

FRAMEWORK SCHEDULE 4 PART 2

DIRECT AWARD and SHORT FORM FURTHER COMPETITION CALL OFF TERMS

[GUIDANCE NOTE:

The parties' attention is drawn to the various customer guidance notes highlighted in GREEN

Before any Call Off Contract is entered, the Customer should ensure that they have read the customer guidance notes. Schedules that can be completed by the Customer for Direct Award and Short Form Further Competition have been appended to the appropriate Order Form.

The guidance is not exhaustive and has been included to assist the Customer in completing the required information with sufficient detail.

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TERMS AND CONDITIONS

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

1.1 In this Call Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions) or the relevant Call Off Schedule in which that capitalised expression appears.

1.2 If a capitalised expression does not have an interpretation in Call Off Schedule 1 (Definitions) or relevant Call Off Schedule, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.3 In this Call Off Contract, unless the context otherwise requires:

1.3.1 the singular includes the plural and vice versa;

1.3.2 reference to a gender includes the other gender and the neuter;

1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;

1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";

1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;

1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under this Call Off Contract;

1.3.8 references to "**Clauses**" and "**Call Off Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Call Off Contract and references in any Call Off Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Call Off Schedule in which these references appear; 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 and 1.6 (Definitions and Interpretation), in the event of and only to the extent of any conflict between the Order Form, the Call Off Terms and the provisions of the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- 1.4.1 the Framework Agreement, except Framework Schedule 15 (Tender);
- 1.4.2 the Order Form;
- 1.4.3 the Call Off Terms;
- 1.4.4 Supplier Call Off Solution or Service Offer (as applicable);
- 1.4.5 Framework Schedule 15 (Tender).

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

1.6 Where Framework Schedule 15 (Tender) contains provisions which are more favourable to the Customer in relation to this Call Off Contract or , following a Further Competition Procedure, the Supplier Call Off Solution contains provisions which are more favourable to the Customer in relation to the rest of this Call Off Contract, such provisions of the Tender and/or the Supplier Call Off Solution (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.

2. DUE DILIGENCE

2.1 Where the Customer has conducted a General Further Competition Procedure, the Supplier acknowledges that:

- 2.1.1 the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Call Off Contract;
- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Customer before the Call Off Commencement Date) of all relevant details relating to:
 - (a) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Call Off Commencement Date) future Operating Environment;
 - (b) the operating processes and procedures and the working methods of the Customer;
 - (c) the ownership, functionality, capacity, condition and suitability for use in the provision of the Services of the Customer Assets; and

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

3. REPRESENTATIONS AND WARRANTIES

3.1 Each Party represents and warranties that:

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

3.2 The Supplier represents and warrants that:

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 3.2.2 subject to any declarations made pursuant to Clause 2.1.4(b), it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call Off Contract;
 - 3.2.3 its execution, delivery and performance of its obligations under this Call Off Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
 - 3.2.4 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to the PQQ (if applicable), its Tender, its Call Off Solution (if applicable) and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract;
 - 3.2.5 as at the Call Off Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
 - 3.2.6 it has and shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Services by the Customer;
 - 3.2.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Contract; and
 - 3.2.8 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.
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.
- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

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

4. CALL OFF GUARANTEE

4.1 Only where the Customer has stipulated on the Order Form during a General Further Competition Procedure that the award of this Call Off Contract shall be conditional upon receipt of a Call Off Guarantee, then, on or prior to the Call Off Commencement Date, the Supplier shall deliver to the Customer:

4.1.1 an executed Call Off Guarantee from a Call Off Guarantor; and

4.1.2 a certified copy extract of the board minutes and/or resolution of the Call Off Guarantor approving the execution of the Call Off Guarantee.

4.2 The Customer may in its sole discretion at any time agree to waive compliance with the requirement in Clause 4.1 by giving the Supplier notice in writing.

B. DURATION OF CALL OFF CONTRACT

5. CALL OFF CONTRACT PERIOD

5.1 This Call Off Contract shall commence on the Call Off Commencement Date and shall expire either:

5.1.1 at the end of the Call Off Initial Period; or

5.1.2 where the Customer elects to extend the Call Off Initial Period in accordance with Clause 5.2 below, at the end of the Call Off Extension Period,

unless it is terminated earlier in accordance with the terms of this Call Off Contract or otherwise by operation of Law.

5.2 Where the Customer elects to extend the Call Off Initial Period, it shall give the Supplier no less than three (3) Months' written notice before the end of the Call Off Initial Period.

C. CALL OFF CONTRACT PERFORMANCE

6. IMPLEMENTATION PLAN

6.1 General

6.1.1 This Clause 6 applies only where the Customer has indicated in the Order Form (or elsewhere in this Call Off Contract) that an Implementation Plan shall be provided by the Supplier.

6.2 Formation of Implementation Plan

6.2.1 The Supplier's Implementation Plan must contain information at the level of detail necessary to manage the implementation stage effectively, and consistently with the Milestones. The Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.

- 6.2.2 The Supplier shall submit the draft Implementation Plan to the Customer for Approval (such decision of the Customer to Approve or not shall not be unreasonably delayed or withheld) within thirty (30) calendar days from the Call Off Commencement Date, or other such period as specified by the Customer in the Order Form.
- 6.2.3 The Supplier shall perform each of the Deliverables identified in the Order Form by the applicable Milestone Date assigned to that Deliverable.
- 6.2.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in this Call Off Contract and report to the Customer on such performance.

6.3 Control of Implementation Plan

- 6.3.1 Subject to Clause 6.3.2, the Supplier shall keep the Implementation Plan under review in accordance with the Customer's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Services. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 6.3.2 Changes to the Milestones (if any), Milestone Payments (if any) and Delay Payments (if any) shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- 6.3.3 Only where the Customer has stipulated on the Order Form during a General Further Competition Procedure that time in relation to compliance with a date, Milestone Date or period will be of the essence, failure of the Supplier to comply with such date, Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

6.4 Rectification of Delay in Implementation

- 6.4.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Call Off Contract:
 - (a) it shall:
 - (A) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and
 - (B) include in its notification an explanation of the actual or anticipated impact of the Delay; and
 - (C) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (D) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and

- (b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Implementation Plan, Clause 6.5 (Delay Payments) shall apply.

6.5 Delay Payments

- 6.5.1 If Delay Payments have been included as a requirement on the Order Form and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Customer such Delay Payments (calculated as set out in the Implementation Plan) and the following provisions shall apply:
- (a) the Supplier acknowledges and agrees that any Delay Payment is a genuine estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to Achieve the corresponding Milestone;
 - (b) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
 - (A) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 38 (Customer Termination Rights) except Clause 38.6 (Termination Without Cause); or
 - (B) the delay exceeds the period of one hundred (100) days commencing on the relevant Milestone Date;
 - (c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified in the Implementation Plan);
 - (d) no payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver complies with Clause 45 (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Customer's rights to claim Delay Payments; and
 - (e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 6.5.

