disclosing the Supplier Confidential Information:
- 20.5.1 for the purpose of the examination and certification of the Customer's accounts;
- 20.5.2 for the purpose of any 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; or
- 20.5.3 to any government department or any other Contracting Body,
- and the Supplier hereby acknowledges that all government departments or Contracting Bodies receiving such Supplier Confidential Information may further disclose the Supplier Confidential Information to other government departments or Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Body (unless disclosure is required by Law or is permitted under this Call-Off Agreement).
- 20.6 The Supplier acknowledges and agrees that information relating to this Call-Off Agreement, including pricing information and these Call-Off Terms may be shared with a Contracting Body or any other government department from time to time. The Customer shall use reasonable endeavours to notify the recipient of such information that its contents are confidential.
- 20.7 Nothing in Clauses 20.1 to 20.3 shall prevent either Party or any Contracting Body from using any techniques, ideas or Know-How gained during the performance of its obligations under this Call-Off Agreement in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's (or relevant Contracting Body's) Confidential Information or an infringement of the other Party's (or relevant Contracting Body's) Intellectual Property Rights.
- 20.8 Clauses 20.1 to 20.3 shall operate without prejudice to and be read subject to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- 20.9 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Call-Off Agreement, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- 20.10 The Supplier shall immediately notify the Customer of any breach of security in relation to Customer Confidential Information obtained in the performance of this Call-Off Agreement and shall keep a record of such breaches. The Supplier shall use its best endeavours to recover any Customer Confidential Information however it may have been recorded, which has been lost or corrupted due to any act or omission of the Supplier or the Supplier Staff. This obligation is in addition to the Supplier's obligations under Clauses 20.1 to 20.3. The Supplier shall co-operate with the Customer in any investigation that the Customer considers necessary to undertake as a result of any breach of security in relation to Customer Confidential Information.
- 20.11 The Supplier shall, at its own expense, alter any security systems used in connection with the performance of this Call-Off Agreement at any time during the Call-Off Period at the request of the Customer if the Customer believes (acting reasonably) the Supplier has failed to comply with Clause 20.2 or 20.9.
- 20.12 No changes shall be made by the Supplier in the way they handle or mark any Government information under this Call-Off Agreement until those changes have been specifically agreed by the Authority by means of a variation in accordance with Clause 28.

20A TRANSPARENCY

- 20A.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 Agreement is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of this Call-Off Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 20A.2 Notwithstanding any other term of this Call-Off Agreement, the Supplier hereby gives its consent for the Customer to publish this Call-Off Agreement in its entirety (subject only to redaction of any information that the Customer determines is exempt from disclosure in accordance with the provisions of FOIA) including from time to time agreed changes to this Call-Off Agreement.
- 20A.3 The Customer may consult with the Supplier to help with its decision regarding any exemptions under Clause 20A.1 but the Customer shall have the final decision in its absolute discretion.
- 20A.4 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish this Call-Off Agreement.

21. OFFICIAL SECRETS ACTS

- 21.1 The Supplier shall comply with and shall ensure that the Supplier Staff comply with, the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) Section 182 of the Finance Act 1989.
- 21.2 In the event that the Supplier or Supplier Staff fail to comply with this Clause, the Customer reserves the right to terminate this Call-Off Agreement by giving notice in writing to the Supplier.

22. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 22.1 The Customer shall be entitled to publicise this Call-Off Agreement in accordance with any legal obligation upon the Customer, including any examination of this Call-Off Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.
- 22.2 The Supplier shall not make any press announcements or publicise this Call-Off Agreement or any part thereof in any way, except with the prior Approval of the Customer.
- 22.3 The Supplier shall not have any right to use any of the Customer's names, logos or trade marks on any of its products or services without prior Approval.
- 22.4 The Supplier shall not do anything or cause anything to be done which may damage the reputation of the Customer or bring the Customer into disrepute.

23. INTELLECTUAL PROPERTY RIGHTS

- 23.1 Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):
- 23.1.1 furnished or made available to the Supplier by or on behalf of the Customer shall remain the property of the Customer; and
 - 23.1.2 prepared by or for the Supplier on behalf of the Customer for use, or intended use, in relation to the performance by the Supplier of its obligations under this Call-Off Agreement shall belong to the Customer,

and the Supplier shall not, and the Supplier shall procure that the Supplier Staff shall not, (except when necessary for the performance of this Call-Off Agreement) without prior Approval, use or disclose any such Intellectual Property Rights in the IP Materials.

- 23.2 Subject to any pre-existing Intellectual Property Rights the Supplier hereby assigns to the Customer, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause 23.1.2. This assignment shall take effect on the date of this Call-Off Agreement or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier shall execute all documentation necessary to execute this assignment.
- 23.3 The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Supplier for the performance of this Call-Off Agreement.
- 23.4 The Supplier shall use best endeavours to ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this Call-Off Agreement grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Customer to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying Services to the Customer.
- 23.5 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services (including any materials licensed or supplied to the Customer) and the Supplier shall, during and after the Call-Off Period, indemnify and keep indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of or in connection with any breach of this Clause, except where such claim arises from:
- 23.5.1 items or materials based upon designs supplied by the Customer; or
- 23.5.2 the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of this Call-Off Agreement.
- 23.6 The Customer shall notify the Supplier in writing of any claim or demand brought against the Customer for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier.
- 23.7 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier shall:
- 23.7.1 consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
- 23.7.2 take due and proper account of the interests of the Customer; and
- 23.7.3 not settle or compromise any claim without the Customer's prior written consent (not to be unreasonably withheld or delayed).
- 23.8 The Customer shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Customer or the Supplier by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier's obligations under this Call-Off Agreement and the Supplier shall indemnify the Customer for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier shall not, however, be required to indemnify the Customer in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in Clause 23.5.1 or 23.5.2.

