

**FRAMEWORK SCHEDULE 4 – ANNEX 2**  
**TECHNOLOGY PRODUCTS 2 CALL OFF TERMS**

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## PART 2 – CALL OFF TERMS

### TERMS AND CONDITIONS

#### **A. PRELIMINARIES**

##### **1. DEFINITIONS AND INTERPRETATION**

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

- 1.4 Subject to Clauses 1.5, 1.6 and 1.7 in the event of and only to the extent of any conflict between the Order Form, the Call Off Terms and the provisions of the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 the Framework Agreement, except Framework Schedule 19 (Tender);
  - 1.4.2 the Order Form;
  - 1.4.3 the Call Off Terms;
  - 1.4.4 Framework Schedule 17 (Tender)
  - 1.4.5 the Financed Purchase Agreement, where used.
- 1.5 Any permitted changes by the Customer to the Call Off Terms and the Order Form under Clause 4 of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to them becoming the Call Off Terms and the Order Form and the Parties entering this Call Off Contract shall prevail over the Framework Agreement.
- 1.6 If the Customer has specified security requirements in the Order Form and security-related clauses those provisions shall prevail over the Framework Agreement.
- 1.7 Where Framework Schedule 17 (Tender) contains provisions which are more favourable to the Customer in relation to the Call Off Contract such provisions of the Tender (as applicable) shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Tender and/or the Supplier Call Off Solution (as applicable) is more favourable to it in this context.
- 1.8 Call Off Contracts under Lot 6 shall comply with Call Off Schedule 4.
- 1.9 Subject to Clause 1.7, in the event and to the extent only of a conflict between any of the provisions of the Call Off Terms, the conflict shall be resolved, in accordance with the following descending order of precedence:
- (a) the Call Off Clauses and Call Off Schedule 1 (Definitions);
  - (b) Call Off Schedules 2 to 4 inclusive.

## **2. REPRESENTATIONS AND WARRANTIES**

- 2.1 Each Party represents and warranties that:
- 2.1.1 it has full capacity and authority to enter into and to perform this Call Off Contract;
  - 2.1.2 this Call Off Contract is executed by its duly authorised representative;
  - 2.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Call Off Contract; and
  - 2.1.4 its obligations under this Call Off Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar

Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

- 2.2 The Supplier represents and warrants that:
- 2.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - 2.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call Off Contract;
  - 2.2.3 its execution, delivery and performance of its obligations under this Call Off Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
  - 2.2.4 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract;
  - 2.2.5 as at the Call Off Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non-Compliance;
  - 2.2.6 it has and shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Goods by the Customer;
  - 2.2.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Contract; and
  - 2.2.8 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- 2.3 Each of the representations and warranties set out in Clauses 2.1 and 2.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.
- 2.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 2.1 and 2.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

- 2.5 For the avoidance of doubt, the fact that any provision within this Call Off Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier which constitutes a material Default.

## **B. DURATION OF CALL OFF CONTRACT**

### **3. CALL OFF CONTRACT PERIOD**

- 3.1 This Call Off Contract shall take effect on the Call Off Commencement Date (being the date that the Order is placed) and shall expire on the later of the satisfactory delivery of the Goods to the Customer or the Call Off Expiry Date, where specified.

## **C. CALL OFF CONTRACT PERFORMANCE**

### **4. GOODS AND SERVICES**

#### **4.1 Provision of the Goods and Services**

- 4.1.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Goods and the Services and the performance of its obligations under this Call Off Contract.
- 4.1.2 The Supplier shall ensure that the Goods and the Services:
- a) comply in all respects with the description of the Goods and the Services in the Order Form (or elsewhere in this Call Off Contract); and
  - b) are supplied in accordance with the provisions of this Call Off Contract.
- 4.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:
- a) All applicable Law;
  - b) Good Industry Practice;
  - c) The Standards;
  - d) The Security Policy;
  - e) The ICT Policy (if so required by the Customer); and
  - f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 4.1.3a) to 4.1.3e).
- 4.1.4 The Supplier shall:
- a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Goods and the Deliverables, if any, in accordance with this Call Off Contract;
  - b) subject to Clause 10.1 (Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory,

regulatory contractual or otherwise) it may require and which are necessary for the provision of the Goods and the Services;

- c) minimise any disruption to the Customer's operations when providing the Goods and the Services;
- d) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- e) provide the Customer with such assistance as the Customer may reasonably require during the Call Off Contract Period in respect of the supply of the Goods and the Services;
- f) deliver the Goods and the Services in a proportionate and efficient manner;
- g) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and
- h) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.

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

## 4.2 Time of Delivery of the Goods

4.2.1 The Supplier shall provide the Goods and the Services on the date(s) specified in the Order Form (or elsewhere in this Call Off Contract) and the Milestone Dates (if any). Such provision shall include compliance with the obligation on the Supplier set out in Clause A1 (Implementation Plan) where used.

4.2.2 Subject to Clause 4.2.5, where the Goods are physically delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle and transferred at the Sites.

4.2.3 At the Customer's option, Delivery of Goods shall include unloading and stacking of the Goods by the Supplier Personnel at such place as the Customer shall reasonably direct. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.

4.2.4 Unless expressly agreed to the contrary, the Customer shall not be obliged to accept delivery of the Goods by instalments. If, however, the Customer does agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its Delivery shall, without prejudice to any other rights or remedies of the Customer howsoever arising, entitle the Customer to terminate the whole or any unfulfilled part of this Call Off Contract for material Default without further liability to the Customer.

- 4.2.5 Where the Customer has specified any Installation Works in the Order Form (or elsewhere in this Call Off Contract), Delivery shall include installation of the Goods by the Supplier Personnel at the Sites or at such place as the Customer shall reasonably direct.
- 4.2.6 The Supplier shall undertake timed deliveries and out-of-hours deliveries as specified in the Order Form (or elsewhere in the Call-Off Contract). Timed delivery is delivery on a specified date and within a defined time range specified by the Customer on that date. The Customer shall be able to reject early deliveries and late deliveries at no cost to the Customer where a timed delivery or out-of-hours delivery has been specified.
- 4.2.7 The Supplier shall deliver to secure locations as directed by the Customer in the Order Form (or elsewhere in the Call-Off Contract) and in accordance with the Customer's security requirement set out at Schedule B12 (Security) where this is used.

#### **4.3 Location and Manner of Delivery of the Goods and the Services**

- 4.3.1 Except where otherwise provided in this Call Off Contract, the Supplier shall supply the Goods to the location(s) specified in the Order Form, and provide the Services to the Customer through the Supplier Personnel at the Sites. The Supplier shall ensure that the Supplier Personnel comply with the Customer's security requirements as set out in Schedule B12 (Security) where used while on Site, including the requirement to undertake formal personnel security clearance procedures. Where Supplier Personnel are required to undertake personnel security clearance procedures to access the Sites the Customer shall notify the Supplier at least ten (10) Working Days in advance of the delivery date.
- 4.3.2 If requested by the Customer prior to Delivery, the Supplier shall provide the Customer with a sample or samples of Goods for evaluation and Approval, at the Supplier's cost and expense.
- 4.3.3 The Goods shall be marked, stored, handled and delivered in a proper manner and in accordance the Customer's instructions as set out in the Order Form (or elsewhere in this Call Off Contract), Good Industry Practice, any applicable Standards and any Law. In particular, the Goods shall be marked with the Order number and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- 4.3.4 On dispatch of any consignment of the Goods the Supplier shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the number of packages, their weight and volume together with the all other relevant documentation and information required to be provided under any Laws.
- 4.3.5 The Customer may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Customer Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.

#### **4.4 Risk and Ownership in Relation to the Goods**

4.4.1 Without prejudice to any other rights or remedies of the Customer howsoever arising:

4.4.1.1 risk in the Goods shall pass to the Customer at the time of Delivery; and

4.4.1.2 subject to Clause 4.4.2 and Clause 4.4.3, ownership of the Goods shall pass to the Customer on the earlier of Delivery of the Goods or payment by the Customer of the Call Off Contract Charges

4.4.2 Where the Goods are Financed Goods ownership shall pass in accordance with the terms of the Financed Purchase Agreement for such Financed Goods.

4.4.3 Ownership of the Licensed Software shall pass in accordance with Clause 14 (IPR).

#### 4.5 **Undelivered Goods and Services**

4.5.1 In the event that any of the Goods or Services are not Delivered in accordance with Clauses 4.1 to 4.3 or the Goods are Damaged or lost ("**Undelivered Goods**" and "**Undelivered Services**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Goods or Services that were not so Delivered until such time as the Undelivered Goods and Undelivered Services are Delivered.

4.5.2 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 4.1 to 4.3 and meet the relevant Milestone Date (if any) to be a material Default.

#### 4.6 **Warranty**

4.6.1 The Supplier hereby guarantees the Goods for the Warranty Period against faulty materials and workmanship.

4.6.2 If the Customer shall within such Warranty Period give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies of the Customer howsoever arising) promptly remedy such faults or defects (whether by repair or replacement as pursuant to the applicable published warranty terms of the manufacturer) free of charge.

4.6.3 The Supplier warrants to the Customer that all components of any Specially Written Software shall:

- a) be free from material design and programming errors;
- b) perform in all material respects in accordance with the relevant specifications; and
- c) not infringe any Intellectual Property Rights.

4.6.4 Where Goods are repaired or replaced under Warranty, the repaired or replaced Goods shall have either the remainder of the original Warranty Period or where offered a full Warranty Period as if supplied as new under the Call Off Contract.

- 4.6.5 In undertaking any repairs to the Goods, the Supplier shall not replace any parts or components of the Ordered Goods with parts or components that are of lower quality or which are unsuitable for use in their designed purpose either by the Customer or a replacement service provider, prior to the expiry or termination of the Call-Off Contract (howsoever arising).
- 4.6.6 Where there is fault in any Ordered Goods which cannot be repaired, the Supplier shall ensure and procure that any data residing in any Ordered Goods is removed or destroyed in accordance with HMG Infosec Standard 5 Baseline (at no additional cost to the Customer) prior to such Ordered Goods being returned to any manufacturer or other third party for disposal.
- 4.6.7 The Customer has the sole option to remove and retain any hard drives or solid state drives prior to the return of Goods to the Supplier at no additional cost to the Customer.
- 4.6.8 The Supplier confirms that where a Customer has an in-house warranty provider or technical staff who undertake warranty repair work, the Supplier shall work with the in-house warranty provider and/or technical staff to provide any required training to enable the transfer of warranty repair work without cost or loss of service to the customer. Where this reduces the cost to the Supplier of providing the Warranty, the Supplier shall pass such cost savings on to the Customer.