7. SERVICES

7.1 Provision of the Services

- 7.1.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Call Off Contract.
- 7.1.2 The Supplier shall ensure that the Services:
- (a) comply in all respects with the description of the Services in Call Off Schedule 2 (Services) (or elsewhere in this Call Off Contract);
 - (b) are supplied in accordance with the provisions of this Call Off Contract ;

- (c) comply with the Tender; and
- (d) where they are PSN Services, comply with relevant PSN standards and processes, as described on the PSN website <https://www.gov.uk/government/groups/public-services-network> ("**PSN Standards**")
- (e) where HSCN Connectivity Services are provided, the Supplier shall comply with the HSCN obligations and processes described in the following documents on the HSCN website <https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers>
 - (A)** HSCN Compliance Operating Model
 - (B)** HSCN Obligations Framework
 - (C)** HSCN CN-SP Service Management Requirement Addendum
 - (D)** CN-SP Deed
 - (E)** HSCN Mandatory Supplemental Terms

7.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:

- (a) all applicable Law;
- (b) Good Industry Practice;
- (c) the Standards;
- (d) Call Off Contract Schedule 7 (Security);
- (e) the Quality Plans (if applicable);
- (f) the ICT Policy (if so required by the Customer); and
- (g) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 7.1.3(a) to 7.1.3(f).

7.1.4 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Call Off Contract;
- (b) subject to Clause 19.1 (Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (A)** the release of any new Supplier Software or upgrade to any Supplier Software complies with the interface requirements of the Customer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Customer three (3)

Months before the release of any new Supplier Software or Upgrade;

- (B)** all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (C)** any products or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Customer;
 - (D)** the Supplier System and Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer) and will be Euro Compliant; and
 - (E)** the Services are fully compatible with such elements of the Customer Software, Customer System, Customer Property or Customer Assets that are required for the delivery of the Services as described in the Order Form or otherwise used by the Supplier in connection with this Call Off Contract;
- (d) minimise any disruption to the Services, the ICT Environment and/or the Customer's operations when providing the Services;
 - (e) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the Call Off Expiry Date for any reason, to enable the timely transition of the Services (or any of them) to the Customer and/or to any Replacement Supplier;
 - (g) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
 - (h) provide the Customer with such assistance as the Customer may reasonably require during the Call Off Contract Period in respect of the supply of the Services;
 - (i) deliver the Services in a proportionate and efficient manner;
 - (j) ensure that neither it, nor any of its Affiliates, brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public

places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and

- (k) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.

7.1.5 Only where the Customer has stipulated such on the Order Form during a General Further Competition Procedure, the Supplier will act as an Agent of the Customer in accordance with the provisions of Call Off Schedule 10 (Agency Agreement).

7.2 Time of Delivery of the Services

7.2.1 The Supplier shall provide 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 6 (Implementation Plan) (if applicable).

7.3 Location and Manner of Delivery of the Services

7.3.1 Except where otherwise provided in this Call Off Contract, the Supplier shall provide the Services to the Customer through the Supplier Personnel at the Sites.

7.3.2 The Customer may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Customer Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.

7.4 Undelivered Services

7.4.1 In the event that any of the Services are not Delivered in accordance with Clauses 7.1 (Provision of the Services), 7.2 (Time of Delivery of the Services) and 7.3 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.

7.4.2 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 7.1, (Provision of the Services), 7.2 (Time of Delivery of the Services) and 7.3 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

7.5 Specially Written Software warranty

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

- (a) be fit for purpose and free from material design errors;

- (b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
- (c) not infringe any Intellectual Property Rights.

7.6 Obligation to Remedy of Default in the Supply of the Services

- 7.6.1 Subject to Clauses 30.9 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 7.4 (Undelivered Services) and 35 (Customer Remedies for Default), the Supplier shall, where practicable:
- (a) remedy any breach of its obligations in this Clause 7 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.

7.7 Continuing Obligation to Provide the Services

- 7.7.1 The Supplier shall continue to perform all of its obligations under this Call Off Contract and shall not suspend the provision of the Services, notwithstanding:
- (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
 - (b) the existence of an unresolved Dispute; and/or
 - (c) any failure by the Customer to pay any Call Off Contract Charges,
- unless the Supplier is entitled to terminate this Call Off Contract under Clause 39 (Supplier Termination Rights) for failure by the Customer to pay undisputed Call Off Contract Charges.

8. STANDARDS AND QUALITY

8.1 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.

8.2 Where the Customer has stipulated Quality Plans on the Order Form, the following provisions shall apply:

- 8.2.1 The Supplier shall:
- (a) develop, within thirty (30) Working Days of the Call Off Commencement Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**"); and

- (b) seek Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed) of the Quality Plans before implementing them. The Supplier acknowledges and accepts that Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Call Off Contract.

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

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

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

- 8.3.1 be appropriately experienced, qualified and trained to supply the Services in accordance with this Call Off Contract;
- 8.3.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Good and/or Services; and
- 8.3.3 obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Services to the reasonable satisfaction of the Customer.

9. TESTING

- 9.1 If required by the Customer on the Order Form, the Parties shall comply with any provisions set out in Call Off Schedule 4 (Testing).

10. SERVICE LEVELS AND SERVICE CREDITS

- 10.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).
- 10.2 The Supplier shall at all times during the Call Off Contract Period provide the Services to meet or exceed the Service Level Threshold for each Service Level Performance Criterion.
- 10.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to the rights set out in the provisions of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.
- 10.4 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to meet any Service Level Threshold.
- 10.5 A Service Credit shall be the Customer's exclusive financial remedy for a Service Level Failure except where:
 - 10.5.1 the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;

10.5.2 the Service Level Failure:

- (a) breaches the relevant Service Level Threshold;
- (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and
- (c) results in:
 - (A) the corruption or loss of any Customer Data (in which case the remedies under Clause 31.3 (Protection of Customer Data) shall also be available); and/or
 - (B) the Customer being required to make a compensation payment to one or more third parties; and/or

10.5.3 the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 38 (Customer Termination Rights) except Clause 38.6 (Termination Without Cause).

11. CRITICAL SERVICE LEVEL FAILURE

11.1 On the occurrence of a Critical Service Level Failure:

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

11.1.2 the Customer shall (subject to the Service Credit Cap set out in Clause 33.2 (Financial Limits)) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Call Off Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period ("Compensation for Critical Service Level Failure"), provided that the operation of this Clause 11.1 shall be without prejudice to the right of the Customer to terminate this Call Off Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.

11.2 The Supplier:

11.2.1 agrees that the application of Clause 11.1 is commercially justifiable where a Critical Service Level Failure occurs; and

11.2.2 acknowledges that it has taken legal advice on the application of Clause 11.1 and has had the opportunity to price for that risk when calculating the Call Off Contract Charges.

12. BUSINESS CONTINUITY AND DISASTER RECOVERY

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

13. DISRUPTION

13.1 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.

13.2 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.

13.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Call Off Contract.

13.4 If the Supplier's proposals referred to in Clause 13.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.

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

14. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

14.1 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 39 (Supplier Termination Rights)), the Supplier shall:

14.1.1 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.

15. CONTINUOUS IMPROVEMENT

15.1 This Clause 15 shall only apply if stipulated by the Customer as such on the Order Form during a General Further Competition Procedure.