- 23.9 The Customer shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Customer or the Supplier in connection with the performance of its obligations under this Call-Off Agreement.
- 23.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Call-Off Agreement or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Customer as soon as reasonably practicable and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:
- 23.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
- 23.10.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Customer,
- and in the event that the Supplier is unable to comply with Clauses 23.10.1 or 23.10.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate this Call-Off Agreement by notice in writing.
- 23.11 The Supplier grants to the Customer a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) (and where appropriate worldwide) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Call-Off Commencement Date or which were developed independently of this Call-Off Agreement or the Services and which the Customer reasonably requires in order to exercise its rights and take the benefit of this Call-Off Agreement including the Services provided.
24. **NOT USED**
25. **AUDIT**
- 25.1 The Supplier shall keep and maintain until six (6) Years after the date of termination or expiry (whichever is the earlier) of this Call-Off Agreement (or such other longer period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call-Off Agreement including the Services provided under it and the Charges paid by the Customer.
- 25.2 The Supplier shall keep the records and accounts referred to in Clause 25.1 in accordance with Good Industry Practice.
- 25.3 Without prejudice to Clause 19.6, the Supplier shall afford each of the Customer, the National Audit Office and/or auditor appointed by the Audit Commission ("**Auditors**") and their respective representatives access to the records and accounts referred to in Clause 25.1 at the Supplier's premises and/or provide copies of such records and accounts, as may be required by the Customer or Auditors from time to time, in order that the Customer or Auditors may carry out an inspection including for the following purposes:
- 25.3.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Call-Off Agreement);
- 25.3.2 to identify or investigate actual or suspected Fraud, 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;
- 25.3.3 to 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 the Auditor General;

- 25.3.4 to review the integrity, confidentiality and security of the Customer Personal Data held or used by the Supplier;
- 25.3.5 to review the Supplier's compliance with the Data Protection Legislation in accordance with this Call-Off Agreement and any other Laws;
- 25.3.6 to review the Supplier's compliance with its security obligations;
- 25.3.7 to review any books of accounts and the internal contract management accounts kept by the Supplier in connection with the provision of the Services;
- 25.3.8 to 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;
- 25.3.9 to 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;
- 25.3.10 to verify the accuracy or completeness of any management information required to be provided by the Supplier under this Call-Off Agreement;
- 25.3.11 to review any records relating to the Supplier's performance of the Services; and
- 25.3.12 to ensure that the Supplier is complying with its obligations under this Call-Off Agreement.
- 25.4 Nothing in this Call-Off Agreement shall prevent or restrict the rights of either the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of its sub-contractors for the purposes of and pursuant to applicable Law.
- 25.5 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) on request during the Call-Off Period and for a period of six (6) Years after expiry of the Call-Off Period or termination, to the Customer or Auditors and/or its internal and external auditors.
- 25.6 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 any Services, save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditors is outside of the control of the Customer.
- 25.7 The Customer shall give the Supplier reasonable written notice of its requirement to conduct an audit which in any event shall be conducted during normal working hours.
- 25.8 Subject to the Customer's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including by providing:
 - 25.8.1 all information within the scope of the audit requested by the Auditors;
 - 25.8.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Services;
 - 25.8.3 reasonable access to any electronic systems or information technology communications systems used by the Supplier in the provision of the Services or on which information relating to the provision of the Services or this Call-Off Agreement is stored; and
 - 25.8.4 reasonable access to the Supplier Staff.
- 25.9 If an audit reveals:
 - 25.9.1 a material Default; or

25.9.2 Fraud or suspected Fraud,

the Supplier shall reimburse the Customer its reasonable costs incurred in relation to the audit and the Customer be entitled to exercise its rights to terminate this Call-Off Agreement pursuant to Clause 36.

25.10 If an audit reveals:

25.10.1 the Customer has overpaid any charges, the Supplier shall pay to the Customer:

- (a) the amount overpaid;
- (b) Interest on the amount overpaid, accruing on a daily basis from the date of overpayment by the Customer up to the date of repayment by the Supplier; and
- (c) the reasonable costs incurred by the Customer in undertaking the audit; or

25.10.2 the Customer has underpaid any charges, the Supplier shall not be entitled to increase the Call-Off Agreement Price paid or payable by the Customer but the Customer shall pay to the Supplier the difference between the actual Call-Off Agreement Price paid and the Call-Off Agreement Price which should have been due within such timescale and/or instalments as agreed between the Parties in writing.

25.11 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 25, save as specified in Clause 25.9 and 25.10.

CONTROL OF THE CONTRACT

26. ASSIGNMENT AND SUB-CONTRACTING

26.1 Except where Clause 26.6 applies, the Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all rights and obligations under this Call-Off Agreement or any part thereof.

26.2 The Supplier shall not sub-contract this Call-Off Agreement or any part thereof without prior Approval.

26.3 The Supplier shall not substitute or remove a sub-contractor or appoint an additional subcontractor without the prior written consent of the Customer, such consent not be unreasonably withheld or delayed. Such consent shall not constitute approval or endorsement of such substitute or additional sub-contractor.

26.4 Notwithstanding any permitted sub-contract pursuant to this Clause 26, the Supplier at all times 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. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that the Supplier Staff also do, or refrain from doing, such act or thing.

26.5 Where the Customer has consented to the placing of sub-contracts for the provision of services, copies of each sub-contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.