**4.7 Obligation to Remedy of Default in the Supply of the Goods and Services**

- 4.7.1 Subject to Clauses 14.8.2 and 14.8.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 4.5.2 (Undelivered Goods and Services) and 18 (Customer Remedies for Inadequate Performance)), the Supplier shall, where practicable:
- a) remedy any breach of its obligations in this Clause 4 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
  - b) meet all the costs of, and incidental to, the performance of such remedial work.

**4.8 Continuing Obligation to Provide the Goods and Services**

- 4.8.1 The Supplier shall continue to perform all of its obligations under this Call Off Contract and shall not suspend the provision of the Goods or the Services, notwithstanding:
- a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
  - b) the existence of an unresolved Dispute; and/or
  - c) any failure by the Customer to pay any Call Off Contract Charges or sums payable under the Financed Purchase Agreement,

unless the Supplier is entitled to terminate this Call Off Contract under Clause 22.1 (Termination on Customer Cause) for failure by the Customer to pay undisputed Charges.

#### **4.9 Over Delivered Goods**

- 4.9.1 The Customer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity specified in the Order Form (or elsewhere in this Call Off Contract) ("Over-Delivered Goods").
- 4.9.2 If the Customer elects not to accept such Over-Delivered Goods it may, without prejudice to any other rights and remedies of the Customer howsoever arising, give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such over-delivery (including but not limited to the costs of moving and storing the Over-Delivered Goods).
- 4.9.3 If the Supplier fails to comply with the Customer's notice under Clause 4.9.2, the Customer may dispose of such Over-Delivered Goods and charge the Supplier for the costs of such disposal. The risk in any Over-Delivered Goods shall remain with the Supplier.

#### **4.10 Responsibility for Damage to or Loss of the Goods**

- 4.10.1 Without prejudice to the Supplier's other obligations to provide the Goods in accordance with this Call Off Contract, the Supplier accepts responsibility for all damage to or loss of the Goods if:
  - 4.10.1.1 the same is notified in writing to the Supplier within ten (10) Working Days of receipt and inspection of the Goods by the Customer, the Supplier and Customer shall agree the date of inspection of the Delivered Goods in the Implementation Plan where used;
  - 4.10.1.2 in the event that no date for inspection is specified in the Implementation Plan (or elsewhere in the Call Off Contract), such damage and/or loss is notified in writing to the Supplier within three (3) Working Days of the Delivery of the Goods at the Customer's nominated site; and
  - 4.10.1.3 the Goods have been handled by the Customer in accordance with the Supplier's instructions.

Where the Supplier accepts responsibility under Clause 4.10.1 it shall, at its sole option, replace or repair the Goods (or part thereof) within such time as is reasonable having regard to the circumstances and as agreed with the Customer. Return of the Damaged Goods shall be at the Supplier's cost. For the avoidance of doubt, the Customer shall not approve any Damaged or lost Goods as Delivered, and for the purposes of the Implementation Plan such Goods shall be deemed as Undelivered Goods.

#### **4.11 Goods Replacement/Substitution**

- 4.11.1 In the event that the Goods become genuinely unavailable after the Supplier has accepted and/or confirmed the Customer's Order and is contractually bound, the Supplier shall offer the Customer a replacement model or equivalent substitute goods at no additional cost to the Customer. The equivalent substitute goods shall be of an equivalent or higher specification and provide the same or additional

functionality than the Goods they replace. It shall be the Customer's sole decision whether to accept the replacement model or equivalent substitute goods. In the event that the Customer rejects the replacement model or equivalent substitute goods, the Supplier's failure to Deliver in accordance with the Call-Off Contract shall be deemed a material Default entitling the Customer to terminate the Call-Off Contract.

#### **4.12 Product Lifecycle Information**

4.12.1 The Supplier shall provide product lifecycle information, including product roadmaps, on request of the Customer. Where the Supplier becomes aware that Goods are to become End of Life, the Supplier shall use all reasonable endeavours to give the Customer three (3) Months' notice of this event; in any event, the Supplier shall notify the Customer when Goods are End of Life.

#### **4.13 Access to Spares**

4.13.1 The Supplier shall have access to a sufficient stock of spare devices that have been specified as business critical on the Order Form to allow the Customer to initiate business-critical swaps of faulty devices, or to address Dead On Arrival/Installation (DOA/DOI) business critical issues, with replacement by the same model and specification of device. Upon notification by the Customer of the requirement for a business-critical swap or DOA/DOI business critical issue, the Supplier shall swap the device with a spare device within twenty-four (24) hours of the Customer reporting the issue. For the avoidance of doubt, the Customer shall not Approve any DOA/DOI devices, and for the purposes of the Implementation Plan such Goods shall be deemed as Undelivered Goods.

4.13.2 The Supplier shall have access to a sufficient stock of spare components to undertake repairs to Goods in accordance with warranty requirements, and in any case to undertake required repairs within a reasonable time period.

#### **4.14 Test Devices**

4.14.1 The Supplier shall make a stock of Test Devices, for the purpose of testing compatibility with a Customer's IT infrastructure, available to the Customer as required. Test Devices shall be shipped to the Customer's nominated Site on request and at the Supplier's expense. The Customer shall return Test Devices to the Supplier in the same condition as initially provided to them by the Supplier (unless agreed otherwise between the Parties). Risk and ownership for any Test Devices shall remain with the Supplier.

#### **4.15 Endemic Failures**

4.15.1 The Supplier shall collate information on the failure rate of Goods such that it can trace failure rate by batch, principal reasons for failure, and by Customer affected by Goods failure. This information will help the Supplier to identify situations of Endemic Failures. In the event of Endemic Failure of the Goods supplied, the Supplier shall inform the Customer and the Customer has the right to reject all Goods in the affected batch and require their replacement by the Supplier at no cost to the Customer and without prejudice to the Customer's right of remedies. Endemic Failure also triggers a

material Default by the Supplier, entitling the Customer to terminate the Call-Off Contract.

## **5. STANDARDS AND QUALITY**

- 5.1 The Supplier shall at all times during the Call Off Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.
- 5.2 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
  - 5.2.1 be appropriately experienced, qualified and trained to supply the Goods in accordance with this Call Off Contract;
  - 5.2.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Services; and
  - 5.2.3 obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Goods to the reasonable satisfaction of the Customer.
- 5.3 The Supplier shall ensure that the Goods are Delivered in accordance with the Specifications, requirements in the Order Form, the manufacturer's specification (as applicable) and the the Call Off Contract.
- 5.4 The Supplier shall ensure the Goods are free from defects in design and workmanship and are fit for the purpose.

## **6. DISRUPTION**

- 6.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call Off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 6.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.
- 6.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods in accordance with its obligations under this Call Off Contract.
- 6.4 If the Supplier's proposals referred to in Clause 6.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.

## **7. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE**

- 7.1 Without prejudice to any other obligations of the Supplier in this Call Off Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 22.1.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall:
  - 7.1.1 notify the Customer as soon as reasonably practicable (and in any event within two (2) Working Days of the Supplier becoming aware)

that a Customer Cause has occurred or is reasonably likely to occur, giving details of:

- a) the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Call Off Contract; and
- b) any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
- c) use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

## **D. CALL OFF CONTRACT GOVERNANCE**

### **8. REPRESENTATIVES**

- 8.1 Each Party shall have a representative for the duration of this Call Off Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Call Off Contract.
- 8.2 The initial Supplier Representative and Customer Representative shall be the persons named as such in the Order Form. Either Party may revoke or amend the authority of or replace their respective representative by written notice to the other Party. Any changes to the Supplier Representative shall be agreed in accordance with Clause B.10 Framework Schedule 4 – Annex 3 Alternative and Additional Call Off Contract Provisions (Key Personnel) where used.

### **9. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

- 9.1 The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Goods provided under it, any Sub-Contracts and the amounts paid by the Customer.
- 9.2 The Supplier shall:
  - 9.2.1 keep the records and accounts referred to in Clause 9.1 in accordance with Good Industry Practice and Law; and
  - 9.2.2 afford any Auditor access to the records and accounts referred to in Clause 9.1 at the Supplier's premises and/or provide copies of such records and accounts (including copies of the Supplier's published accounts), as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 9.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call Off Contract Agreement including for the following purposes:
    - a) to verify the accuracy of the Call Off Contract Charges and any other amounts payable by the Customer under this Call Off Contract including any sums payable under the Financed Purchase Agreement;

- b) to verify the costs of the Supplier (including the costs of all Sub-Contractors) in connection with the provision of the Goods;
- c) to verify the Open Book Data;
- d) to verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- e) to identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- f) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Framework Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to supply the Goods;
- g) 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 Auditor General;
- h) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Call Off Contract;
- i) 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;
- j) 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;
- k) to verify the accuracy and completeness of any information delivered or required by this Call Off Contract;
- l) to review the Supplier's compliance with the Standards;
- m) to review the integrity, confidentiality and security of the Customer Data.

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

9.4 The Supplier shall on demand provide the Auditor(s) with all co-operation and assistance in:

9.4.1 all information requested by the Customer within the scope of the audit;

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

9.4.3 access to the Supplier Personnel.

9.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 9,

unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

## **10. CHANGE**

### **10.1 Variation Procedure**

10.1.1 Except as otherwise permitted by this Call Off Contract, no change to the terms of this Call Off Contract shall be effective unless it is in writing and signed by or on behalf of both Parties.

### **10.2 Legislative Change**

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

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

10.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 10.2.1b)), the Supplier shall:

- a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
  - (i) whether any Variation is required to the provision of the Goods, the Call Off Contract Charges or this Call Off Contract; and
  - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone, if any; and
- b) provide to the Customer with evidence:
  - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
  - (ii) as to how the Specific Change in Law has affected the cost of providing the Goods; and
  - (iii) demonstrating that any expenditure that has been avoided, has been taken into account in amending the Call Off Contract Charges.

10.2.3 Any change in the Call Off Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 10.2.1b)) shall be implemented in accordance with the Variation Procedure.

## **E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**

### **11. CALL OFF CONTRACT CHARGES AND PAYMENT**

#### **11.1 Call Off Contract Charges**

- 11.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Goods, the Customer shall pay the undisputed Call Off Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in the Order Form, and where used, with Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing) and any sums due under any Financed Purchase Agreement in accordance with the terms of that agreement.
- 11.1.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 9 (Records, Audit Access and Open Book Data), 15.6 (Freedom of Information), **Error! Reference source not found.** (Data Protection).
- 11.1.3 If the Customer fails to pay any undisputed Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 11.1.4 If at any time during this Call Off Contract Period the Supplier reduces its Framework Prices for any Goods which are provided under the Framework Agreement (whether or not such Goods are offered in a catalogue, if any, which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Call Off Contract Charges for such Goods under this Call Off Contract by the same amount.