15.2 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Services in accordance with this Clause 15 with a view to reducing the Customer's costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Customer. As part of this obligation the Supplier shall identify and report to the Customer once every twelve (12) months regarding:

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

- 15.2.2 new or potential improvements to the Services or the provision of the Services including in respect of the quality, responsiveness, procedures, benchmarking methods, ways of performing the Services and customer support services in relation to the Services;
 - 15.2.3 changes in business processes and working practices that would enable the Services to be provided at lower cost and/or with greater benefits to the Customer;
 - 15.2.4 changes to the ICT Environment, business processes and working practices that would enable reductions in the total energy consumed in the provision of the Services.
 - 15.2.5 improvements which the Supplier uses or is planning to use with its other Customers;
 - 15.2.6 proposals as to how any investment required for continuous improvement could be shared with other Customers of the Supplier;
 - 15.2.7 a zero usage report for the delivered services; and
 - 15.2.8 any variation in Charges and cost / benefit analysis of the potential improvements identified subject to this Clause 15.
- 15.3 The Supplier shall ensure that the information that it provides to the Customer shall be sufficient for the Customer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Customer requests.
- 15.4 If the Customer wishes to incorporate any improvement identified by the Supplier, including any impact on the Charges declared by the Supplier as part of that improvement, the Customer shall request a Variation in accordance with the Variation Procedure.
- 15.5 Notwithstanding anything to the contrary in this Call Off Contract, the Parties may not change or improve the Services in any way which adversely affects or may adversely affect any relevant PSN Standards or HSCN obligations and processes.

D. CALL OFF CONTRACT GOVERNANCE

16. PERFORMANCE MONITORING

- 16.1 Unless otherwise Approved or notified by the Customer, the Supplier shall comply with the monitoring requirements set out in Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).
- 16.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.

17. REPRESENTATIVES

- 17.1 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.

17.2 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 25 (Supplier Personnel).

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

18. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

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

18.2 The Supplier shall:

18.2.1 keep the records and accounts referred to in Clause 18.1 in accordance with Good Industry Practice and Law; and

18.2.2 afford any Auditor access to the records and accounts referred to in Clause 18.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 18.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call Off Contract Agreement including for the following purposes to:

- (a) verify the accuracy of the Call Off Contract Charges and any other amounts payable by the Customer under this Call Off Contract (and proposed or actual variations to them in accordance with this Call Off Contract);
- (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party Suppliers) in connection with the provision of the Services;
- (c) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- (d) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Framework Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to perform the Services;
- (f) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial,

judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

- (g) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Call Off Contract;
- (h) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;
- (i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
- (j) review any Performance Monitoring Reports provided under Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (k) verify the accuracy and completeness of any information delivered or required by this Call Off Contract;
- (l) inspect the ICT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (m) review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing (if applicable);
- (n) review the Supplier's quality management systems (including all relevant Quality Plans (if applicable) and any quality manuals and procedures);
- (o) review the Supplier's compliance with the Standards;
- (p) inspect the Customer Assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date;
- (q) review the integrity, confidentiality and security of the Customer Data; and/or
- (r) where indicated on the Customer's Order Form that the Customer requires Full Audit Transparency, Auditor access will also be afforded to verify the Open Book Data.

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

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

- 18.4.1 all reasonable information requested by the Customer within the scope of the audit;
 - 18.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 18.4.3 access to the Supplier Personnel.
- 18.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 18, 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.

19. CHANGE

19.1 Variation Procedure

- 19.1.1 Subject to the provisions of this Clause 19 and of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 19.1.2 A Party may request a Variation by completing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 19.1.3 The Customer may require the Supplier to carry out an impact assessment of the Variation on the Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:
 - (a) details of the impact of the proposed Variation on the Services and the Supplier's ability to meet its other obligations under this Call Off Contract;
 - (b) details of the cost of implementing the proposed Variation;
 - (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Call Off Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - (e) such other information as the Customer may reasonably request in (or in response to) the Variation request.
- 19.1.4 If the Supplier requires resources other than those ordinarily deployed in the provision of the Service in order to complete the Impact Assessment, the Supplier must bring this to the attention of the Customer prior to commencing the Impact Assessment. In such circumstances, if the Customer wishes the Impact Assessment to proceed, the Customer shall pay any reasonable costs incurred by the Supplier in producing the Impact

Assessment. For the avoidance of doubt, the Supplier will not be able to retrospectively recover costs incurred during the Impact Assessment that were not agreed by the Customer prior to the commencement of the Impact Assessment.

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

19.1.6 Subject to 19.1.5, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Order and the proposed Variation.

19.1.7 In the event that:

- (a) the Supplier is unable to agree to or provide the Variation; and/or
- (b) the Parties are unable to agree a change to the Call Off Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof,

the Customer may:

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

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

19.2 Legislative Change

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

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

19.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 19.2.1(b)), the Supplier shall:

- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:

- (A) whether any Variation is required to the provision of the Services, the Call Off Contract Charges or this Call Off Contract; and
- (B) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Thresholds; and
- (b) provide to the Customer with evidence:
 - (A) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (B) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (C) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 15 (Continuous Improvement), has been taken into account in amending the Call Off Contract Charges.

19.2.3 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 19.2.1(b)) shall be implemented in accordance with the Variation Procedure.

20. FINANCIAL DISTRESS

- 20.1 This Clause 20 applies only where the Customer has stipulated such on the Order Form during a General Further Competition Procedure.
- 20.2 The Parties shall comply with the provisions of Call Off Schedule 5 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

21. CALL OFF CONTRACT CHARGES AND PAYMENT

- 21.1 Call Off Contract Charges
 - 21.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Services, the Customer shall pay the undisputed Call Off Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).
 - 21.1.2 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 (Testing) (if applicable), 18 (Records, Audit Access and Open Book Data), 31.6 (Freedom of Information), 31.7 (Data Protection).
 - 21.1.3 If the Customer fails to pay any undisputed Call Off Contract Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue

amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

21.2 VAT

21.2.1 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.

21.2.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on or from the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 21.2 (VAT) shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

21.3 Retention and Set Off

21.3.1 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.

21.3.2 If the Customer wishes to exercise its right pursuant to Clause 21.3.1 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.

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

21.4 Euro

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

21.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 21.4.1 by the Supplier.

21.5 Income Tax and National Insurance Contributions

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

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

22. PROMOTING TAX COMPLIANCE

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

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

22.1.2 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.

23. BENCHMARKING

23.1 This Clause 23 applies only where the Customer has stipulated such on the Order Form during a General Further Competition Procedure.

23.2 The Parties shall comply with the provisions of Call Off Schedule 14 (Benchmarking).

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

24. KEY PERSONNEL

24.1 This Clause 24 applies only where the Customer has stipulated the use of Key Personnel as set out in Clause 24.8 or additionally in the Order Form.

24.2 The Parties have agreed to the appointment of the Key Personnel. The Order Form lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Call Off Commencement Date.

24.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Call Off Contract Period.

24.4 The Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person

selected to fill those Key Roles shall be included on the list of Key Personnel.

24.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Call Off Schedule 9 (Exit Management)) unless:

24.5.1 requested to do so by the Customer;

24.5.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;

24.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or

24.5.4 the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).

24.6 The Supplier shall:

24.6.1 notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);

24.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;

24.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;

24.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and

24.6.5 ensure that any replacement for a Key Role:

(a) has a level of qualifications and experience appropriate to the relevant Key Role; and

(b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

24.6.6 procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.

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

24.8 The following of Key Personnel and their Key Roles:

Key Role	Key Personnel Name	Key Personnel Telephone Number	Key Personnel eMail Address
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25. SUPPLIER PERSONNEL

25.1 Supplier Personnel

25.1.1 The Supplier shall:

- (a) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (A) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (B) are vetted in accordance with Good Industry Practice and, where applicable, Call Off Schedule 7 (Security) and the Standards; and
 - (C) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call Off Schedule 7 (Security);
- (c) retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Call Off Contract shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and

- (h) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.