26.6 Notwithstanding Clause 26.1, the Supplier may assign to a third party ("**the Assignee**") the right to receive payment of the Call-Off Agreement Price or any part thereof due to the Supplier under this Call-Off Agreement (including any Interest which the Customer incurs under Clause 11). Any assignment under this Clause 26.6 shall be subject to:

26.6.1 reduction of any sums in respect of which the Customer exercises its right of recovery under Clause 12;

- 26.6.2 all related rights of the Customer under this Call-Off Agreement in relation to the recovery of sums due but unpaid; and
- 26.6.3 the Customer receiving notification under both Clauses 26.7 and 26.8.
- 26.7 In the event that the Supplier assigns the right to receive the Call-Off Agreement Price under Clause 26.6, the Supplier or the Assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.
- 26.8 The Supplier shall ensure that the Assignee notifies the Customer of the Assignee's contact information and bank account details to which the Customer shall make payment.
- 26.9 The provisions of Clause 11 shall continue to apply in all other respects after the assignment and shall not be amended without the prior Approval of the Customer.
- 26.10 Subject to Clause 26.12, the Customer may assign, novate or otherwise dispose of its rights and obligations under this Call-Off Agreement or any part thereof as it sees fit provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Call-Off Agreement.
- 26.11 Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not affect the validity of this Call-Off Agreement. In such circumstances, this Call-Off Agreement shall bind and inure to the benefit of any successor body to the Customer.
- 26.12 If the rights and obligations of the Customer under this Call-Off Agreement are assigned, novated or otherwise disposed of pursuant to Clause 26.10 to a body which is not a Public Body, or if there is a change in the legal status of the Customer such that it ceases to be a Public Body (in the remainder of this Clause both such bodies being referred to as the "**Transferee**"):

26.12.1 the rights of termination of the Customer in Clauses 36.7, 36.10 and 36.11 shall be available to the Supplier in the event of respectively, the Default, bankruptcy or insolvency of the Transferee; and

26.12.2 the Transferee shall only be able to assign, novate or otherwise dispose its rights and obligations under this Call-Off Agreement or any part thereof with the prior consent in writing of the Supplier.
- 26.13 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this Call-Off Agreement. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under this Call-Off Agreement and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 26.14 Each Party shall at its own cost and expense enter into such agreement and/or deed as the Customer shall reasonably require so as to give effect to any assignment, novation or disposal made pursuant to this Clause 26.
- 27. WAIVER AND CUMULATIVE REMEDIES**
- 27.1 The rights and remedies provided by this Call-Off Agreement may be waived only in writing by the Customer Representative or the Supplier Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 27.2 Unless a right or remedy of the Customer is expressed to be an exclusive right or remedy, the exercise of it by the Customer is without prejudice to the Customer's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

- 27.3 The rights and remedies provided by this Call-Off Agreement are cumulative and, unless otherwise provided in this Call-Off Agreement, are not exclusive of any right or remedies provided at Law or in equity or otherwise under this Call-Off Agreement.

28. VARIATION

- 28.1 Subject to Clause 28.2 and Framework Schedule 2 (Charging Structure), this Call-Off Agreement may not be varied except where:

28.1.1 the Customer notifies the Supplier in writing that it wishes to vary this Call-Off Agreement and provides the Supplier with full written details of any such proposed change; and

28.1.2 the Customer Representative and the Supplier Representative, acting reasonably, agree in writing to the variation and a written variation agreement is signed by the Customer Representative and the Supplier Representative.

- 28.2 If, by the date thirty (30) Working Days after notification was given under Clause 28.1.1, no agreement is reached by the Parties acting reasonably in relation to any variation requested, the Customer may, by giving written notice to the Supplier, either:

28.2.1 agree that the Parties shall continue to perform their obligations under this Call-Off Agreement without the variation; or

28.2.2 terminate this Call-Off Agreement with immediate effect.

- 28.3 The Supplier shall not be entitled to refuse any request to vary this Call-Off Agreement where such variation is required in order to reflect a Change in Law and such variation shall be subject to Clauses 28.5 to 28.7 of the Framework Agreement.

29. SEVERABILITY

- 29.1 If any provision of this Call-Off Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force without affecting the remaining provisions of this Call-Off Agreement.

- 29.2 If any provision of this Call-Off Agreement that is fundamental to the accomplishment of the purpose of this Call-Off Agreement is held to any extent to be invalid, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

30. NOT USED

31. EXTENSION OF INITIAL CALL-OFF PERIOD

Subject to Clause 13 (Price Adjustment on Extension of the Initial Call-Off Period), the Customer may, by giving written notice to the Supplier not less than three (3) Month(s) prior to the last day of the Initial Call-Off Period, extend this Call-Off Agreement for such further period as may be specified in the notice but the Call-Off Period (including any extension) shall not exceed three (3) Years. The provisions of this Call-Off Agreement will apply (subject to any variation or adjustment to the Call-Off Agreement Price pursuant to Clause 13) throughout any such extended period.

32. ENTIRE AGREEMENT

- 32.1 This Call-Off Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

- 32.2 Each of the Parties acknowledges and agrees that in entering into this Call-Off Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Call-Off Agreement.

32.3 Nothing in this Clause 32 shall operate to exclude liability for Fraud or fraudulent misrepresentation.

33. **COUNTERPARTS**

This Call-Off Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

LIABILITIES

34. **INDEMNITY AND INSURANCE**

34.1 Neither Party excludes or limits liability to the other Party for:

34.1.1 death or personal injury caused by its negligence; or

34.1.2 fraud or fraudulent misrepresentation by it or its employees; or

34.1.3 any breach of any obligations imposed by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979.

34.2 The Supplier's liability under and in connection with this Call-Off Agreement shall be limited to the extent set out in the Order forming part of this Call-Off Agreement. For the avoidance of doubt, the Parties acknowledge and agree that this Clause 34 shall not limit the Supplier's liability under the Framework Agreement, which liability is governed by the terms of that Framework Agreement.

34.3 The Customer's liability under and in connection with this Call-Off Agreement shall be limited to the extent set out in the Order forming part of this Call-Off Agreement. For the avoidance of doubt, the Parties acknowledge and agree that this Clause 34 shall not limit the Customer's liability under the Framework Agreement, which liability is governed by the terms of that Framework Agreement.