#### **11.2 VAT**

- 11.2.1 The Call Off Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a Valid Invoice.
- 11.2.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 11.2.2 shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

#### **11.3 Retention and Set off**

- 11.3.1 The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Call Off Contract or under any other agreement between the Supplier and the Customer.

11.3.2 If the Customer wishes to exercise its right pursuant to Clause 11.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Call Off Contract Charges.

11.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

#### 11.4 **Euro**

11.4.1 Any requirement of Law to account for the Goods in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.

11.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 11.4.1 by the Supplier.

#### 11.5 **Income Tax and National Insurance Contributions**

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

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

## **12. PROMOTING TAX COMPLIANCE**

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

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

12.1.2 promptly provide to the Customer:

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

## **F. SUPPLY CHAIN MATTERS**

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

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

13.1.1 The Key Sub-Contractors shall be as listed in Framework Schedule 7 (Key Sub-Contractors).

### **13.2 Retention of Legal Obligations**

13.2.1 Notwithstanding the Supplier's right to sub-contract pursuant to Clause 20 of the Framework Agreement (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

13.2.2 An obligation herein 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 Personnel also do, or refrain from doing, such act or thing.

### **13.3 Supplier Personnel**

13.3.1 The Supplier shall ensure that all Supplier Personnel:

- a) are appropriately qualified, trained and experienced to provide the Goods and/or Services with all reasonable skill, care and diligence;
- b) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards; and
- c) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call Off Schedule B12 (Security Management) where this is used;

13.3.2 The Supplier shall be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Call Off Contract shall be a Default by the Supplier.

## **G. INTELLECTUAL PROPERTY AND INFORMATION**

## **14. INTELLECTUAL PROPERTY RIGHTS**

### **14.1 Allocation of title to IPR**

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

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

- b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:
      - (i) in the Customer Software;
      - (ii) the Customer Background IPR; and
      - (iii) in the Customer Data.
  - 14.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 14.1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
  - 14.1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 14.2 **Licences granted by the Supplier: Specially Written Software and Project Specific IPR**
  - 14.2.1 The Supplier hereby grants to the Customer, or shall procure the direct grant to the Customer of, a perpetual, royalty-free, irrevocable, non-exclusive licence to use:
    - a) the Documentation, Source Code and the Object Code of the Specially Written Software (including any Supplier Background IPR or Third Party IPR that are embedded in or which are an integral part of the Specially Written Software) which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate such Specially Written Software;
    - b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "**Software Supporting Materials**"); and
    - c) the Project Specific IPR including but not limited to the right to copy, adapt, publish and distribute such Project Specific IPR.
  - 14.2.2 The Supplier shall:
    - a) inform the Customer of all Specially Written Software that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
    - b) deliver to the Customer the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Customer.

- 14.2.3 The Supplier acknowledges and agrees that the ownership of the media referred to in Clause 14.2.2b) shall vest in the Customer upon their receipt by the Customer.
- 14.2.4 Those items licensed according to the terms of Clause 14.2.1 are listed in the Order Form or, where this is used, Call Off Schedule 3.
- 14.3 Licences granted by the Supplier: Supplier Software and Supplier Background IPR**
- 14.3.1 The Supplier hereby grants to the Customer a perpetual, royalty-free and non-exclusive licence to use:
- a) the Supplier Software for any purpose relating to the Goods (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display); and
  - b) the Supplier Background IPR for any purpose relating to the Goods (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function.
- 14.3.2 At any time during the Call Off Contract Period or following the Call Off Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Software or the Supplier Background IPR under Clause 14.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Customer Cause which constitutes a material breach of the terms of Clauses 14.3.1a) or 14.3.1b) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.
- 14.3.3 In the event the licence of the Supplier Software or the Supplier Background IPR is terminated pursuant to Clause 14.3.2, the Customer shall:
- a) immediately cease all use of the Supplier Software or the Supplier Background IPR (as the case may be);
  - b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR, provided that if the Supplier has not made an election within six months of the termination of the licence, the Customer may destroy the documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR (as the case may be); and
  - c) ensure, so far as reasonably practicable, that any Supplier Software and/or Supplier Background IPR that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Customer) from any computer, word processor,

voicemail system or any other device containing such Supplier Software and/or Supplier Background IPR.

- 14.3.4 Those items licensed according to the terms of Clause 14.3.1 are listed in the Order Form or, where this is used, Call Off Schedule 3.

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

- 14.4.1 The Customer shall be freely entitled to sub-license the rights granted to it pursuant to Clause 14.2.1.

- 14.4.2 The Customer may sub-license:

- a) the rights granted under Clause 14.3.1 to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
  - (i) the sub-licence is on terms no broader than those granted to the Customer; and
  - (ii) the sub-licence only authorises the third party to use the rights licensed in Clause 14.3.1 for purposes relating to the Goods or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and
- b) the rights granted under Clause 14.3.1 to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Customer.

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

- 14.5.1 The Customer:

- a) shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 14.2.1; and
- b) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 14.3.1 to:
  - (i) a Central Government Body; or
  - (ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.
- c) Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 14.2.1 and/or Clause 14.3.1. If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 14.2.1 and Clause 14.3.1.

- d) If a licence granted in Clause 14.2.1 and/or Clause 14.3.1 is novated under Clause 14.5.1 or there is a change of the Customer's status pursuant to Clause c) (both such bodies being referred to as the "**Transferee**"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

#### **14.6 Third Party IPR and Third Party Software**

- 14.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR and any Third Party Software which is not commercial off-the-shelf software grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 14.3.1 and Clause 14.5.1b). If the Supplier cannot obtain for the Customer a licence materially in accordance with the licence terms set out in Clause 14.3.1 and Clause 14.5.1b) in respect of any such Third Party IPR and/or Third Party Software, the Supplier shall:
  - a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
  - b) only use such Third Party IPR and/or Third Party Software if the Customer Approves the terms of the licence from the relevant third party.
- 14.6.2 The Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Customer on terms no less favourable than such software is usually made available.
- 14.6.3 Those items licensed according to the terms of Clause 14.6.1 and those items licensed according to the terms of Clause 14.6.2 are listed in the Order Form or, where this is used, Call Off Schedule 3.

#### **14.7 Termination of licenses**

- 14.7.1 Subject to Clauses 14.3.2 and/or 14.3.3, all licences granted pursuant to this Clause 14 (other than those granted pursuant to Clause 14.6.2 and B6 where used) shall survive the Call Off Expiry Date.
- 14.7.2 The Supplier shall, if requested by the Customer, grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPR, Third Party IPR and/or Third Party Software on terms equivalent to those set out in Clause 14.3.1 subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 14.7.3 Any licences granted by the Customer to the Supplier in respect of the Customer Software, Customer Background IPR and the Customer Data and any sub-licence granted by the Supplier pursuant to this Call Off Contract shall terminate automatically on the Call Off Expiry Date and the Supplier shall:
  - a) immediately cease all use of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be);

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

## 14.8 IPR Indemnity

- 14.8.1 The Supplier shall during and after the Call Off Contract Period, on written demand indemnify the Customer against all Losses incurred by, awarded against or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 14.8.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
  - a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
  - b) replace or modify the relevant item with non-infringing substitutes provided that:
    - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
    - (ii) the replaced or modified item does not have an adverse effect on any other Goods;
    - (iii) there is no additional cost to the Customer; and
    - (iv) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Goods.
- 14.8.3 If the Supplier elects to procure a licence in accordance with Clause 14.8.2a) or to modify or replace an item pursuant to Clause 14.8.2b), but this has not avoided or resolved the IPR Claim, then:
  - a) the Customer may terminate this Call Off Contract by written notice with immediate effect; and
  - b) without prejudice to the indemnity set out in Clause 14.8.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

- 14.8.4 The provisions of Clauses 14.8.1 to 14.8.3 (inclusive) shall not apply to the extent that any IPR Claim is caused by any use by or on behalf of the Customer of the Software, or the use of the Customer Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Call Off Contract or in a manner not reasonably to be inferred from the description of the Goods in this Call Off Contract.
- 14.8.5 The Customer agrees that:
- a) it will notify the Supplier in writing of any IPR Claim;
  - b) it will allow the Supplier to conduct all negotiations and proceedings and will provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and
  - c) it will not, without first consulting with the Supplier, agree to make any payment or make an admission relating to the IPR Claim.
- 14.8.6 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute. The Supplier shall not settle or compromise any IPR Claim without the Customer's Approval (not to be unreasonably withheld or delayed).

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

### **15.1 Security Requirements**

- 15.1.1 The Supplier shall comply with the Security Policy and where specified by the Customer, with the requirements of Call Off Schedule B12 (Security Management) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 15.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 15.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Goods it may propose a Variation to the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call Off Contract Charges shall then be subject to the Variation Procedure.
- 15.1.4 Until and/or unless a change to the Call Off Contract Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Goods in accordance with its existing obligations.

### **15.2 Malicious Software**

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

- 15.2.2 Notwithstanding Clause 15.2.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of the Goods to its desired operating efficiency.
- 15.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 15.2.2 shall be borne by the Parties as follows:
- a) by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Customer has waived the obligation set out in Clause 15.2.1) or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
  - b) by the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived its obligation set out in Clause 15.2.1) or the Customer Data (whilst the Customer Data was under the control of the Customer).

### 15.3 Protection of Customer Data

- 15.3.1 To the extent that the Customer Data is held and/or Processed by the Supplier:
- a) the Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
  - b) the Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call Off Contract or as otherwise Approved by the Customer.
  - c) the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified in this Call Off Contract and in any event as specified by the Customer from time to time in writing.
  - d) the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
  - e) the Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with any BCDR plan. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
  - f) the Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure

system that complies with the Security Policy and the Security Management Plan (if any).

- g) if at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- h) if the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:
  - (i) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
  - (ii) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so).

#### 15.4 Confidentiality

- 15.4.1 For the purposes of this Clause , the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 15.4.2 Except to the extent set out in this Clause 15 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:
  - a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
  - b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call Off Contract or without obtaining the owner's prior written consent;
  - c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and
  - d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 15.4.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
  - a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 15.6.1 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;

- b) the need for such disclosure arises out of or in connection with:
    - (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;
    - (ii) the purpose of the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Goods provided under this Call Off Contract; or
    - (iii) the conduct of a Central Government Body review in respect of this Call Off Contract; or
  - c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 15.4.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 15.4.5 Subject to Clauses 15.4.2 and 15.4.7, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:
- a) Supplier Personnel who are directly involved in the provision of the Goods and need to know the Confidential Information to enable performance of the Supplier's obligations under this Call Off Contract; and
  - b) its professional advisers for the purposes of obtaining advice in relation to this Call Off Contract.
- 15.4.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 15.4.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.
- 15.4.7 The Customer may disclose the Confidential Information of the Supplier:
- a) on a confidential basis to any Central Government Body for any proper purpose of the Customer or of the relevant Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies or Other Contracting Bodies;
  - b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

- d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 15.4.7a) (including any benchmarking organisation) for any purpose relating to or connected with this Call Off Contract;
- e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or
- f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause 15.