25.1.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Call Off Contract, it may:

- (a) refuse admission to the relevant person(s) to the Customer Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

25.1.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

25.2 Relevant Convictions

25.2.1 The following provisions apply only where the Customer has stipulated that Relevant Conviction provisions are required on the Order Form during a General Further Competition Procedure:

- (a) The Supplier shall ensure that no person who discloses that they have a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Services without Approval.
- (b) For each member of Supplier Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):
 - (A) carry out a check with the records held by the Department for Education (DfE);
 - (B) conduct thorough questioning regarding any Relevant Convictions; and
 - (C) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.

26. SUPPLY CHAIN RIGHTS AND PROTECTION

26.1 Key Sub-Contractors

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

26.2 Retention of Legal Obligations

26.2.1 Notwithstanding the Supplier's right to sub-contract pursuant to Clause 22 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.

G. PROPERTY MATTERS

27. CUSTOMER PREMISES

27.1 Licence to occupy Customer Premises

27.1.1 Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Call Off Contract. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Call Off Contract and in accordance with Call Off Schedule 9 (Exit Management).

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

27.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2.1.3(a) (Due Diligence) and set out in the Order Form (or elsewhere in this Call Off Contract), should the Supplier require modifications to the Customer Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this Clause 27.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.

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

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

27.2 Security of Customer Premises

27.2.1 The Customer shall be responsible for maintaining the security of the Customer Premises. The Supplier shall comply with the

reasonable security requirements of the Customer while on the Customer Premises.

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

28. CUSTOMER PROPERTY

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

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

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

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

28.5 The Supplier shall maintain the Customer Property in good order and condition (excluding fair wear and tear) and shall use the Customer Property solely in connection with this Call Off Contract and for no other purpose without Approval.

28.6 The Supplier shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with Call Off Schedule 7 (Security) and the Customer's reasonable security requirements from time to time.

28.7 The Supplier shall be liable for all loss of, or damage to the Customer Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Customer Cause. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Customer Property.

29. SUPPLIER EQUIPMENT

29.1 Unless otherwise stated in the Order Form (or elsewhere in this Call Off Contract), the Supplier shall provide all the Supplier Equipment necessary for the provision of the Services.

29.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.

29.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs.

Likewise on the Call Off Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.

29.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Supplier's property located on Customer Premises which is due to the negligent act or omission of the Customer.

29.5 Subject to any express provision of the BCDR Plan (if applicable) to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Call Off Contract, including the Service Level Thresholds.

29.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.

29.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:

29.7.1 remove from the Customer Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Call Off Contract; and

29.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.

H. INTELLECTUAL PROPERTY AND INFORMATION

30. INTELLECTUAL PROPERTY RIGHTS

30.1 Allocation of title to IPR

30.1.1 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:

(A) in the Supplier Software;

(B) the Supplier Background IPR;

(C) in the Third Party Software;

(D) the Third Party IPR;

(E) in the Specially Written Software; and

(F) the Project Specific IPR.

(b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the:

(A) Customer Software;

(B) Customer Background IPR; and

(C) Customer Data.

30.1.2 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 30.1, 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).

30.1.3 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.

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

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

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

30.2.2 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.

30.2.3 The Supplier acknowledges and agrees that the ownership of the media referred to in Clause 30.2.2(b) shall vest in the Customer upon their receipt by the Customer.

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

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

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

30.4 **Customer's right to sub-licence**

30.4.1 The Customer shall be freely entitled to sub-license the rights granted to it pursuant to Clause 30.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR).

30.4.2 The Customer may sub-licence:

- (a) the rights granted under Clause 30.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (A) the sub-licence is on terms no broader than those granted to the Customer; and
 - (B) the sub-licence only authorises the third party to use the rights licenced in Clause 30.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and
- (b) the rights granted under Clause 30.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the 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.

30.5 **Customer's right to assign/novate licences**

30.5.1 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 30.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR); and

- (b) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 30.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to:
 - (A) a Central Government Body; or
 - (B) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.
- (c) Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 30.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 30.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR). If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 30.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and Clause 30.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR).
- (d) If a licence granted in Clause 30.2 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 30.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) is novated under Clause 30.5.1(b) or there is a change of the Customer's status pursuant to Clause 30.5.1(c) (both such bodies being referred to as the "**Transferee**"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

30.6 Third Party IPR and Third Party Software

- 30.6.1 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 30.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) and Clause 30.5.1(b) (Customer's right to assign/novate licences).
- 30.6.2 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.

30.7 Licence granted by the Customer

- 30.7.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call Off Contract Period to use the Customer Software, the Customer Background IPR and the Customer Data solely to the extent necessary for providing the Services in accordance with this Call Off Contract,

including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 31.4 (Confidentiality); and
- (b) the Supplier shall not without Approval, which the Customer shall have the sole and absolute right to grant or deny, use the licenced materials for any other purpose or for the benefit of any person other than the Customer.

30.8 Duration and Termination of licenses

30.8.1 The duration of licences granted by the Supplier to the Customer pursuant to Clauses 30.2.1 and 30.3.1 shall be either;

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

30.8.2 Subject to Clause 30.8.1(b), all licences granted pursuant to this Clause 30 (Intellectual Property Rights) (other than those granted pursuant to Clause 30.6.2 (Third Party IPR and Third Party Software) and 30.7.1 (Licence granted by the Customer)) shall survive the Call Off Expiry Date.

30.8.3 The Supplier shall, if requested by the Customer in accordance with Call Off Schedule 9 (Exit Management), grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPR, Third Party IPR and/or Third Party Software on terms equivalent to those set out in Clause 30.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

30.8.4 The licence granted pursuant to Clause 30.7.1 (Licence granted by the Customer) and any sub-licence granted by the Supplier in accordance with Clause 30.7.1 (Licence granted by the Customer) shall terminate automatically on the Call Off Expiry Date and the Supplier shall:

- (a) immediately cease all use of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be);
- (b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data, provided that if the Customer has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be); and

- (c) ensure, so far as reasonably practicable, that any Customer Software, Customer Background IPR and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Customer Software, Customer Background IPR and/or Customer Data.

30.9 IPR Indemnity

30.9.1 The Supplier shall at 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.

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

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

30.9.3 If the Supplier elects to procure a licence in accordance with Clause 30.9.2(a) or to modify or replace an item pursuant to Clause 30.9.2(b), but this has not avoided or resolved the IPR Claim, then:

- (A) the Customer may terminate this Call Off Contract by written notice with immediate effect; and
- (B) without prejudice to the indemnity set out in Clause 30.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute services including the additional costs of procuring, implementing and maintaining the substitute items.

30.9.4 The provisions of Clauses 30.9.1 to 30.9.3 (inclusive) shall not apply to the extent that any IPR Claim is caused by any use by or on behalf of the Customer of the Software in a manner not reasonably to be inferred from the description of the Services in Call Off Schedule 2 (Services) or the provisions of this Call Off Contract.

30.9.5 The Supplier shall promptly notify the Customer (in writing) of any IPR Claim.

30.9.6 The Customer shall:

- (a) notify the Supplier in writing of any IPR Claim of which it is aware;
- (b) allow (subject to Clause 30.9.7) the Supplier to conduct all negotiations and proceedings and provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and
- (c) not, without first consulting with the Supplier, make an admission relating to the IPR Claim.