34.4 Subject to the limits set out in Clause 34.2, the Supplier shall be liable for the following types of loss, damage, cost or expense flowing from an act or Default of the Supplier which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Customer) be recoverable by Customer as a direct loss:

34.4.1 the additional operational and/or administrative costs and expenses arising from any material Default;

34.4.2 the cost of procuring, implementing and operating any alternative or replacement services to the Services; and

34.4.3 any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.

34.5 In no event shall either Party be liable to the other for any:

34.5.1 loss of profits;

34.5.2 loss of business;

34.5.3 loss of revenue;

34.5.4 loss of or damage to goodwill;

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

34.5.6 any indirect, special or consequential loss or damage.

- 34.6 The Supplier shall maintain the policy or policies of insurance set out in the Order forming part of this Call-Off Agreement.
- 34.7 The Supplier shall produce to the Customer, on request, copies of all insurance policies required by the Customer or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 34.8 The Supplier shall use its reasonable endeavours to ensure that it shall not by its acts or omissions cause any policy of insurance to be invalidated or voided.
- 34.9 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Call-Off Agreement. 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 arising under this Call-Off Agreement.

35. WARRANTIES AND UNDERTAKINGS

- 35.1 The Supplier warrants and undertakes to the Customer that:
- 35.1.1 it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Call-Off Agreement;
 - 35.1.2 this Call-Off Agreement is executed by a duly authorised representative of the Supplier;
 - 35.1.3 in entering into this Call-Off Agreement it has not committed any Fraud;
 - 35.1.4 all information, statements, warranties and representations contained in the Tender and (unless otherwise agreed by the Customer in writing) any other document which resulted in the award to the Supplier of a place on the Framework are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Customer prior to the execution of this Call-Off Agreement and it shall promptly advise the Customer in writing of any fact, matter or circumstance of which it may become aware which would render any such information, statement, warranty or representation to be false or misleading if repeated;
 - 35.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework or this Call-Off Agreement;
 - 35.1.6 it has not caused or induced any person to enter any such agreement as is referred to in Clause 35.1.5;
 - 35.1.7 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for the provision of Services under this Call-Off Agreement;
 - 35.1.8 it has notified the Customer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
 - 35.1.9 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, or, to the best of its knowledge and belief pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Call-Off Agreement;
 - 35.1.10 it is not subject to any contractual obligation, compliance with which will be likely to have an adverse effect on its ability to perform its obligations under this Call-Off Agreement;

- 35.1.11 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 35.1.12 in the three (3) years prior to the date of this Call-Off Agreement (or, if the Supplier has been in existence for less than three (3) years, in the whole of such shorter period) it has:
- (a) conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - (b) it has not performed any act or made any omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an on-going business concern or its ability to fulfil its obligations under this Call-Off Agreement.
- 35.2 The Supplier shall promptly notify the Customer in writing:
- 35.2.1 of any material detrimental change in the financial standing and/or any change in the credit rating of the Supplier;
 - 35.2.2 if the Supplier undergoes a change of control within the meaning of section 450 of the Corporation Tax Act 2010 (a "**Change of Control**"); and
 - 35.2.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.
- 35.3 For the avoidance of doubt, the fact that any provision within this Call-Off Agreement 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.

DEFAULT, DISRUPTION AND TERMINATION

36. DEFAULT, DISRUPTION AND TERMINATION

Termination for Bribery and Corruption

- 36.1 The Customer may terminate this Call-Off Agreement in accordance with Clause 9.4.

Termination in relation to Fraud

- 36.2 The Customer may terminate this Call-Off Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice under Clause 9A.3.1.

Termination on Audit

- 36.3 The Customer may terminate this Call-Off Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice in the circumstances set out in Clause 25.9.

Termination on Breach of Obligations of Confidentiality

- 36.4 The Customer may terminate this Call-Off Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where the Supplier fails to comply with any of Clauses 20.1 to 20.3.

Termination in relation to Official Secrets Acts

- 36.5 The Customer may terminate this Call-Off Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where the Supplier is in breach of its obligations under Clause 21.

Termination on Failure to Agree Variation

- 36.6 The Authority may terminate this Call-Off Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where the Parties fail to agree to a variation as referred to in Clause 28.

Termination on Default

- 36.7 The Customer may terminate this Call-Off Agreement with immediate effect if the Supplier commits a material Default and if:
- 36.7.1 the Supplier has not remedied the material Default to the satisfaction of the Customer within ten (10) Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the material Default and requesting it to be remedied; or
 - 36.7.2 the material Default is not, in the opinion of the Customer, capable of remedy.
- 36.8 In the event that through any material Default of the Supplier, data transmitted or processed in connection with this Call-Off Agreement is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 36.9 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Supplier may terminate this Call-Off Agreement in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 12.1.

Termination for Financial Standing

- 36.10 The Customer may terminate this Call-Off Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice:
- 36.10.1 where (in the reasonable opinion of the Customer) there is a (i) material detrimental change in the financial standing and/or (ii) change in the credit rating of the Supplier which:
 - (a) adversely impacts on the Supplier's ability to supply the Services under this Call-Off Agreement; or
 - (b) could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Services under this Call-Off Agreement; or
 - 36.10.2 if the Supplier demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Supplier.

Termination on Insolvency

- 36.11 The Customer may terminate this Call-Off Agreement with immediate effect by notice in writing where in respect of the Supplier:

- 36.11.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- 36.11.2 a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that it be wound up or dissolved or a resolution for its winding-up or dissolution is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- 36.11.3 a petition is presented for its winding up (which is not dismissed within five (5) 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;
- 36.11.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- 36.11.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within ten (10) Working Days;
- 36.11.6 an application or an administration order is made either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given;
- 36.11.7 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- 36.11.8 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force in relation to it pursuant to Schedule A1 of the Insolvency Act 1986;
- 36.11.9 being an individual, or where the Supplier is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control of the firm, shall at any time become bankrupt or shall have a receiving order or administration order made against him or them or shall make any composition or arrangement with or for the benefit of his or their creditors, or shall make any conveyance or assignment for the benefit of his or their creditors, or shall purport to do any of these things, or appears or is unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986, or he or they shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his or their estate(s), or a trust deed shall be granted by him or them on behalf of his or their creditors; or
- 36.11.10 any event analogous to those listed in Clauses 36.11.1 to Clause 36.11.9 occurs under the law of any other jurisdiction.