- 15.4.8 Nothing in this Clause 15 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 15.4.9 In the event that the Supplier fails to comply with Clauses 15.4.2 to 15.4.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

## 15.5 Transparency

- 15.5.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Contract is not Confidential Information. The Customer shall determine whether any of the content of this Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 15.5.2 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives his consent for the Customer to publish this Call Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Call Off Contract agreed from time to time.
- 15.5.3 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Call Off Contract.

## 15.6 Freedom of Information

- 15.6.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
  - a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;
  - b) transfer to the Customer all Requests for Information relating to this Call Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

- c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
  - d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 15.6.2 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Call Off Contract) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## 15.7 Data Protection

- 15.7.1 "The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Call Off Schedule 5 by the Customer and may not be determined by the Supplier.
- 15.7.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 15.7.3 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - b) an assessment of the necessity and proportionality of the processing operations in relation to the provision of the Goods and Services;
  - c) an assessment of the risks to the rights and freedoms of Data Subjects; and;
  - d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data:
- 15.7.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract:
- a) process that Personal Data only in accordance with Call Off Schedule 5 unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the

Customer before processing the Personal Data unless prohibited by Law;

- b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- c) ensure that
  - (i) the Supplier Personnel do not process Personal Data except in accordance with this Call-Off Contract (and in particular Call Off Schedule 5;
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
    - (i) are aware of and comply with the Supplier's duties under this clause;
    - (ii) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
    - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call-Off Contract; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- d) not transfer Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled
  - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on

termination of the Call-Off Contract unless the Supplier is required by Law to retain the Personal Data

- 15.7.5 Subject to clause 15.7.6, the Supplier shall notify the Customer immediately if it:
- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - b) receives a request to rectify, block or erase any Personal Data;
  - c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - d) receives any communication from the Information Commissioner or any other regulatory Customer in connection with Personal Data processed under this Call-Off Contract;
  - e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - f) becomes aware of a Data Loss Event.
- 15.7.6 The Supplier's obligation to notify under clause 15.7.5 shall include the provision of further information to the Customer in phases, as details become available:
- 15.7.7 Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 15.7.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- a) the Customer with full details and copies of the complaint, communication or request;
  - b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - d) assistance as requested by the Customer following any Data Loss Event;
  - e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 15.7.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- a) the Customer determines that the processing is not occasional;
  - b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or

Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

- c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects
- 15.7.9 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 15.7.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 15.7.11 Before allowing any Sub-processor to process any Personal Data related to this Call-Off Contract, the Supplier must:
- a) notify the Customer in writing of the intended Sub-processor and processing;
  - b) obtain the written consent of the Customer;
  - c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 15.7 such that they apply to the Sub-processor; and
  - d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require
- 15.7.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 15.7.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Call-Off Contract).

The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office publishes guidance. The Customer may on not less than 30 Working Days' notice to the Supplier amend this Call-Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer. “.

## **16. PUBLICITY AND BRANDING**

- 16.1 The Supplier shall not make any press announcements or publicise this Call Off Contract in any way nor use the Customer's name or brand in any promotion or marketing or announcement of orders, without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed).
- 16.2 Each Party acknowledges to the other that nothing in this Call Off Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Goods) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## **H. LIABILITY AND INSURANCE**

### **17. LIABILITY**

- 17.1 Neither Party excludes or limits its liability for:

- 17.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
  - 17.1.2 bribery or Fraud by it or its employees;
  - 17.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 17.1.4 any liability to the extent it cannot be excluded or limited by Law.
- 17.2 Subject to Clause 17.1 the Supplier's total aggregate liability in respect of all:
- 17.2.1 Service Credits; and
  - 17.2.2 Compensation for Critical Service Level Failure;
- incurred in any rolling period of twelve (12) Months shall be subject in aggregate to the Service Credit Cap;
- 17.3 Save as specified under Clause 17.3 2:
- 17.3.1 in respect of all other Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:
    - a) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year (for the avoidance of doubt including Call Off Contracts with a duration of less than one year), the higher of one hundred thousand pounds (£100,000) or a sum equal to one hundred and twenty-five per cent (125%) of the Estimated Year 1 Call Off Contract Charges;
    - b) in relation to any Defaults occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, the higher of one hundred thousand pounds (£100,000) in each such Call Off Contract Year or a sum equal to one hundred and twenty-five per cent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
    - c) in relation to any Defaults occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, the higher of one hundred thousand pounds (£100,000) in each such Call Off Contract Year or a sum equal to one hundred and twenty-five per cent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period,
    - d) unless a different aggregate limit or percentage under this Clause 17.3 is stipulated by the Customer during a Further Competition Procedure and set out in the Order Form
  - 17.3.2 The Supplier's liability in respect of any breach of its obligations under Clause 15.7 shall be limited to £17 million.
- 17.4 Subject to Clause 17.1 and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:

- 17.4.1 in relation to any Customer Causes occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year (for the avoidance of doubt including Call Off Contracts with a duration of less than one year), a sum equal to the Estimated Year 1 Call Off Contract Charges;
  - 17.4.2 in relation to any Customer Causes occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
  - 17.4.3 in relation to any Customer Causes occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.
- 17.5 Subject to Clause 17.1 neither Party shall be liable to the other Party for any:
- 17.5.1 indirect, special or consequential Loss;
  - 17.5.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 17.6 Subject to Clause 17.3, and notwithstanding Clause 17.4, the Supplier acknowledges that the Customer may, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of, and relate to a Default by the Supplier:
- 17.6.1 any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
  - 17.6.2 any wasted expenditure or charges;
  - 17.6.3 the additional cost of procuring Replacement Goods for the remainder of the Call Off Contract Period and/or replacement Deliverables if any, which shall include any incremental costs associated with such Replacement Goods and/or replacement Deliverables above those which would have been payable under this Call Off Contract;
  - 17.6.4 any compensation or interest paid to a third party by the Customer; and
  - 17.6.5 any fine, penalty or costs incurred by the Customer pursuant to Law.
- 17.7 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call Off Contract.
- 17.8 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 17.3.

## **I. REMEDIES AND RELIEF**

### **18. CUSTOMER REMEDIES FOR DEFAULT**

## 18.1 Remedies

18.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising and subject to the exclusive financial remedy provisions in Clause A.1.4 Framework Agreement Schedule 4 – Annex 3 Alternative and Additional Call Off Contract Provisions (Delay Payments) where used, if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Goods have been Delivered) do any of the following:

- a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Goods and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Customer's instructions;
- b) carry out, at the Supplier's expense, any work necessary to make the provision of the Goods comply with this Call Off Contract;
- c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single Material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
  - (i) instruct the Supplier to comply with the Rectification Plan Process;
  - (ii) suspend this Call Off Contract (whereupon the relevant provisions of Clause 24 shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Goods;
  - (iii) without terminating or suspending the whole of this Call off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Goods only (whereupon the relevant provisions of Clause 24 shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Goods;

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

## 18.2 Rectification Plan Process

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

- a) The Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event

within ten (10) Working Days (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.

- b) The draft Rectification Plan shall set out:
  - (i) full details of the Default that has occurred, including a root cause analysis;
  - (ii) the actual or anticipated effect of the Default; and
  - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

18.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of Annex 1 (Dispute Resolution Procedure) to the Call Off Terms.

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

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

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

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

## **19. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE**

19.1 If the Supplier has failed to:

- 19.1.1 Achieve a Milestone by its Milestone Date, where used;
- 19.1.2 comply with its obligations under this Call Off Contract,  
(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 7 (Notification of Customer Cause)):

- a) the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- b) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 21 (Customer Termination Rights) except Clause 21.2 (Termination Without Cause);
- c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date, where used:
  - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
  - (ii) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;
  - (iii) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and/or

19.2 In order to claim any of the rights and/or relief referred to in Clause 19.1, the Supplier shall:

19.2.1 comply with its obligations under Clause 7 (Notification of Customer Cause); and

19.2.2 within five (5) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer notice (a "**Relief Notice**") setting out details of:

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

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

19.4 Without prejudice to Clause 4.8.1 (Continuing obligation to provide the Goods), if a Dispute arises as to:

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

19.4.2 the nature and/or extent of the relief claimed by the Supplier,  
either Party may refer the Dispute to the Dispute Resolution Procedure.  
Pending the resolution of the Dispute, both Parties shall continue to resolve the  
causes of, and mitigate the effects of, the Supplier Non-Performance.

19.5 Any Variation that is required to the Implementation Plan or to the Call Off  
Contract Charges pursuant to this Clause 19 shall be implemented in  
accordance with the Variation Procedure.

## **20. FORCE MAJEURE**

20.1 Subject to the remainder of this Clause 20 a Party may claim relief under this  
Clause 20 from liability for failure to meet its obligations under this Call Off  
Contract for as long as and only to the extent that the performance of those  
obligations is directly affected by a Force Majeure Event. Any failure or delay  
by the Supplier in performing its obligations under this Call Off Contract which  
results from a failure or delay by an agent, Sub-Contractor or supplier shall be  
regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or  
supplier is itself impeded by a Force Majeure Event from complying with an  
obligation to the Supplier.

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

20.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under  
this Clause 20 to the extent that consequences of the relevant Force Majeure  
Event:

20.3.1 are capable of being mitigated by any of the Goods, but the Supplier  
has failed to do so; and/or

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

20.4 Subject to Clause 20.5, as soon as practicable after the Affected Party issues  
the Force Majeure Notice, and at regular intervals thereafter, the Parties shall  
consult in good faith and use reasonable endeavours to agree any steps to be  
taken and an appropriate timetable in which those steps should be taken, to  
enable continued provision of the Goods affected by the Force Majeure Event.

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

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

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

a) the other Party shall not be entitled to exercise any rights to  
terminate this Call Off Contract in whole or in part as a result of  
such failure unless the provision of the Goods is materially

- impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
- b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Cause arising as a result of such failure;
- 20.6.2 the Supplier fails to perform its obligations in accordance with this Call Off Contract:
- a) the Customer shall not be entitled:
- (i) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 18.1.1b) and 18.1.1c) (Customer Remedies for Inadequate Performance) as a result of such failure; and
- (ii) to receive Delay Payments pursuant to Clause A.1.4 Framework Agreement Schedule 4 – Annex 3 Alternative and Additional Call Off Contract Provisions (Delay Payments) where used to the extent that the Achievement of any Milestone is affected by the Force Majeure Event;
- b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Goods (or part of the Goods) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.
- 20.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract.
- 20.8 Relief from liability for the Affected Party under this Clause 20 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract and shall not be dependent on the serving of notice under Clause 20.7.