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

31. SECURITY AND PROTECTION OF INFORMATION

31.1 Security Requirements

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

31.2 Malicious Software

31.2.1 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).

31.2.2 Notwithstanding Clause 31.2.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.

31.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 31.2.2 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 31.2.1) or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
- (b) by the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived the obligation set out in Clause 31.2.1) or the Customer Data (whilst the Customer Data was under the control of the Customer).

31.3 Protection of Customer Data

- 31.3.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 31.3.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call Off Contract or as otherwise Approved by the Customer.
- 31.3.3 To the extent that the Customer Data is held and/or processed by the Supplier:
- (a) the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified in this Call Off Contract and in any event as specified by the Customer from time to time in writing.
 - (b) the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
 - (c) the Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
 - (d) the Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the requirements of Call Off Schedule 7 (Security).
- 31.3.4 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 31.3.5 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Call Off Schedule 10 (Business Continuity and Disaster Recovery) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
 - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Call Off Schedule 8 (Business Continuity and Disaster Recovery)

31.4 Confidentiality

- 31.4.1 For the purposes of this Clause 31.4, the term “**Disclosing Party**” shall mean a Party which discloses or makes available

directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

31.4.2 Except to the extent set out in this Clause 31.4 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:

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

31.4.3 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 31.6 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (A) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;
 - (B) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Services provided under this Call Off Contract; or
 - (C) the conduct of a Central Government Body review in respect of this Call Off Contract; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

31.4.4 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.

31.4.5 Subject to Clauses 31.4.2 and 31.4.7, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:

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

31.4.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 31.4.5, 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.

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

- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 31.4.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Call Off Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer.

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

31.4.9 Nothing in this Clause 31.4 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a

disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

31.4.10 In the event that the Supplier fails to comply with Clauses 31.4.2 to 31.4.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

31.5 Transparency

31.5.1 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.

31.5.2 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.

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

31.6 Freedom of Information

31.6.1 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.

31.6.2 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.

31.7 Data Protection

- 31.7.1 "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 the Call Off Schedule of "Processing, Personal Data and Data Subjects" by the Customer and may not be determined by the Supplier.
- 31.7.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 31.7.3 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:
- 31.7.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 31.7.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 31.7.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 31.7.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 31.7.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract:
- 31.7.4.1 process that Personal Data only in accordance with the Call Off Schedule of "Processing, Personal Data and Data Subjects" 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;
 - 31.7.4.2 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:
 - 1. nature of the data to be protected;
 - 2. harm that might result from a Data Loss Event;
 - 3. state of technological development; and
 - 4. cost of implementing any measures;
 - 31.7.4.3 ensure that:
 - 1. the Supplier Personnel do not process Personal Data except in accordance with this Call-Off Contract (and in particular the Call Off Schedule of "Processing, Personal Data and Data Subjects";

2. 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

31.7.4.4 where specified by the Customer on a General Further Competition Order Form not process or otherwise transfer Personal Data in or to any country outside of the United Kingdom, in any case the Supplier shall 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:

1. the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
2. the Data Subject has enforceable rights and effective legal remedies;
3. 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
4. the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

31.7.4.5 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.

31.7.5 Subject to clause 31.7.6, the Supplier shall notify the Customer immediately if it:

- 31.7.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
- 31.7.5.2 receives a request to rectify, block or erase any Personal Data;
- 31.7.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 31.7.5.4 receives any communication from the Information Commissioner or any other regulatory Customer in connection with Personal Data processed under this Call-Off Contract;
- 31.7.5.5 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
- 31.7.5.6 becomes aware of a Data Loss Event.

31.7.6 The Supplier's obligation to notify under clause 31.7.5 shall include the provision of further information to the Customer in phases, as details become available.

- 31.7.7 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 31.7.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- 31.7.7.1 the Customer with full details and copies of the complaint, communication or request;
 - 31.7.7.2 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;
 - 31.7.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 31.7.7.4 assistance as requested by the Customer following any Data Loss Event;
 - 31.7.7.5 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.
- 31.7.8 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:
- 31.7.8.1 the Customer determines that the processing is not occasional;
 - 31.7.8.2 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
 - 31.7.8.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 31.7.9 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 31.7.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 31.7.11 Before allowing any Sub-processor to process any Personal Data related to this Call-Off Contract, the Supplier must:
- 31.7.11.1 notify the Customer in writing of the intended Sub-processor and processing;
 - 31.7.11.2 obtain the written consent of the Customer;
 - 31.7.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 31.7 such that they apply to the Sub-processor; and
 - 31.7.11.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 31.7.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 31.7.13 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).

31.7.14 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. "

32. PUBLICITY AND BRANDING

32.1 The Supplier shall not:

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

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

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

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

I. LIABILITY AND INSURANCE

33. LIABILITY

33.1 Unlimited Liability

33.1.1 Neither Party excludes or limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (b) bribery or Fraud by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be excluded or limited by Law.

33.2 Financial Limits

33.2.1 Subject to Clause 33.1 (Unlimited Liability), the Supplier's total aggregate liability:

(a) in respect of all:

(A) Service Credits; and

(B) Compensation for Critical Service Level Failure;

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

- (b) Subject to Clause 33.2.1 (c) 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, five hundred thousand pounds (£500,000);
 - (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 five hundred thousand pounds (£500,000) in each such Call Off Contract Year or a sum equal to one hundred and fifty percent (150%) 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 five hundred thousand pounds (£500,000) in each such Call Off Contract Year or a sum equal to one hundred and fifty percent (150%) 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,
- (c) The Supplier's liability in respect of any breach of its obligations under Clause 31.7 shall be limited to £17 million.

unless a different aggregate limit or percentage under this Clause (b) is stipulated by the Customer on the Order Form during a General Further Competition Procedure.

33.2.2 Subject to Clauses 33.1 (Unlimited Liability) and 33.2 (Financial Limits) and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses shall be limited to:

- (a) in relation to any Customer Causes occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, a sum equal to five hundred thousand pounds (£500,000);
- (b) in relation to any Customer Causes occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year;
- (c) in relation to any Customer Causes occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last

Call Off Contract Year commencing during the Call Off Contract Period; and

- (d) in relation to any termination subject to the consequences described in Clause 42.2.1, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract during the Call Off Contract Period.

33.3 Non-recoverable Losses

33.3.1 Subject to Clause 33.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:

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

33.4 Recoverable Losses

33.4.1 Subject to Clause 33.2 (Financial Limits), and notwithstanding Clause 33.3.1 (Non-recoverable Losses), the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

- (a) any reasonable additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the reasonable additional cost of procuring Replacement Services for the remainder of the Call Off Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Call Off Contract;
- (d) any compensation or interest paid to a third party by the Customer; and
- (e) any fine, penalty or costs incurred by the Customer pursuant to Law.

33.5 Miscellaneous

33.5.1 A Party shall not be responsible for any Loss under this Call Off Contract if and to the extent that it is caused by the default of the other (Default on the part of the Supplier and Customer Cause on the part of the Customer).

33.5.2 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.

33.5.3 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 33.2 (Financial Limits).