Termination on Change of Control

- 36.12 The Customer may terminate this Call-Off Agreement by giving notice in writing to the Supplier with immediate effect within six (6) Months of:
 - 36.12.1 being notified in writing that a Change of Control has occurred; or
 - 36.12.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,
 if it believes, acting reasonably, that such change is likely to have an adverse effect on the provision of the Services, but it shall not be permitted to terminate this Call-Off Agreement where Approval of the Change of Control was granted prior to the Change of Control.

Termination for Serious Misconduct

- 36.13 The Customer may terminate this Call-Off Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where the Supplier is a partnership or a limited liability partnership or an individual, or where the provider is a firm, any partner in that firm:
- 36.13.1 is convicted of a criminal offence relating to the conduct of its business or profession;
 - 36.13.2 commits an act of Grave Misconduct;
 - 36.13.3 fails to comply with any obligations relating to the payment of any taxes or social security contributions;
 - 36.13.4 makes any serious misrepresentations in the tendering process in respect of the provision of the Services; or
 - 36.13.5 fails to obtain any necessary licences or obtain or maintain membership of any relevant body.

Termination for Procurement Reasons

- 36.14 The Customer shall have the right to terminate this Call-Off Agreement at any time by giving one (1) Months' written notice to the Supplier where this Call-Off Agreement has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of The Public Contracts Regulations 2015.

Termination on Dissolution of Partnership

- 36.15 The Customer may terminate this Call-Off Agreement with immediate effect by notice in writing on dissolution of the Supplier where the Supplier is a partnership or a limited liability partnership.

Termination for Occasion of Tax Non-Compliance

- 36.16 The Customer may terminate this Call-Off Agreement with immediate effect by notice in writing:
- 36.16.1 if the Supplier is in breach of its obligation to notify the Customer of any Occasion of Tax Non-Compliance pursuant to Clause 9.6.1; or
 - 36.16.2 if the Supplier fails to provide details of the steps and the mitigating factors pursuant to Clause 9.6.2 which in the Authority's reasonable opinion are acceptable.

Termination on Termination of the Framework Agreement

- 36.17 The Customer may terminate this Call-Off Agreement with immediate effect by notice in writing if:
- 36.17.1 the Framework Agreement is terminated under Clause 22.1, 22.2, 22.4, 22.13 or 22.15 of that Framework Agreement; or
 - 36.17.2 if the Framework Agreement is terminated under Clause 22.6 of that Framework Agreement where such right is exercised by the Authority in respect of a breach by the Supplier of Clause 4.3 or 4.4 of that Framework Agreement.

Partial Termination

- 36.18 Where the Customer is entitled to terminate this Call-Off Agreement pursuant to any of the provisions set out in Clauses 36.1 to 36.16 the Customer may alternatively terminate this Call-Off Agreement in part only, provided always that the parts of this Call-Off Agreement not terminated can operate effectively to deliver the intended purpose of this Call-Off Agreement.

37. TERMINATION FOR CONVENIENCE

The Customer shall have the right to terminate this Call-Off Agreement at any time by giving at least three (3) Months' written notice to the Supplier.

38. CONSEQUENCES OF EXPIRY OR TERMINATION

- 38.1 Where the Customer terminates this Call-Off Agreement under Clause 36 and then makes other arrangements for the supply of 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 this Call-Off Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where this Call-Off Agreement is terminated under Clause 36, no further payments shall be payable by the Customer to the Supplier (for Services supplied by the Supplier prior to termination and in accordance with this Call-Off Agreement but where the payment has yet to be made by the Customer), until the Customer has established the final cost of making the other arrangements envisaged under this Clause.
- 38.2 Subject to Clause 34, where the Customer terminates this Call-Off Agreement under Clause 37, the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable direct loss to the Supplier by reason of the termination of this Call-Off Agreement, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Customer shall only indemnify the Supplier for those unavoidable direct costs that are not covered by the insurance available. The Supplier shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Customer, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause 37. For the avoidance of doubt, this indemnity shall not apply where the Customer exercises any right of termination under Clause 36.
- 38.3 The Customer shall not be liable under Clause 38.2 to pay any sum which:
- 38.3.1 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;
 - 38.3.2 when added to any sums paid or due to the Supplier under this Call-Off Agreement, exceeds the total sum that would have been payable to the Supplier if this Call-Off Agreement had not been terminated prior to the expiry of this Call-Off Period; or
 - 38.3.3 is a claim by the Supplier for loss of profit, due to early termination of this Call-Off Agreement.
- 38.4 In the event of any termination or expiry of this Call-Off Agreement:
- 38.5 the Customer shall be entitled to obtain a refund of the Call-Off Agreement Price paid by the Customer in respect of any part of this Call-Off Agreement which has not been performed by the Supplier;
- 38.6 the Call-Off Agreement Price shall be reduced on a pro rata basis where any part of this Call-Off Agreement is terminated, and the remaining parts of this Call-Off Agreement shall continue to be performed for the remainder of this Call-Off Period;
- 38.6.1 the Supplier shall return to the Customer all Property and all other items belonging to the Customer in its possession (save for copies required by the Supplier for statutory audit or archive purposes);
 - 38.6.2 subject to the payment of the appropriate portion of the Call-Off Agreement Price the Supplier shall provide the Customer with a copy of all deliverables undertaken to date (whether completed or not) in its state at that time and, at the Customer's option, return or destroy all other copies in the Supplier's possession or control; and