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

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

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

- 21.1.1 The Customer may terminate this Call Off Contract for material Default by issuing a Termination Notice to the Supplier where:
- a) The representation and warranty given by the Supplier pursuant to Clause 2.2.5 (Representations and Warranties) is materially untrue or misleading;
- b) As a result of any Defaults the Customer incurs losses in a Contract Year which exceeds 80% of the value of the Supplier's aggregate annual liability limit for that Contract year as set out in Clause 17;
- c) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of

the following Clauses A.1.2.3 where used, 4.5.2, 6.4, 9.5, 15.4.9, 30.6.2 and 38.2 where this is used

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

21.1.2 For the purpose of Clause 21.1.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

## **21.2 Termination Without Cause**

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

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

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

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

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

- a) the warranty given by the Supplier pursuant to Clause 2.2.5 is materially untrue; or
- b) the Supplier commits a material breach of its obligation to notify the Customer of any Occasion of Tax Non-Compliance as required by Clause 12; or
- c) the Supplier fails to provide details of proposed mitigating factors as required by Clause 12.1.2a) which in the reasonable opinion of the Customer, are acceptable.

## **22. SUPPLIER TERMINATION RIGHTS**

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

22.1.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call Off Contract if the Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract to the Supplier or any third party financier under any Financed Purchase Agreement which in aggregate exceeds a sum equal to fifty per cent (50%) of the Estimated Year 1 Call Off Contract Charges payable by the Customer to the Supplier and any sums payable by the Customer

to the Supplier or any third party financier under any Financed Purchase Agreement in that Call Off Contract Year (for the avoidance of doubt including Call Off Contracts with a duration of less than one year) and such amount remains outstanding forty (40) Working Days (the “**Undisputed Sums Time Period**”) after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

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

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 11.3 (Retention and Set off).

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

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

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

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

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

- 24.1 Where the Customer has the right to terminate this Call Off Contract, the Customer shall be entitled to terminate or suspend all or part of this Call Off Contract provided always that, if the Customer elects to terminate or suspend this Call Off Contract in part, the parts of this Call Off Contract not terminated or suspended can, in the Customer’s reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Call Off Contract.
- 24.2 Any suspension of this Call Off Contract under Clause 24.1 shall be for such period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.
- 24.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Goods and the Call Off Contract Charges, provided that the Supplier shall not be entitled:
- 24.3.1 to an increase in the Call Off Contract Charges in respect of the provision of the Goods that have not been terminated if the partial termination arises due to the exercise of any of the Customer’s

termination rights under Clause 21 (Customer Termination Rights) except Clause 21.2 (Termination Without Cause); or

24.3.2 to reject the Variation.

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

**25.1 Consequences of Termination under Clauses 21.1 (Termination on Material Default) where used, 21.3 (Termination in Relation to Framework Agreement) where used, 21.5 (Termination in Relation to Variation) where used, 21.4 (Termination in Relation to Tax Compliance) where used and Clauses A.3 Framework Agreement Schedule 4 – Annex 3 Alternative and Additional Call Off Contract Provisions (Termination in Relation to Financial Standing) and Clause D.3 (Termination in Relation to Guarantee) where used.**

25.1.1 Where the Customer:

- a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 25.1; and
- b) then makes other arrangements for the supply of the Goods, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period provided that Customer shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

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

25.2.1 Where:

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

the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 21.2 (Termination without Cause).

25.2.2 The Customer shall not be liable under Clause 25.2.1 to pay any sum which:

- a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has

failed to make a claim in accordance with the procedural requirements of the insurance policy; or

- b) when added to any sums paid or due to the Supplier under this Call Off Contract, exceeds the total sum that would have been payable to the Supplier if this Call Off Contract had not been terminated.

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

25.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause 23.1 (Termination for Continuing Force Majeure Event).

#### 25.4 **Consequences of Termination for Any Reason**

25.4.1 Save as otherwise expressly provided in this Call Off Contract:

- a) termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- b) termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 9 (Records, Audit Access & Open Book Data), 14 (Intellectual Property Rights), 15.4 (Confidentiality), 15.6 (Freedom of Information) **Error! Reference source not found.** (Data Protection), 17 (Liability), 25 (Consequences of Expiry or Termination), 31 (Severance), 33 (Entire Agreement), 34 (Third Party Rights) 36 (Dispute Resolution) and 37 (Governing Law and Jurisdiction), Annex 1 to the Terms & Conditions (Dispute Resolution Procedure), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing), where these are used, and, without limitation to the foregoing, any other provision of this Call off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

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

### **26. COMPLIANCE**

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

- 26.1.1 The Supplier shall perform its obligations under this Call Off Contract (including those in relation to the Goods) in accordance with:
- a) all applicable Law regarding health and safety; and
  - b) the Customer's health and safety policy (as provided to the Supplier from time to time) whilst at the Customer Premises.

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

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

26.2.1 The Supplier shall comply with the provisions of:

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

## **26.3 Environmental Requirements**

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

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

## **27. ASSIGNMENT AND NOVATION**

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

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

28.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 35 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Call Off Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of.

28.2 Unless otherwise provided in this Call Off Contract, rights and remedies under this Call Off Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

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

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

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

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

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

- 30.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 30.2 The Supplier shall not during the Call Off Contract Period:
  - 30.2.1 commit a Prohibited Act; and/or
  - 30.2.2 do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 30.3 The Supplier shall during the Call Off Contract Period:
  - 30.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 30.3.2 keep appropriate records of its compliance with its obligations under Clause 30.3.1 and make such records available to the Customer on request;
  - 30.3.3 if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Goods in connection with this Call Off Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
  - 30.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 30.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 30.1, or has reason to believe that it has or any of the Supplier Personnel have:
  - 30.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 30.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 30.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call Off Contract or otherwise suspects that any person or Party directly or indirectly connected with this Call Off Contract has committed or attempted to commit a Prohibited Act.
- 30.5 If the Supplier makes a notification to the Customer pursuant to Clause 30.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with Clause 9 (Records, Audit Access and Open Book Data).

- 30.6 If the Supplier breaches Clause 30.3, the Customer may by notice:
- 30.6.1 require the Supplier to remove from performance of this Call Off Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
  - 30.6.2 immediately terminate this Call Off Contract for material Default.
- 30.7 Any notice served by the Customer under Clause 30.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).

### **31. SEVERANCE**

- 31.1 If any provision of this Call Off Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of the Call Off Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call Off Contract shall not be affected.
- 31.2 In the event that any deemed deletion under Clause 31.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract or materially alters the balance of risks and rewards in this Call Off Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 31.3 If the Parties are unable to resolve the Dispute within twenty (20) Working Days of the date of the notice given pursuant to Clause 31.2, this Call Off Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Contract is terminated pursuant to this Clause 31.

### **32. FURTHER ASSURANCES**

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

### **33. ENTIRE AGREEMENT**

- 33.1 This Call Off Contract constitutes the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 33.2 Neither Party has been given, nor entered into this Call Off Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call Off Contract.
- 33.3 Nothing in this Clause 33 shall exclude any liability in respect of misrepresentations made fraudulently.

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

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

### 35. NOTICES

- 35.1 Except as otherwise expressly provided within this Call Off Contract, any notices sent under this Call Off Contract must be in writing. For the purpose of this Clause, an e-mail is accepted as being "in writing".
- 35.2 Subject to Clause 35.3, the following table sets out the method by which notices may be served under this Call Off Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 35.3 and 35.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 <sup>st</sup> Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

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

- 35.3.1 any Termination Notice (Clause 21),
- 35.3.2 any notice in respect of:
  - a) partial termination, suspension or partial suspension (Clause 24);
  - b) waiver (Clause 28);
  - c) Default or Customer Cause; and
- 35.3.3 any Dispute Notice.
- 35.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 35.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 35.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 35.5 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).
- 35.6 For the purposes of this Clause 35, the address and email address of each Party shall be the address and email address set out in the Order Form.

## **36. DISPUTE RESOLUTION**

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

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

- 37.1 This Call Off Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 37.2 Subject to Clause 36 (Dispute Resolution) and Annex 1 to these Call Off Terms (Dispute Resolution Procedure) (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.

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

### **1. DEFINITIONS**

In this Annex 1, the following definitions shall apply:

<b>“CEDR”</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>“Exception”</b>	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Goods;
<b>“Expert”</b>	the person appointed by the Parties in accordance with paragraph 5.2 of this Annex 1; and
<b>“Mediator”</b>	the independent third party appointed in accordance with paragraph 4.2 of this Annex 1.

### **2. INTRODUCTION**

- 2.1 If a Dispute arises then:
  - 2.1.1 the representative of the Customer and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
  - 2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.
- 2.2 The Dispute Notice shall set out:
  - 2.2.1 the material particulars of the Dispute;
  - 2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen;
  - 2.2.3 the names and contact details of the Parties' respective escalation points; and
  - 2.2.4 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6, the reason why.
- 2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Call Off Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.
- 2.4 Subject to paragraph 3.2, the Parties shall seek to resolve Disputes:
  - 2.4.1 first by commercial negotiation (as prescribed in paragraph 3);
  - 2.4.2 then by mediation (as prescribed in paragraph 4); and
  - 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6) or litigation (in accordance with Clause 37 (Governing Law and Jurisdiction)).

- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5) where specified under the provisions of this Call Off Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5.
- 2.6 In exceptional circumstances where the use of the times in this Annex 1 would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- 2.7.1 in paragraph 3.2.3 ten (10) Working Days;
- 2.7.2 in paragraph 4.2, ten (10) Working Days;
- 2.7.3 in paragraph 5.2, five (5) Working Days; and
- 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

### **3. COMMERCIAL NEGOTIATIONS**

- 3.1 Following the service of a Dispute Notice, the Customer and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Parties' respective escalation points as nominated in the Dispute Notice in accordance with paragraph 2.2.3.
- 3.2 If:
- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
- 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3; or
- 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 within thirty (30) Working Days of service of the Dispute Notice,
- either Party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with paragraph 4.

### **4. MEDIATION**

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

## **5. EXPERT DETERMINATION**

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

5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## 6. ARBITRATION

- 6.1 The Customer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 or be subject to the jurisdiction of the courts in accordance with Clause 37 (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 shall apply;
  - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 37 (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
  - 6.3.3 the Customer does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 or commence court proceedings in the courts in accordance with Clause 37 (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3, the Parties hereby confirm that:
- 6.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA") (subject to paragraphs 6.4.5, 6.4.6 and 6.4.7);
  - 6.4.2 the arbitration shall be administered by the LCIA;
  - 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - 6.4.5 the chair of the arbitral tribunal shall be British;

- 6.4.6 the arbitration proceedings shall take place in London and in the English language; and
- 6.4.7 the seat of the arbitration shall be London.