34. INSURANCE

- 34.1 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 23 (Insurance) of the Framework Agreement, the Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Framework Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract as the Customer may stipulate on the Order Form during a General Further Competition Procedure.
- 34.2 The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause 34.1 above for six (6) years after the Call Off Expiry Date.
- 34.3 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause 34.1 or at the Supplier's option a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 34.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause 34.1, the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 34.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 34.6 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

J. REMEDIES AND RELIEF

35. CUSTOMER REMEDIES FOR DEFAULT

35.1 Remedies

35.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising (including under Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 10.5 (Service Levels and Service Credits) and 6.5.1(b) (Delay Payments), if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:

- (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any

damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Customer's instructions;

- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Call Off Contract;
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (A) instruct the Supplier to comply with the Rectification Plan Process;
 - (B) suspend this Call Off Contract (whereupon the relevant provisions of Clause 41 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
 - (C) without terminating or suspending the whole of this Call Off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 41 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Good and/or Services;

35.1.2 Where the Customer exercises any of its step-in rights under Clauses 35.1.1(c)(B) or 35.1.1(c)(C), the Customer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

35.2 Rectification Plan Process

35.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 35.1.1(c)(A):

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

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

35.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of Call Off Schedule 11 (Dispute Resolution Procedure).

35.2.3 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.

35.2.4 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.

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

36. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

36.1 If the Supplier has failed to:

- 36.1.1 Achieve a Milestone by its Milestone Date;
 - 36.1.2 provide the Services in accordance with the Service Levels;
 - 36.1.3 comply with its obligations under this Call Off Contract,
- (each a "Supplier Non-Performance"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 14 (Supplier Notification of Customer Cause)):

- (a) the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (b) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 38 (Customer Termination Rights) except Clause 38.6 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
 - (B) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;
 - (C) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and/or
- (d) where the Supplier Non-Performance constitutes a Service Level Failure:
 - (A) the Supplier shall not be liable to accrue Service Credits;
 - (B) the Customer shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 11 (Critical Service Level Failure); and
 - (C) the Supplier shall be entitled to invoice for the Call Off Contract Charges for the provision of the relevant Services affected by the Customer Cause,
 - (D) in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Customer Cause.

36.2 In order to claim any of the rights and/or relief referred to in Clause 36.1, the Supplier shall:

36.2.1 comply with its obligations under Clause 14 (Notification of Customer Cause); and

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

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

(c) the relief claimed by the Supplier.

36.3 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.

36.4 Without prejudice to Clauses 7.7 (Continuing obligation to provide the Services):

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

36.4.2 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.

36.5 Any Variation that is required to the Implementation Plan or to the Call Off Contract Charges pursuant to this Clause 36 shall be implemented in accordance with the Variation Procedure.

37. FORCE MAJEURE

37.1 Subject to the remainder of this Clause 37 (and, in relation to the Supplier, subject to its compliance with its obligations in Clause 12 (Business Continuity and Disaster Recovery)), a Party may claim relief under this Clause 37 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.

37.2 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.

37.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 37 to the extent that consequences of the relevant Force Majeure Event:

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

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

37.4 Subject to Clause 37.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps

should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

37.5 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.

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

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

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

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

- (a) the Customer shall not be entitled:
 - (A)** during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 35.1.1(b) and 35.1.1(c) (Customer Remedies for Default) as a result of such failure;
 - (B)** to receive Delay Payments pursuant to Clause 6.5.1 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (C)** to receive Service Credits or withhold and retain any of the Call Off Contract Charges as Compensation for Critical Service Level Failure pursuant to Clause 11 (Critical Service Level Failure) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; and
- (b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.

37.7 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.

37.8 Relief from liability for the Affected Party under this Clause 37 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 37.7.

K. TERMINATION AND EXIT MANAGEMENT

38. CUSTOMER TERMINATION RIGHTS

38.1 Termination in Relation to Guarantee

38.1.1 Where the Supplier has procured a Call Off Guarantee pursuant to Clause 4 (Call Off Guarantee), the Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where:

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

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

38.2 Termination on Material Default

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

- (a) the Supplier commits a Critical Service Level Failure;
- (b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading;
- (c) the Call Off Contract was entered into by way of a Direct Award and such Direct Award was concluded on the basis of an Invalid Service Offer;
- (d) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed eighty per cent (80%) of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clauses 33.2.1(a) and 33.2.1(b) (Liability);
- (e) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: 6.3.3 (Implementation Plan), 7.4.2 (Provision of Services), 11.1 (Critical Service Level Failure), 13.4 (Disruption), 18.5 (Records, Audit Access and Open Book Data), 23 (Benchmarking), 31.4.10 (Confidentiality), 47.6.2 (Prevention of Fraud and Bribery);
- (f) 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
- (g) 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;

38.2.2 For the purpose of Clause 38.2.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

38.3 Termination in Relation to Financial Standing

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

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

38.4 Termination on Insolvency

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

38.5 Termination on Change of Control

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

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

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

38.6 Termination Without Cause

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

38.7 Termination in Relation to Framework Agreement

38.7.1 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.

38.8 Termination In Relation to Benchmarking

38.8.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations pursuant to Clause 23 (Benchmarking).

38.9 Termination in Relation to Variation

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

38.10 Termination in Relation to Promoting Tax Compliance

38.10.1 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 6.2.6 of the Framework Agreement is materially untrue; or
- (b) the Supplier commits a material breach of its obligation to notify the Customer of any Occasion of Tax Non-Compliance as required by Clause 23; or
- (c) the Supplier fails to provide details of proposed mitigating factors as required by Clause 22.1.2 (a) which in the reasonable opinion of the Customer, are acceptable

39. SUPPLIER TERMINATION RIGHTS

39.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call Off Contract if the Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract which in aggregate exceeds five thousand pounds (£5,000) and such amount remains outstanding forty (40) Working Days (the “**Undisputed Sums Time Period**”) after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

39.1.1 the Customer's failure to pay; and

39.1.2 the correct overdue and undisputed sum; and

39.1.3 the reasons why the undisputed sum is due; and

39.1.4 the requirement on the Customer to remedy the failure to pay; and

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 21.3 (Retention and Set off).

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

40. TERMINATION BY EITHER PARTY

40.1 Termination for continuing Force Majeure Event

40.1.1 Either Party may, by issuing a Termination Notice to the other Party terminate this Call Off Contract if, in accordance with Clause 37.6.1(a) (Force Majeure).

41. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

41.1 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.

41.2 Any suspension of this Call Off Contract under Clause 41.1 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.

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

41.3.1 an increase in the Call Off Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 38 (Customer Termination Rights) except Clause 38.6 (Termination Without Cause); and

41.3.2 reject the Variation.

42. CONSEQUENCES OF EXPIRY OR TERMINATION

42.1 **Consequences of termination under Clauses [38.1 (Termination in Relation to Guarantee),] 38.2 (Termination on Material Default), 38.3 (Termination in Relation to Financial Standing) 38.8 and 41.8 (Termination in Relation to Benchmarking)**

42.1.1 Where the Customer:

(a) terminates (in whole or in part) this Call Off Contract under any of the Clauses 38.1 (Termination in Relation to Guarantee), 38.2 (Termination on Material Default), 38.3 (Termination in Relation to Financial Standing) and 41.8 (Termination in Relation to Benchmarking); and

(b) then makes other arrangements for the supply of the Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period provided that Customer shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

42.2 Consequences of termination under Clauses 41.5 (Termination on Change of Control) 38.6 (Termination without Cause), 38.7 (Termination in Relation to Framework Agreement), 38.9 (Termination in Relation to Variation) and Clause 39 (Supplier Termination Rights).