- 38.6.3 the Supplier shall at the Customer's request novate any agreements between the Supplier and any third parties that are relevant to the receipt of the Services by the Customer.
- 38.7 Upon expiry or termination of all or any part of this Call-Off Agreement, the Supplier shall provide, at its cost, all reasonable assistance and information to the Customer (and to any Replacement Contractor appointed by the Customer) if requested, to the extent necessary to effect an orderly assumption of the Services by the Customer or the Replacement Contractor.
- 38.8 Save as otherwise expressly provided in this Call-Off Agreement:
- 38.8.1 termination or expiry of this Call-Off Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Call-Off Agreement prior to termination or expiration and nothing in this Call-Off Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 38.8.2 termination of this Call-Off Agreement shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 9 (Prevention of Fraud and Prevention of Corruption), 9A (Safeguard Against Fraud), 11 (Payment and VAT), 12 (Recovery of Sums Due), 16 (The Contracts (Rights of Third Parties) Act 1999), 17 (Customer Data) and 18 (Protection of Personal Data), 19 (Freedom of Information), 20 (Confidentiality), 21 (Official Secrets Acts), 23 (Intellectual Property Rights), 25 (Audit), 27 (Waiver and Cumulative Remedies), 34 (Indemnity and Insurance), 35 (Warranties and Undertakings), 38 (Consequences of Expiry or Termination), 40 (Recovery upon Termination), 42 (Governing Law) and Clause 43 (Dispute Resolution) and, without limitation to the foregoing, any other provision of this Call-Off Agreement which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of this Call-Off Agreement.
- 38.9 Where, following the expiry or termination of this Call-Off Agreement, there is a transfer of an undertaking or a service provision change, within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006, the Transfer of Undertakings Schedule shall have effect.
- 39. DISRUPTION**
- 39.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call-Off Agreement it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 39.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Call-Off Agreement.
- 39.3 In the event of industrial action by the Supplier Staff the Supplier shall seek Approval to its proposals to perform its obligations under this Call-Off Agreement.
- 39.4 If the Supplier's proposals referred to in Clause 39.3 are considered insufficient or unacceptable by the Customer acting reasonably, then this Call-Off Agreement may be terminated with immediate effect by the Customer by notice in writing.
- 39.5 If the Supplier is temporarily unable to fulfil the requirements of this Call-Off Agreement owing to disruption of normal business of the Customer, the Supplier may request a reasonable allowance of time and in addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.
- 40. RECOVERY UPON TERMINATION**
- 40.1 On the termination of this Call-Off Agreement for any reason, the Supplier shall:

- 40.1.1 immediately return to the Customer all Confidential Information, Personal Data and materials subject to Intellectual Property Rights in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;
 - 40.1.2 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier for the purposes of this Call-Off Agreement. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 40.1.3 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress;
 - 40.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Contractor to conduct due diligence.
- 40.2 If the Supplier fails to comply with Clauses 40.1.1 and 40.1.2, the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or sub-contractors where any such items may be held.
- 40.3 Where the end of the Call-Off Period arises due to the Supplier's Default, the Supplier shall provide all assistance under Clauses 40.1.3 and 40.1.4 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

41. FORCE MAJEURE

- 41.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Call-Off Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Call-Off Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Call-Off Agreement for a period in excess of six (6) Months, either Party may terminate this Call-Off Agreement with immediate effect by notice in writing.
- 41.2 Any failure or delay by the Supplier in performing its obligations under this Call-Off Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 41.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause 41.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

DISPUTES AND LAW

42. GOVERNING LAW

- 42.1 Subject to the provisions of Clause 43, the Customer and the Supplier accept the exclusive jurisdiction of the English courts and agree that this Call-Off Agreement and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

43. **DISPUTE RESOLUTION**

- 43.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Call-Off Agreement within twenty (20) Working Days of either Party notifying the other of the dispute, such efforts shall involve the escalation of the dispute to the Director of Procurement (or equivalent) of each Party.
- 43.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 43.3 The obligations of the Parties under this Call-Off Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation or arbitration pursuant to this Clause 43 and the Supplier and Supplier Staff, personnel and associates shall comply fully with the requirements of this Call-Off Agreement at all times.
- 43.4 If the dispute cannot be resolved by the Parties pursuant to Clause 43.1 the dispute shall be referred to mediation pursuant to the procedure set out in Clause 43.5 unless the Parties agree that the dispute is not suitable for resolution by mediation.
- 43.5 If a dispute is referred to mediation, the Parties shall comply with the following provisions:
- 43.5.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
 - 43.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure;
 - 43.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - 43.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - 43.5.5 if the Parties fail to reach agreement on the resolution of the dispute, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Call-Off Agreement without the prior written consent of both Parties; and
 - 43.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to arbitration pursuant to Clause 43.6.
- 43.6 If a dispute cannot be resolved by the Parties pursuant to Clause 43.5 the Parties shall refer it to arbitration pursuant to the procedure set out in Clause 43.7 unless the Customer considers that it is not suitable for resolution by arbitration.

43.7 If a dispute is referred to arbitration the Parties shall comply with the following provisions:

- 43.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the LCIA procedural rules shall be applied and are deemed to be incorporated into this Call-Off Agreement (save that in the event of any conflict between those rules and this Call-Off Agreement, this Call-Off Agreement shall prevail);
- 43.7.2 the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);
- 43.7.3 the tribunal shall consist of a sole arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA; and
- 43.7.4 the arbitration proceedings shall take place in London.

SPECIFICATION SCHEDULE

Not used

TRANSFER OF UNDERTAKINGS SCHEDULE

1 Definitions and Interpretations

In these Conditions:

"Acquired Rights Directive" means the EU Acquired Rights Directive 2001/23/EC.

"Re-tendering Employment Information" means the information required under paragraph 2.1.

"Transferring-Out Employees" means those employees wholly or mainly engaged in the provision of the Services immediately before the expiry or earlier termination of this Call-Off Agreement.

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No. 246).