## **7. URGENT RELIEF**

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

## CALL OFF SCHEDULE 1: DEFINITIONS

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

<b>“Additional Clauses”</b>	means any of the alternative Clauses or additional Clauses and Schedules from Annex 3 of Framework Schedule 4 (Alternative and Additional Call Off Contract Provisions) selected by the Customer in the Order Form;
<b>"Affected Party"</b>	means the party seeking to claim relief in respect of a Force Majeure;
<b>“Affiliates”</b>	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Approval"</b>	means the prior written consent of the Customer and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>“Approved Sub-Licensee”</b>	means any of the following: <ul style="list-style-type: none"><li>a) a Central Government Body;</li><li>b) any third party providing services to a Central Government Body; and/or</li><li>c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;</li></ul>
<b>"Auditor"</b>	means: <ul style="list-style-type: none"><li>a) the Customer’s internal and external auditors;</li><li>b) the Customer’s statutory or regulatory auditors;</li><li>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office</li><li>d) HM Treasury or the Cabinet Office</li><li>e) any party formally appointed by the Customer to carry out audit or similar review functions; and</li><li>f) successors or assignees of any of the above;</li></ul>
<b>"Authority"</b>	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, on behalf of the Crown, whose offices are located at Rosebery Court, St Andrew’s Business Park, Norwich NR7 0HS;
<b>"Call Off Agreement"</b>	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Goods made between a Contracting Body

	and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Commencement Date"</b>	means the effective date of commencement of the Call Off Contract set out in the Order Form;
<b>"Call Off Contract"</b>	means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Order Form and the Call-Off Terms;
<b>"Call Off Contract Charges"</b>	means the prices (inclusive of any Milestone Payments and sums payable under any Financed Purchase Agreement between the Supplier and the Customer and exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract, as set out in the Order Form or , where used, Annex 1 of Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under the Call Off Contract less any Deductions;
<b>"Call Off Contract Period"</b>	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date, which shall in no event exceed a maximum duration of five (5) years including optional extension periods;
<b>"Call Off Contract Year"</b>	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof; except where the Call Off Contract Period is less than twelve (12) Months, in which case Call Off Contract Year shall mean from the Call Off Commencement Date to the end of the Call Off Contract Period
<b>"Call Off Expiry Date"</b>	means: <ul style="list-style-type: none"> <li>a) the end date of the Call Off Initial Period or any Call Off Extension Period; or</li> <li>b) if the Call Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call Off Contract;</li> </ul>
<b>"Call Off Extension Period"</b>	the extension term of this Call Off Contract from the end date of the Call Off Initial Period to the end date of the extension period stated in the Order Form;
<b>"Call Off Initial Period"</b>	the initial term of this Call Off Contract from the Call Off Commencement Date to the end date of the initial term stated in the Order Form;
<b>"Call Off Schedule"</b>	means a schedule to this Call Off Contract;
<b>"Call-Off Terms"</b>	means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Goods and/or Services, together with the Call Off Schedules hereto and Additional Clauses;
<b>"Central Government Body"</b>	means a body listed in one of the following sub-categories of the Central Government classification of the Public

Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- a) Government Department;
- b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- c) Non-Ministerial Department; or
- d) Executive Agency;

<b>"Change in Law"</b>	means any change in Law which impacts on the supply of the Goods and performance of the Call-Off Terms which comes into force after the Call Off Commencement Date;
<b>"Change of Control"</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	means the charges raised under or in connection with a Call-Off Agreement from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure;
<b>"Charging Structure"</b>	means the structure to be used in the establishment of the charging model which is applicable to each Call Off Agreement, which structure is set out in Framework Schedule 3 (Charging Structure);
<b>"Commercially Sensitive Information"</b>	means the Confidential information listed in the Order Form (if any) comprising of a commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Supply"</b>	means the supply of Goods to another customer of the Supplier that are the same or similar to the Goods;
<b>"Confidential Information"</b>	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
<b>"Contracting Body"</b>	means the Authority, the Customer and any other bodies listed in paragraph VI.3 of the OJEU Notice;
<b>"Control"</b>	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
<b>"Controller"</b>	takes the meaning given in the Data Protection Legislation
<b>"Conviction"</b>	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of

	Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;
<b>“Costs”</b>	means the direct buy-in price from an external supply chain for Lots 1, 2, 3, 4 or 6 or the cost of manufacture for Lot 5, and in both circumstances excludes the Supplier’s internal costs and overheads;
<b>"Crown"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>“Crown Body”</b>	means any department, office or executive agency of the Crown;
<b>“CRTPA”</b>	means the Contracts (Rights of Third Parties) Act 1999;
<b>"Customer"</b>	means the customer(s) identified in the Order Form;
<b>“Customer Assets”</b>	means the Customer’s infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the supply of the Goods and Services;
<b>"Customer Background IPR"</b>	means: <ul style="list-style-type: none"> <li>a) IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, processes and procedures;</li> <li>b) IPRs created by the Customer independently of this Call Off Contract; and/or</li> <li>c) Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract;</li> </ul> <p>licensed to the Supplier under the terms of this Call Off Contract and necessary for the performance of the Supplier’s obligations hereunder, but excluding IPRs owned by the Customer subsisting in the Customer Software;</p>
<b>“Customer Cause”</b>	means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Customer is liable to the Supplier;
<b>"Customer Data"</b>	means: <ul style="list-style-type: none"> <li>a) 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,</li> </ul>

optical or tangible media, including any Customer's Confidential Information, and which:

- i) are supplied to the Supplier by or on behalf of the Customer; or
- ii) the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or

b) any Personal Data for which the Customer is the Controller;

**"Customer Representative"**

means the representative appointed by the Customer from time to time in relation to the Call Off Contract;

**"Customer Responsibilities"**

means the responsibilities of the Customer set out in the Part B of Call Off Schedule A1 (Implementation Plan, Customer Responsibilities and Key Personnel) where used and any other responsibilities of the Customer in the Order Form or agreed in writing between the Parties from time to time in connection with this Call Off Contract;

**"Customer Software"**

means software which is owned by or licensed to the Customer other than software licensed to the Customer under this Call Off Contract and which is or will be used by the Supplier for the purposes of providing the Goods;

**"Customer Premises"**

means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-contractors for provision of the Goods (or any of them);

**"Customer Property"**

means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with this Call Off Contract;

**"Customer's Confidential Information"**

means:

- a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Customer (including all Customer Background IPR and Project Specific IPR);
- b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Customer's attention or into the Customer's possession in connection with this Call Off Contract; and
- c) information derived from any of the above;

**"Damaged"**

means Goods which contain a Defect;

**"Data Loss Event"**

any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Call-Off Contract, and/or actual or potential loss and/or

	destruction of Personal Data in breach of this Call-Off Contract, including any Personal Data Breach.
<b>“Data Protection Impact Assessment”</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>"Data Protection Legislation"</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time  (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy;  (iii) all applicable Law about the processing of personal data and privacy;
<b>“Data Protection Officer”</b>	takes the meaning given in the Data Protection Legislation
<b>"Data Subject"</b>	takes the meaning given in the Data Protection Legislation
<b>“Data Subject Access Request”</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>“Dead on Arrival/Installation” or “DOA” or “DOI”</b>	means once removed from its packaging at a customer’s premises, the delivered device fails to work in accordance with the manufacturer’s specification;
<b>“Deductions”</b>	all Delay Payments or any other deduction which the Customer is paid or is payable under this Call Off Contract;
<b>"Default"</b>	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;
<b>“Defect”</b>	means any of the following: <ul style="list-style-type: none"> <li>a) any error, damage or defect in the manufacturing or delivery of a Deliverable; or</li> <li>b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</li> <li>c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under the Call Off Contract; or</li> <li>d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation</li> </ul>

(including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract;

<b>"Deliverable"</b>	means an item or feature in the supply of the Goods delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan (if any) or at any other stage during the performance of this Call Off Contract;
<b>"Delivery"</b>	means, in respect of Goods, the time at which the Goods have been delivered as confirmed by the issue by the Customer of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Call Off Contract and accepted by the Customer and "Deliver" and "Delivered" shall be construed accordingly;
<b>"Disclosing Party"</b>	has the meaning given to it in Clause 15.4.1 (Confidentiality);
<b>"Dispute"</b>	any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>"Dispute Notice"</b>	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
<b>"Dispute Resolution Procedure"</b>	means the dispute resolution procedure set out in Clause 36 (Dispute Resolution Procedure);
<b>"Documentation"</b>	means all such documentation as: <ul style="list-style-type: none"><li>a) is required to be supplied by the Supplier to the Customer under this Call Off Contract;</li><li>b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Goods;</li><li>c) is required by the Supplier in order to provide the Goods; and/or</li><li>d) has been or shall be generated for the purpose of providing the Goods;</li></ul>
<b>"DOTAS"</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as

extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

<b>“DPA 2018”</b>	means the Data Protection Act 2018
<b>“End of Life”</b>	means the Goods are no longer being manufactured and there is insufficient stock of such Goods available in the supply chain to meet the full Customer requirement and/or Order.
<b>“Endemic Failure”</b>	means a failure rate equal to or above 300% the mean time to failure under Goods testing by the manufacturer;
<b>"Environmental Information Regulations or EIRs"</b>	means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Customer;
<b>“Environmental Policy”</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
<b>“Estimated Year 1 Call Off Contract Charges”</b>	means the sum specified in the Order Form as estimated by the Customer to be payable by it to the Supplier as the total aggregate Call Off Contract Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year;
<b>“ERG”</b>	means the Cabinet Office Efficiency and Reform Group;
<b>“Euro Compliant”</b>	means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Customer’s business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data): <ul style="list-style-type: none"><li>a) be able to perform all such functions in any number of currencies and/or in Euros;<ul style="list-style-type: none"><li>during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;</li></ul></li><li>b) recognise accept, display and print all the euro currency symbols and alphanumeric codes which</li></ul>

	<p>may be adopted by any government and other European Union body in relation to the euro;</p> <p>c) incorporate protocols for dealing with rounding and currency conversion;</p> <p>d) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and</p> <p>e) permit the input of data in euro and display an outcome in euro where such data, supporting the Customer's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;</p>
<b>"Expedited Dispute Timetable"</b>	means the timetable set out in paragraph 2.6 of Annex 1 to the Call Off Terms (Dispute Resolution Procedure);
<b>"Financed Purchase Agreement"</b>	means the financing arrangement in respect of the purchase of the Goods entered into by the Customer and the Supplier or a third party financier and included at Annex A of Call Off Schedule 2;
<b>"Financed Goods"</b>	means the Goods for which payment is subject to the Financed Purchase Agreement;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
<b>"Force Majeure"</b>	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <p>a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under the Call Off Contract;</p> <p>b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p> <p>c) acts of the Crown, local government or Regulatory Bodies;</p> <p>d) fire, flood or any disaster; and</p> <p>e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:</p> <p>i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and</p>