42.2.1 Where:

- (a) the Customer terminates (in whole or in part) this Call Off Contract under Clauses 41.5 (Termination on Change of Control), 38.6 (Termination without Cause), 38.7 (Termination in Relation to Framework Agreement) and 38.9 (Termination in Relation to Variation); or
- (b) the Supplier terminates this Call Off Contract pursuant to Clause 39 (Supplier Termination Rights),

the Customer shall, subject to Clause 32.2.2(d), indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 38.6 (Termination without Cause).

42.2.2 The Customer shall not be liable under Clause 42.2.1 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.

42.3 Consequences of termination under Clause 40.1 (Termination for Continuing Force Majeure Event)

42.3.1 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 40.1 (Termination for Continuing Force Majeure Event).

42.4 Consequences of Termination for Any Reason

42.4.1 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 18 (Records, Audit Access & Open

Book Data), 30 (Intellectual Property Rights), 31.4 (Security and Protection of Information), , 33 (Liability), 37 (Insurance) 42 (Consequences of Expiry or Termination), 48 (Waiver and Cumulative Remedies) 48 (Severance), 50 (Entire Agreement), 51 (Third Party Rights), 55 (Notices), 54 (Dispute Resolution) and 55 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), Call Off Schedule 9 (Exit Management), Call Off Schedule 11 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

42.5 Exit management

- 42.5.1 Unless otherwise specified by the Customer on the Order Form during a further competition, the Parties shall comply with the exit management provisions set out in Call Off Schedule 9 (Exit Management) only where the total contract value is expected to exceed five hundred thousand pounds (£500,000) during the Call Off Contract Period.

L. MISCELLANEOUS AND GOVERNING LAW

43. COMPLIANCE

43.1 Health and Safety

- 43.1.1 The Supplier shall perform its obligations under this Call Off Contract (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Customer's health and safety policy (as provided to the Supplier from time to time) whilst at the Customer Premises.
- 43.1.2 Each Party shall promptly notify the other as soon as possible of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Call Off Contract
- 43.1.3 While on the Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Personnel and other persons working there and any instructions from the Customer on any necessary associated safety measures.

43.2 Equality and Diversity

- 43.2.1 The Supplier shall:
- (a) perform its obligations under this Call Off Contract (including those in relation to provision of the Services) in accordance with:
 - (A)** all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability,

sexual orientation, pregnancy, maternity, age or otherwise); and

(B) any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law;

(b) take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

43.3 Official Secrets Act and Finance Act

43.3.1 The Supplier shall comply with the provisions of:

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

43.4 Environmental Requirements

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

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

44. ASSIGNMENT AND NOVATION

44.1 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.

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

44.2.1 any other Contracting Body; or

44.2.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

44.2.3 any private sector body which substantially performs the functions of the Customer,

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 44.2.

44.3 A change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 44.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.

44.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a body which is not a Contracting Body or if a body which is not a Contracting Body succeeds the Customer (both "**Transferee**" in the rest of this Clause) the right of termination of the Customer in Clause 38.4 (Termination on

Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in Clause 38.4 (Termination on Insolvency) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee).

45. WAIVER AND CUMULATIVE REMEDIES

45.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 52 (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.

45.2 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.

46. RELATIONSHIP OF THE PARTIES

46.1 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.

47. PREVENTION OF FRAUD AND BRIBERY

47.1 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:

47.1.1 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

47.1.2 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.

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

47.2.1 commit a Prohibited Act; and/or

47.2.2 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.

47.3 The Supplier shall during the Call Off Contract Period:

47.3.1 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;

- 47.3.2 keep appropriate records of its compliance with its obligations under Clause 47.3.1 and make such records available to the Customer on request;
 - 47.3.3 if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Call Off Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
 - 47.3.4 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.
- 47.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 47.1, or has reason to believe that it has or any of the Supplier Personnel have:
- 47.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 47.4.2 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
 - 47.4.3 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.
- 47.5 If the Supplier makes a notification to the Customer pursuant to Clause 47.4, 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 18 (Records, Audit Access and Open Book Data).
- 47.6 If the Supplier breaches Clause 47.3, the Customer may by notice:
- 47.6.1 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
 - 47.6.2 immediately terminate this Call Off Contract for material Default.
- 47.7 Any notice served by the Customer under Clause 47.4 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).

48. SEVERANCE

- 48.1 If any provision of this Call Off Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure

that the remaining provisions of this Call Off Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call Off Contract shall not be affected.

48.2 In the event that any deemed deletion under Clause 48.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract or materially alters the balance of risks and rewards in this Call Off Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

48.3 If the Parties are unable to resolve the Dispute arising under this Clause 48 within twenty (20) Working Days of the date of the notice given pursuant to Clause 48.2, 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 48.

49. FURTHER ASSURANCES

49.1 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.

50. ENTIRE AGREEMENT

50.1 This Call Off Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

50.2 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.

50.3 Nothing in this Clause 50 shall exclude any liability in respect of misrepresentations made fraudulently.

51. THIRD PARTY RIGHTS

51.1 The provisions of paragraph 9.9 of Schedule 9 (Exit Management) (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

51.2 Subject to Clause 51.1, a person who is not a Party to this Call Off Contract has no right under the CRTPA to enforce any term of this Call Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

51.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.

51.4 Any amendments or modifications to this Call Off Contract may be made, and any rights created under Clause 51.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

52. NOTICES

52.1 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 52, an e-mail is accepted as being "in writing".

52.2 Subject to Clause 52.3, 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 52.3 and 52.4)	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 st 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

52.3 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™ 1st Class or other prepaid in the manner set out in the table in Clause 52.2:

52.3.1 any Termination Notice (Clause 38 (Customer Termination Rights)),

52.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 41 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 45 (Waiver and Cumulative Remedies))
- (c) Default or Customer Cause; and

52.3.3 any Dispute Notice.

52.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 52.3 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 52.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

52.5 This Clause 52 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).

52.6 For the purposes of this Clause 52, the address and email address of each Party shall be the address and email address set out in the Order Form.

53. COMPLAINT HANDLING PROCEDURE

53.1 Complaints raised by the Customer must be managed in accordance with this Clause 53.

53.2 If the Customer wishes to raise a complaint, the Customer must write to the following person:

53.2.1 Name:

53.2.2 Telephone Number:

53.2.3 Email Address:

53.2.4 Postal address:

or as communicated to the Customer in writing by the Supplier from time-to-time.

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

53.4 The Supplier shall send a progress report to the Customer in accordance with the timescales for resolution issued pursuant to Clause 53.3. Updates are to be in line with the Milestones detailed for the complaint resolution.

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

54. DISPUTE RESOLUTION

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

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

55. GOVERNING LAW AND JURISDICTION

55.1 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.

55.2 Subject to Clause 54 (Dispute Resolution) and Call Off Schedule 11 (Dispute Resolution Procedure) (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.