2. Disclosure of Information

2.1. Not later than twelve (12) Months prior to the end of the Call-Off Period or such other period as may be specified by the Customer, the Supplier shall fully and accurately disclose to the Customer all information that the Customer may reasonably request in relation to the Supplier Staff including the following Re-tendering Employment Information:

- (i) the total number of Transferring-Out Employees;
- (ii) current salary;
- (iii) length of service;
- (iv) hours of work;
- (v) arrangements for overtime;
- (vi) factors that may affect redundancy entitlement;
- (vii) outstanding industrial injury or other claims;
- (viii) probationary periods;
- (ix) periods of notice for termination of employment;
- (x) current pay agreement and any agreed settlement yet to come into effect;
- (xi) age;
- (xii) gender;
- (xiii) immigration status;
- (xiv) annual leave entitlement;
- (xv) sick leave entitlement;
- (xvi) maternity/paternity leave arrangements;
- (xvii) special leave entitlement;
- (xviii) season ticket loans, provision of cars and other contractual or customary benefits, if applicable;

- (xix) pension arrangements;
 - (xx) location and any contractual provisions relating to location;
 - (xxi) nature of job;
 - (xxii) percentage of time spent in providing the Services;
 - (xxiii) any disciplinary action taken by the Supplier against a Transferring-Out Employee within the previous two (2) years where the Employment Act 2002 (Dispute Resolution) Regulations 2004 applied;
 - (xxiv) any grievance procedure taken by a Transferring-Out Employee against the Supplier within the previous two (2) years where the Employment Act 2002 (Dispute Resolution) Regulations 2004 applied;
 - (xxv) any court or tribunal case, claim or action:
 - (i) brought by a Transferring-Out Employee against the Supplier within the previous two (2) years;
 - (ii) that the Supplier has reasonable grounds to believe a Transferring-Out Employee may bring against a new Contractor arising out of the Transferring-Out Employee's employment with the Supplier; and
 - (xxvi) any collective agreement which will have effect after a transfer of employment in relation to the Transferring-Out Employees, pursuant to TUPE.
- 2.2. At intervals to be stipulated by the Customer (which shall not be more frequent than every thirty (30) days) and immediately prior to the end of the Call-Off Period the Supplier shall deliver to the Customer a complete update of all such information which shall be disclosable pursuant to paragraph 2.1.
- 2.3. At the time of providing the information disclosed pursuant to paragraphs 2.1 and 2.2, the Supplier shall warrant the completeness and accuracy of all such information and the Customer may assign the benefit of this warranty to any Replacement Contractor.
- 2.4. The Customer may use the information it receives from the Supplier pursuant to paragraphs 2.1 and 2.2 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Call-Off Period. The Supplier shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- 2.5. The Supplier shall indemnify and keep indemnified and hold the Customer and the Crown (both for themselves and any Replacement Contractor) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:
- 2.5.1. the provision of information pursuant to paragraph 2.1;
 - 2.5.2. any claim or demand by any Transferring-Out Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Supplier or any sub-contractor in respect of any Transferring-Out Employee on or before the end of the Call-Off Period;
 - 2.5.3. any failure by the Supplier or any sub-contractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Customer or a Replacement Contractor to comply with its duties under Regulation 13 of the Regulations;
 - 2.5.4. any claim (including any individual employee entitlement under or consequent on such a

claim) by any trade union or other body or person representing any Transferring-Out Employees arising from or connected with any failure by the Supplier or any sub-contractor to comply with any legal obligation to such trade union, body or person; and

- 2.5.5. any claim by any person who is transferred by the Supplier to the Customer and/or a Replacement Contractor whose name is not included in the list of Transferring-Out Employees.
- 2.6. If the Supplier becomes aware that the information it provided pursuant to paragraph 2.1 has become untrue, inaccurate or misleading, it shall notify the Customer and provide the Customer with up to date information.
- 2.7. This paragraph 2 applies during the Call-Off Period and indefinitely thereafter.
- 2.8. The Supplier undertakes to the Customer that, during the twelve (12) Months prior to the end of the Call-Off Period the Supplier shall not (and shall procure that any sub-contractor shall not) without the prior consent of the Customer (such consent not be unreasonably withheld or delayed):
- 2.8.1. amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Supplier Staff (other than where such amendment or variation has previously been agreed between the Supplier and the Supplier Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);
- 2.8.2. terminate or give notice to terminate the employment or engagement of any of the Supplier Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
- 2.8.3. transfer away, remove, reduce or vary the involvement of any of the Supplier Staff from or in the provision of the Services other than where such transfer or removal:
- (iii) was planned as part of the individual's career development;
- (iv) takes place in the normal course of business; and
- (v) will not have any adverse impact upon the delivery of the Services by the Supplier,
- PROVIDED THAT any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services);
- 2.8.4. recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.
- 2.9. The Supplier will comply with the provisions of ss.257-258 Pensions Act 2004 and s.12 Pension Schemes Act 1993 ("**the Acts**") to the extent applicable, and with the provisions of The Transfer of Employment (Pension Protection) Regulations 2005 ("**the Regulations**"). The Supplier will indemnify the Customer for any failure by the Supplier to comply with the Acts and the Regulations against any claims for loss or damage which may be made against the Customer as an organisation as a result of the Supplier's failure. The Supplier further undertakes that it warrants to the Customer that the Supplier has thoroughly researched its obligations under the Acts and the Regulations, and has taken appropriate actuarial and financial advice as may be necessary to ensure compliance with the Acts and the Regulations; and that the Supplier has made an estimate of the costs which will be incurred by it as a result of complying with its obligations under the Acts and the Regulations and that those estimated costs are included in the Supplier's tender price.
- 2.10. The Customer shall be entitled to assign the benefit of the indemnities contained in paragraph 2.5 to any Replacement Contractor.