	<ul style="list-style-type: none"> <li>ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</li> <li>iii) any failure of delay caused by a lack of funds.</li> </ul>
<b>“Force Majeure Notice”</b>	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
<b>"Framework Agreement"</b>	means the framework agreement between the Authority and the Supplier referred to in the Order Form;
<b>“Framework Commencement Date”</b>	means the date of commencement of the Framework Agreement as stated in Framework Schedule 1 (Definitions);
<b>“Framework Period”</b>	means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;
<b>“Framework Price(s)”</b>	means the price(s) applicable to the provision of the Goods set out in Framework Schedule 3 (Charging Structure);
<b>“Framework Schedule”</b>	means a schedule to the Framework Agreement;
<b>"Fraud"</b>	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
<b>"Further Competition Procedure"</b>	means the award procedure described in paragraph 2 of Framework Schedule 5 (Call Off Procedure);
<b>“General Anti-Abuse Rule”</b>	means the legislation in Part 5 of the Finance Act 2013 and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>“GDPR”</b>	the General Data Protection Regulation (Regulation (EU) 2016/679)
<b>“General Change in Law”</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>“Goods”</b>	means the goods to be provided by the Supplier to the Customer as specified in in the Order Form, including Financed Goods;

<b>“Government”</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>“Halifax Abuse Principle”</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>“HMRC”</b>	means Her Majesty’s Revenue and Customs;
<b>"Holding Company"</b>	shall have the meaning given to it in section 1159 of the Companies Act 2006;
<b>“ICT Policy”</b>	means the Customer's ICT policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier before the Call Off Commencement Date), as updated from time to time in accordance with the Variation Procedure;
<b>“Impact Assessment”</b>	shall have the meaning given to it in Clause 10.1.3 where used;
<b>"Implementation Plan"</b>	means any implementation plan required by the Order Form, and to be set out in Part A of Call Off Schedule A1 (Implementation Plan, Customer Responsibilities and Key Personnel) where this is used;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>“Installation Works”</b>	shall mean all works which the Supplier is to carry out at the beginning of the Call Off Contract Period to install the Goods in accordance with the Order Form
<b>“Insolvency Event”</b>	means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable): <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> </ul>

- e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) where the Supplier or Framework Guarantor or Call Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction.

**"Intellectual Property Rights" or "IPR"**

means

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction.

**"IPR Claim"**

means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Goods or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of its obligations under this Call Off Contract;

**"Key Performance Indicators" or "KPIs"**

means the performance measurements and targets in respect of the Supplier's performance of the Framework Agreement set out in Part B of Framework Schedule 2 (Goods and Key Performance Indicators);

**"Key Personnel"**

means the individuals (if any) identified as such in the Order Form or Part C of Call Off Schedule A1 (Implementation Plan, Customer Responsibilities and Key Personnel) where this is used;

<b>“Key Roles”</b>	has the meaning given to it in Clause 4.1 in Part C of Call Off Schedule A1 (Implementation Plan, Customer Responsibilities and Key Personnel) where used;
<b>“Key Sub-Contract”</b>	means each Sub-Contract with a Key Sub-Contractor;
<b>“Key Sub-Contractor”</b>	means any Sub-Contractor: <ul style="list-style-type: none"> <li>a) listed in Framework Schedule 7 (Key Sub-Contractors);</li> <li>b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Goods;</li> </ul>
<b>"Know-How"</b>	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods but excluding know-how already in the other Party’s possession before the Call Off Commencement Date;
<b>"Law"</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
<b>“LED”</b>	Law Enforcement Directive (Directive (EU) 2016/680)
<b>“Licensed Software”</b>	means all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Customer for the purposes of or pursuant to this Call Off Contract, including any Supplier Software, Third Party Software, Open Source Software and/or any Specially Written Software;
<b>“Losses”</b>	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>“Loss”</b> shall be interpreted accordingly;
<b>"Malicious Software"</b>	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
<b>“Man Day”</b>	7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;

<b>“Man Hours”</b>	the hours spent by the Supplier Personnel properly working on the provision of the Goods including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<b>“Margin”</b>	means the percentage by which the price for Goods exceeds the Costs in relation to those Goods, excluding any other supply chain rebates and shipping/delivery;
<b>"Material Default"</b>	means: <ul style="list-style-type: none"> <li>a) a Critical Service Level Failure;</li> <li>b) a Supplier's failure to comply with the Rectification Plan Process;</li> <li>c) the representation and warranty given by the Supplier pursuant to Clause 2.2.5 (Representations and Warranties) being materially untrue or misleading;</li> <li>d) a breach by the Supplier referred to expressly by the term Material Default in this Call Off Contract including in any of the following Clauses: A.1.2.3 (Implementation Plan), 4.5.2 (Undelivered Goods and Services), 4.4.2 (Provision of the Goods and the Services), 6.4 (Disruption), 10.5 (Records, Audit Access and Open Book Data), 15.4 (Confidentiality), 30.6.2 (Prevention of Fraud and Bribery) and, where used, 38.2 (Installation Works);</li> <li>e) any material breach by the Supplier of this Call Off Contract under the Law including of the following Clauses and Call Off Schedules (where used): 19 (Promoting Tax Compliance), 15.6 (Freedom of Information), 15.7 (Data Protection), 45 (Compliance), Call Off Schedule B12 (Security Management);</li> <li>f) a breach which prevents the Customer from discharging a statutory duty.</li> </ul>
<b>"Month"</b>	means a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>“Occasion of Tax Non Compliance”</b>	means: <ul style="list-style-type: none"> <li>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of: <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax abuse principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax abuse principle;</li> <li>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the Disclosure of Tax Avoidance</li> </ul> </li> </ul>

Scheme or any equivalent or similar regime in any jurisdiction; and/or

- b) the Supplier's tax affairs give rise on or after 1 April 2013 to a conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a penalty for civil fraud or evasion;

**“Open Book Data”**

means complete and accurate financial information which is sufficient to enable the Customer to verify the Call Off Contract already paid or payable and Call Off Contract Charges forecast to be paid during the remainder of the Call Off Contract, including details and all assumptions relating to:

- a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- b) operating expenditure relating to the provision of the Goods and/or Services including an analysis showing:
  - i) the unit costs and quantity of consumables and bought-in services;
  - ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; and
  - iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin;
- c) Overheads;
- d) the Supplier Profit achieved over the Call Off Contract Period and on an annual basis;
- e) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier; and

an explanation of the type and value of risk and contingencies associated with the provision of the Goods, including the amount of money attributed to each risk and/or contingency.

**“Open Source Software”**

computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes;

**"Order"**

means the order for the provision of the Goods placed by the Customer with the Supplier in accordance with the

	Framework Agreement and under the terms of this Call Off Contract;
<b>"Order Form"</b>	means the form, as completed and forming part of this Call Off Contract, which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Goods to be supplied;
<b>"Other Supplier"</b>	any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
<b>"Over-Delivered Goods"</b>	has the meaning given to it in Clause 12;
<b>"Parent Company"</b>	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
<b>"Party"</b>	means the Customer or the Supplier and <b>"Parties"</b> shall mean both of them;
<b>"Personal Data"</b>	takes the meaning given in the Data Protection Legislation;
<b>"Personal Data Breach"</b>	takes the meaning given in the Data Protection Legislation
<b>"Processing"</b>	has the meaning given to "processing" under the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and <b>"Process"</b> and <b>"Processed"</b> shall be interpreted accordingly;
<b>"Processor"</b>	takes the meaning given in the Data Protection Legislation
<b>"Prohibited Act"</b>	means any of the following: <ul style="list-style-type: none"> <li>a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority or other Contracting Body or any other public body a financial or other advantage to: <ul style="list-style-type: none"> <li>i) induce that person to perform improperly a relevant function or activity; or</li> <li>ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</li> <li>c) committing any offence: <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)</li> </ul> </li> </ul>

- ii) under legislation or common law concerning fraudulent acts; or
- iii) defrauding, attempting to defraud or conspiring to defraud the Customer; or
- iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

**"Project Specific IPR"**

means:

- a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- b) IPR in or arising as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same;

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

**"Protective Measures"**

appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**"Recipient"**

has the meaning given to it in Clause 15.4.1 (Confidentiality);

**"Rectification Plan"**

means a plan to address the impact of, and prevent the reoccurrence of, a Default;

**"Rectification Plan Process"**

means the process set out in Clause 18.2 (Rectification Plan Process);

**"Registers"**

has the meaning given to in Call Off Schedule B7 (Exit Management) where used;

**"Regulations"**

means the Public Contracts Regulations 2006 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;

**"Related Supplier"**

means any person who provides goods and/or services to the Customer which are related to the Goods and/or Services from time to time;

**"Relevant Requirements"**

all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

<b>“Relevant Tax Authority”</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return;
<b>“Relief Notice”</b>	has the meaning given to it in Clause 19.1.2 (Supplier Relief Due to Customer Cause);
<b>"Replacement Goods "</b>	means any goods which are substantially similar to any of the Goods and which the Customer receives in substitution for any of the Goods following the Call Off Expiry Date, whether those goods are provided by the Customer internally and/or by any third party;
<b>"Replacement Supplier"</b>	means any third party provider of Replacement Goods appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Goods for its own account, shall also include the Customer;
<b>"Request for Information"</b>	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Goods or an apparent request for such information under the FOIA or the EIRs;
<b>"Security Management Plan"</b>	means the Supplier's security management plan prepared pursuant to paragraph 3 of Call Off Schedule B12 (Security Management), where this is used a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 3 of Call Off Schedule B12 (Security Management) and as updated from time to time;
<b>"Security Policy"</b>	the Customer's security policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>"Services"</b>	means the services to be provided by the Supplier to the Customer as specified in the Order Form;
<b>"Sites"</b>	means: <ul style="list-style-type: none"> <li>a) any premises (including the Customer Premises, the Supplier's premises or third party premises): <ul style="list-style-type: none"> <li>i) from, to or at which: <ul style="list-style-type: none"> <li>(1) the Goods are (or are to be) provided; or</li> <li>(2) the Supplier manages, organises or otherwise directs the provision of the Goods;</li> </ul> </li> </ul> </li> </ul>
<b>"Software"</b>	means Specially Written Software, Supplier Software, Open Source Software and Third Party Software;
<b>“Software Supporting Materials”</b>	has the meaning given to it in Clause 14.2.1b);
<b>“Source Code”</b>	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction,