INFORMATION SECURITY SCHEDULE
SPECIAL CONDITIONS: INFORMATION SECURITY

Section I: Process measures to manage information risk

44. The Supplier must:

- 44.1 identify, keep and disclose to the Customer upon request a record of those members of the Supplier Staff and any sub-contractors with access to or who are involved in handling Customer Data ("users"); and
- 44.2 provide to the Customer details of its policy for reporting, managing and recovering from information risk incidents, including losses of protected personal data and ICT security incidents and its procedures for reducing risk and raising awareness; and
- 44.3 immediately report information security incidents to the Customer. Significant actual or potential losses of personal data may be shared with the Information Commissioner and the Cabinet Office by the Customer.

Section II: Specific minimum measures to protect personal information

45. The Supplier must be particularly careful to protect Customer Data whose release or loss could cause harm or distress to individuals. The Supplier must:

- 45.1 handle all such Customer Data as if it were confidential while it is processed or stored by the Supplier or its sub-contractors, applying the measures in this Schedule.

46. When Customer Data is held on paper it must be kept secure at all times, locked away when not in use or the premises on which it is held secured. If Customer data held on paper is transferred it must be by an approved secure form of transfer with confirmation of receipt. When Customer Data is held and accessed on ICT systems on secure premises, the Supplier must apply the minimum protections for information set out in the Specification, or equivalent measures, as well as any additional protections as needed as a result of the Customer's risk assessment. Where in exceptional circumstances equivalent measures are adopted the Supplier must obtain the Customer's prior approval in writing.

47. Wherever possible, Customer Data should be held and accessed on paper or ICT systems on secure premises protected as above. This means the Supplier should avoid the use of removable media (including laptops, removable discs, CD-ROMs, USB memory sticks, PDAs and media card formats) for storage or access to such data where possible. Where the Customer agrees that this is not possible the Supplier should work to the following hierarchy, recording the reasons why a particular approach has been adopted in a particular case or a particular business area:

- 47.1 best option: hold and access data on ICT systems on secure premises;
- 47.2 second best option: secure remote access, so that data can be viewed or amended without being permanently stored on the remote computer. This is possible for Customer Data over the internet using products meeting the FIPS 140-2 standard or equivalent, unless otherwise agreed with the Customer;
- 47.3 third best option: secured transfer of Customer Data to a remote computer on a secure site on which it will be permanently stored. Both the Customer Data at rest and the link should be protected at least to the FIPS 140-2 standard or equivalent. Protectively marked Customer Data must not be stored on privately owned computers unless they are protected in this way;

- 47.4 in all cases the remote computer should be password protected, configured so that its functionality is minimised to its intended business use only, and have up to date software patches and anti-virus software.
48. **Where the Customer agrees that it is not possible to avoid the use of removable media, the Supplier should apply all of the following conditions:**
- 48.1 the Customer Data transferred to the removable media should be the minimum necessary to achieve the business purpose, both in terms of the numbers of people covered by the Customer Data and the scope of Customer Data held. Where possible only anonymised Customer Data should be held;
- 48.2 the removable media should be encrypted to a standard or at least FIPS 140-2 or equivalent in addition to being protected by an authentication mechanism, such as a password;
- 48.3 user rights to transfer Customer Data to removable media should be carefully considered and strictly limited to ensure that this is only provided where absolutely necessary for business purposes and subject to monitoring by the Supplier and the Customer; and
- 48.4 the individual responsible for the removable media should handle it – themselves or if they entrust it to others – as if it were the equivalent or a large amount of their own cash.
49. **Where the Customer agrees that the second condition of encryption in paragraph 5 cannot be applied due to business continuity and disaster recovery considerations, such unprotected Customer Data should only be recorded, moved, stored and monitored with strong controls.**
50. **All material that has been used for confidential Customer Data should be subject to controlled disposal. The Supplier must:**
- 50.1 destroy paper records containing protected personal data by incineration, pulping or shredding so that reconstruction is unlikely; and
- 50.2 dispose of electronic media that has been used for protected personal data through secure destruction, overwriting, erasure or degaussing for re-use.
51. **The Supplier must have appropriate mechanisms in place in order to comply with the Customer's requirements as set out in this Schedule, including adequate training in handling confidential data for the Supplier Staff.**
52. **The Supplier must:**
- 52.1 put in place arrangements to log activity of data users in respect of electronically held protected personal information, and for managers to check it is being properly conducted, with a particular focus on those working remotely and those with higher levels of functionality. Summary records of managers' activity must be shared with the Customer and be available for inspection by the Information Commissioner's Office on request;
- 52.2 minimise the number of users with access to the Customer Data.

Annex A

Minimum scope of Customer Data which is protected personal data

In the absence of specific instructions from the Customer, all the data identified in the table below is data whose release or loss in the Customer's view could cause harm or distress to individuals. The Supplier and its sub-contractors must treat the information identified below as protected personal data.

53. ONE OR MORE OF THE PIECES OF INFORMATION WHICH CAN BE USED ALONG WITH PUBLIC DOMAIN INFORMATION TO IDENTIFY AN INDIVIDUAL	combined with	54. INFORMATION ABOUT THAT INDIVIDUAL WHOSE RELEASE IS LIKELY TO CAUSE HARM OR DISTRESS
Name/addresses (home or business or both)/post code/e-mail/telephone numbers/ driving licence number/date of birth [Note that driving licence number is included in this list because it directly yields date of birth and first part of surname]		Sensitive personal data as defined by s.2 of the Data Protection Act, including records relating to the criminal justice system, and group membership DNA or fingerprints/bank, financial or credit card details/mother's maiden name/National Insurance number/Tax, benefit or pension records/health records/employment record/school attendance or records/material relating to social services including child protection and housing

Protected personal data could be information contained in a database with 1000 or more entries containing facts mentioned in box 1, or an electronic folder or drive containing 1000 or more records about individuals. Again, this is a minimum standard. Information on smaller numbers of individuals may warrant protection because of the nature of the individuals, nature or source of the information, or extent of information.