	<p>maintenance, modification and enhancement of such software;</p>
<b>“Specially Written Software”</b>	<p>means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Call Off Contract;</p>
<b>“Specific Change in Law”</b>	<p>means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;</p>
<b>“Standards”</b>	<p>has the meaning of:</p> <ul style="list-style-type: none"> <li>a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>b) any standards detailed in the specification in Framework Schedule 2 (Goods and Key Performance Indicators);</li> <li>c) any standards detailed by the Customer in the Order Form following a Further Competition Procedure or agreed between the Parties from time to time;</li> <li>d) any relevant Government codes of practice and guidance applicable from time to time.</li> </ul>
<b>"Sub-Contract"</b>	<p>means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods or any part thereof or facilities, services necessary for the provision of the Goods or any part thereof or necessary for the management, direction or control of the provision of the Goods or any part thereof;</p>
<b>"Sub-Contractor"</b>	<p>means the third party from the list of key-subcontractors listed in Framework Schedule 7 (Key Sub-Contractors) or any third party engaged by the Supplier from time to time under a Sub-Contract permitted pursuant to the Framework Agreement and this Call Off Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;</p>
<b>“Sub-Processor”</b>	<p>any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract</p>
<b>"Supplier"</b>	<p>means the person, firm or company with whom the Customer enters into the Call Off Contract as identified in the Order Form;</p>

<b>“Supplier Assets”</b>	means all assets and rights used by the Supplier to provide the Goods in accordance with this Call Off Contract but excluding the Customer Assets;
<b>“Supplier Background IPR”</b>	means <ul style="list-style-type: none"> <li>a) Intellectual Property Rights owned by the Supplier before the Call Off Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</li> <li>b) Intellectual Property Rights created by the Supplier independently of this Call Off Contract,</li> </ul> for which the Customer requires a licence to realise the benefit of the Goods provided hereunder, but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;
<b>"Supplier Personnel"</b>	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Call Off Contract;
<b>“Supplier Non-Performance”</b>	has the meaning given to it in Clause 19.1 (Supplier Relief Due to Customer Cause);
<b>“Supplier Representative”</b>	means the representative appointed by the Supplier named in the Order Form;
<b>"Supplier Software"</b>	means any software which is proprietary to the Supplier (or an Affiliate of the Supplier) and identified as such in the Order Form together with all other such software which is not identified in the Order Form but which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Goods or is embedded in and in respect of such other software as required to be licensed in order for the Customer to receive the benefit of and/or make use of the Goods;
<b>"Supplier's Confidential Information"</b>	means <ul style="list-style-type: none"> <li>a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier;</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Call Off Contract;</li> <li>c) information derived from any of the above.</li> </ul>

<b>"Tender"</b>	means the tender submitted by the Supplier to the Authority which secured award of the Framework Agreement, as annexed to Framework Schedule 17;
<b>"Test Device"</b>	means a device provided by the Supplier to the Customer for the purposes of testing compatibility of the Goods with the Customer's IT infrastructure. The Test Device shall be an exact sample of the Goods specified in the Order Form;
<b>"Tests" and "Testing"</b>	means any tests required to be carried out pursuant to this Call Off Contract as set out in the Test Plan or Call Off Schedule B2 where used or elsewhere in the Call Off Contract and <b>"Test"</b> shall be construed accordingly;
<b>"Termination Notice"</b>	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Call Off Contract on a specified date and setting out the grounds for termination;
<b>"Third Party IPR"</b>	means Intellectual Property Rights owned by a third party and subsisting in Goods to be supplied hereunder but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
<b>"Third Party Software"</b>	means any software identified as such in the Order Form together with all other software which is not listed in the Order Form which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which is made available to the Customer in accordance with the terms of this Call Off Contract;
<b>"Undelivered Goods"</b> and <b>"Undelivered Services"</b>	shall have the meaning given in Clause 4.5
<b>"Undisputed Sums Time Period"</b>	has the meaning given in Clause 22.1.1 (Termination of Customer Cause for Failure to Pay);
<b>"Valid Invoice"</b>	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph 5 (Invoicing Procedure) of Call Off Schedule 2 (Call Off Contract Charges, Payment and Invoicing);
<b>"Variation"</b>	shall mean a change to the contract terms made in accordance with Clause 10.1 (Variation Procedure);
<b>"Variation Procedure"</b>	means the procedure set out in Clause 10.1 (Variation Procedure);
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Warranty Period"</b>	means, in relation to any Goods, the warranty period specified in the Order Form;
<b>"Working Day"</b>	means any Day other than a Saturday or Sunday or public holiday in England and Wales.

## **CALL OFF SCHEDULE 2: CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING**

### **1. GENERAL PROVISIONS**

- 1.1 This Call Off Schedule details:
  - 1.1.1 the Call-Off Contract Charges for the Goods under this Call Off Contract; and
  - 1.1.2 the payment terms/profile for the Call Off Contract Charges;
  - 1.1.3 the invoicing procedure; and
  - 1.1.4 the procedure applicable to any adjustments of the Call Off Contract Charges.

### **2. CALL OFF CONTRACT CHARGES**

- 2.1 The Call Off Contract Charges applicable to this Call Off Contract are set out in the Order Form.
- 2.2 The Supplier acknowledges and agrees that:
  - 2.2.1 In accordance with paragraph 2 of Framework Schedule 3 (Pricing Structure), the Call Off Contract Charges can in no event exceed the Framework Prices set out in Annex 2 to Framework Schedule 3 (Charging Structure); and
  - 2.2.2 subject to paragraph 6 of this Call Off Schedule 2 (Adjustment of Call Off Contract Charges), the Call Off Contract Charges cannot be increased during the Call Off Contract Period.

### **3. COSTS AND EXPENSES**

- 3.1 The Call Off Contract Charges include all costs and expenses relating to the Goods and/or the Supplier's performance of its obligations under this Call Off Contract and no further amounts shall be payable by the Customer to the Supplier in respect of such performance, including in respect of matters such as:
  - 3.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
  - 3.1.2 any amount for any services provided or costs incurred by the Supplier prior to the Call Off Commencement Date.

### **4. PAYMENT TERMS/PAYMENT PROFILE**

- 4.1 The payment terms/profile applicable to this Call Off Contract are set out in the Order Form.

### **5. INVOICING PROCEDURE**

- 5.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice,

submitted to the address specified by the Customer in the Order Form and in accordance with the provisions of this Call Off Contract.

- 5.2 The Customer shall pay all sums properly due and payable under any Financed Purchase Agreement in accordance with the terms of such Financed Purchase Agreement.
- 5.3 The Supplier shall ensure that each invoice (whether submitted electronically through a purchase-to-pay (P2P) automated system (or similar) or in a paper form, as the Customer may specify (but, in respect of paper form, subject to paragraph 4.3)):
  - 5.3.1 contains:
    - 5.3.1.1 all appropriate references, including the unique Order reference number as instructed in the Order Form; and
    - 5.3.1.2 a detailed breakdown of the Delivered Goods, including the Milestone(s) (if any) and any other charges, for example, Delivery, and Deliverable(s) within this Call-Off Contract to which the Delivered Goods relate, against the applicable due and payable Call Off Contract Charges; and
  - 5.3.2 shows separately:
    - 5.3.2.1 the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 11.2.1 and the tax point date relating to the rate of VAT shown; and
  - 5.3.3 is exclusive of any Management Charge (and the Supplier shall not attempt to increase the Call Off Contract Charges or otherwise recover from the Customer as a surcharge the Management Charge levied on it by the Authority); and
  - 5.3.4 it is supported by any other documentation reasonably required by the Customer to substantiate that the invoice is a Valid Invoice.
- 5.4 If the Customer is a Central Government Body, the Customer's right to request paper form invoicing shall be subject to procurement policy note 11/15 ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/437471/PPN\\_e-invoicing.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437471/PPN_e-invoicing.pdf)) in respect of the Customer's obligation to accept unstructured electronic invoices from the Supplier where and as required under that procurement policy note (as amended from time to time).
- 5.5 The Supplier shall accept the Government Procurement Card as a means of payment for the Goods where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.
- 5.6 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a valid invoice unless otherwise specified in this Call Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- 5.7 The Supplier shall submit invoices directly to the invoicing address specified in the Order Form:

## **6. ADJUSTMENT OF CALL OFF CONTRACT CHARGES**

- 6.1 The Call Off Contract Charges shall only be varied:
  - 6.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Call Off Contract Charges in accordance with Clause 10.2 of this Call Off Contract (Legislative Change); or
  - 6.1.2 in accordance with Clause 11.1.4 (Call Off Contract Charges and Payment) where all or part of the Call Off Contract Charges are reduced as a result of a reduction in the Framework Prices;

## **7. IMPLEMENTATION OF ADJUSTED CALL OFF CONTRACT CHARGES**

- 7.1 Variations in accordance with the provisions of this Call Off Schedule to all or part of the Call Off Contract Charges (as the case may be) shall be made by the Customer to take effect:
  - 7.1.1 in accordance with Clause 10.2 (Legislative Change) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.1.1 of this Call Off Schedule;
  - 7.1.2 in accordance with Clause 11.1.4 (Call Off Contract Charges and Payment) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.1.2 of this Call Off Schedule.
- 7.2 The Parties shall amend the Call Off Contract Charges shown in the Order form to reflect such variations.

## **ANNEX A – FINANCED PURCHASE AGREEMENT**

[Guidance Note: where used insert the Financed Purchase Agreement here]

**CALL OFF SCHEDULE 3: THIRD PARTY SOFTWARE AND MAINTENANCE AGREEMENTS**

This Call Off Schedule 3 incorporates or references the license terms and/or maintenance agreements applicable to the Third Party Software, as specified in the Order Form.

**1. THIRD PARTY SOFTWARE LICENSE(S)**

[Insert license terms or link to license terms here]

**2. THIRD PARTY MAINTENANCE AGREEMENT(S)**

[Insert maintenance agreement terms or link to maintenance agreement here]

## **CALL OFF SCHEDULE 4: SPECIFIC EXCLUSIONS FOR LOT 6 ORDERS**

### **1. GENERAL**

1.1 The following terms of this Call Off Contract (including any subclauses and subparagraphs) shall not apply to Lot 6.

- Clauses 4.2.3 to 4.2.7 inclusive
- Clauses 4.12 to 4.14 inclusive
- Clause 6
- Clause 13.3
- Clauses 14.2 to 14.5 inclusive
- Clause 18.2
- Clause 21.2
- Clause 24
- Clause 30.3

**CALL OFF SCHEDULE 5: SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

Description	Details
Subject matter of the processing	Software renewal      Support
Duration of the processing	15 April 2019 to 15 May 2020
Nature and purposes of the processing	N/A
Type of Personal Data	N/A
Categories of Data Subject	N/A
Plan for return or destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	N/A