CALL OFF SCHEDULE 1: DEFINITIONS

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

"Achieve"	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Strategy Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "Achieved" and "Achievement" shall be construed accordingly;
"Achieved Service Level"	means the actual level of performance of a Service achieved by the Supplier in relation to a Service Level Performance Criteria for a Service Period;
"Acquired Rights Directive"	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Additional Clauses"	means the additional Clauses in Call Off Schedule 13 (Alternative and/or Additional Clauses) and any other additional Clauses stipulated by the Customer during a General Further Competition Procedure and set out in the Order Form or elsewhere in this Call Off Contract;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Agreed Service Time"	means the period during which the Supplier ensures the Services are Available to the Customer;
"Agency Services"	has the meaning given to it in Framework Schedule 2 (Services and Key Performance Indicators)
"Alternative Clauses"	means the alternative Clauses in Call Off Schedule 13 (Alternative and/or Additional Clauses) and any other alternative Clauses stipulated by the Customer during a General Further Competition Procedure and set out in the Order Form or elsewhere in this Call Off Contract;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Approved Sub-Licensee"	means any of the following: a Central Government Body; any third party providing services to a Central Government Body; and/or any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the

	Customer;
"Auditor"	<p>means:</p> <p>the Customer's internal and external auditors;</p> <p>the Customer's statutory or regulatory auditors;</p> <p>the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office</p> <p>HM Treasury or the Cabinet Office;</p> <p>any party formally appointed by the Customer to carry out audit or similar review functions; and</p> <p>successors or assigns of any of the above;</p>
"Available"	a Service shall be "Available" when the Customer's end users are able to access and use all its functions at a level that enables them to carry out their normal duties. Availability shall be construed accordingly;
"Authority"	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
"BCDR Services"	means the Business Continuity Services and Disaster Recovery Services as defined in Call Off Schedule 8 (Business Continuity and Disaster Recovery);
"BCDR Plan"	means the Supplier's plan relating to business continuity and disaster recovery as referred to in Clause 12 (Business Continuity and Disaster Recovery) and Call Off Schedule 8 (Business Continuity and Disaster Recovery);
"Call Off Agreement"	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
"Call Off Commencement Date"	means the date of commencement of this Call Off Contract as set out in the Order Form;
"Call Off Contract"	means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Order Form and the Call Off Terms;
"Call Off Contract Charges"	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract, as set out in Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Call Off Contract less any Deductions;
"Call Off Contract Period"	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date or date of earlier termination; and in no event exceed a maximum

	duration of seven (7) years;
"Call Off Contract Year"	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;
"Call Off Expiry Date"	means: the end date of the Call Off Initial Period unless the right to extend is exercised pursuant to Clause 5 (Call Off Contract Period) in which case it means the end date of the Call Off Extension Period; or if this Call Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call Off Contract;
"Call Off Extension Period"	means the extension period as stated in the Order Form which shall not, in any event, exceed two (2) years in total;
"Call Off Guarantee"	means a deed of guarantee in favour of the Customer in the form set out by the Customer or in the form set out in Framework Schedule 11 (Template Guarantee) granted pursuant to Clause 4 (Call Off Guarantee);
"Call Off Guarantor"	means the person acceptable to the Customer to give a Call Off Guarantee;
"Call Off Initial Period"	means 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;
"Call Off Schedule"	means a schedule to this Call Off Contract;
"Call Off Terms"	means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Services, together with the Call Off Schedules hereto;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: Government Department; Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Agency;
"Change in Law"	means any change in Law which impacts on the supply of the Services and performance of the Call Off Terms which comes into force after the Call Off Commencement Date;
"Change of Control"	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Commercially Sensitive Information"	means the Confidential information listed in the Order Form (if any) comprising of a commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant

	commercial disadvantage or material financial loss;
"Comparable Supply"	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
"Compensation for Critical Service Level Failure"	has the meaning given to it in Clause 11.1.2 (Critical Service Level Failure);
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
"Continuous Improvement Plan"	means a plan for improving the provision of the Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);
"Contracting Body"	means the Authority, the Customer and any other bodies listed in paragraph VI.3 of the OJEU Notice;
"Control"	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
"Controller"	means takes the meaning given in the Data Protection Legislation.
"Conviction"	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;
"Costs"	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <p>the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:</p> <p>base salary paid to the Supplier Personnel;</p> <p>employer's national insurance contributions;</p> <p>pension contributions;</p> <p>car allowances;</p> <p>any other contractual employment benefits;</p> <p>staff training;</p> <p>work place accommodation;</p> <p>work place IT equipment and tools reasonably necessary to</p>

	<p>provide the Services (but not including items included within limb (b) below); and</p> <p>reasonable recruitment costs, as agreed with the Customer;</p> <p>costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Customer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services;</p> <p>but excluding:</p> <p>Overhead;</p> <p>financing or similar costs;</p> <p>maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Call Off Contract Period whether in relation to Supplier Assets or otherwise;</p> <p>taxation;</p> <p>finances and penalties;</p> <p>amounts payable under Clause 23 (Benchmarking); and</p> <p>non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
"Critical Service Level Failure"	means any instance of critical service level failure specified in Annex 2 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown Body"	means any department, office or executive agency of the Crown;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Customer"	means the customer(s) identified in the Order Form;
"Customer Assets"	means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Services;

"Customer Background IPR"

means:

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;

IPRs created by the Customer independently of this Call Off Contract; and/or

Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract;

but excluding IPRs owned by the Customer subsisting in the Customer Software;

"Customer Cause"

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;

"Customer Data"

means:

the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which:

are supplied to the Supplier by or on behalf of the Customer; or

the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or

any Personal Data for which the Customer is the Controller;

"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 Services (or any of them);

"Customer Property"

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

"Customer Representative"

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

"Customer Responsibilities"

means the responsibilities of the Customer in the Order Form or agreed in writing between the Parties from time to time in connection with this Call Off Contract;

"Customer Software"

means any software identified as such in the Order Form together with all other software which is not identified as such in the Order Form but which is owned by or licensed to the Customer and which is or will be used by the Supplier for the purposes of providing the Services;

"Customer System"	means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Call Off Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the Services;
"Customer's Confidential Information"	<p>means:</p> <p>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);</p> <p>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</p> <p>information derived from any of the above;</p>
"Data Loss Event"	means: 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.
"Data Protection Legislation"	means: (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;
"Data Protection Impact Assessment"	means: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
"Data Protection Officer"	means: takes the meaning given in the Data Protection Legislation
"Data Subject"	means: takes the meaning given in the Data Protection Legislation
"Data Subject Access Request"	means: 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
"Deductions"	means all Service Credits, Delay Payments or any other deduction which the Customer is paid or is payable under this Call Off Contract;

"Default"	means any breach of the obligations of the Supplier (including but not limited to the abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;
"Defect"	means any of the following: any error, damage or defect in the manufacturing of a Deliverable; or any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract; or any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract;
"Delay"	means: a delay in the Achievement of a Milestone by its Milestone Date; or a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
"Delay Payments"	means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified in the Order Form;;
"Deliverable"	means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Order Form or at any other stage during the performance of this Call Off Contract;
"Dependent Service"	means a Service provided by the Supplier, which is dependent on another Service provided by the Supplier to function;
"Disclosing Party"	has the meaning given to it in Clause 31.4 (Confidentiality);
"Dispute"	means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with

	the Variation Procedure or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Call Off Schedule 11 (Dispute Resolution Procedure);
"Documentation"	<p>means all documentation as:</p> <p>is required to be supplied by the Supplier to the Customer under this Call Off Contract;</p> <p>would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services;</p> <p>is required by the Supplier in order to provide the Services; and/or</p> <p>has been or shall be generated for the purpose of providing the Services;</p>
"DOTAS"	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;
"Downtime"	means any period of time within the Agreed Service Time during which a Service is not Available, excluding Planned Downtime;
"DPA 2018"	means: the Data Protection Act 2018
"Due Diligence Information"	means any information supplied to the Supplier by or on behalf of the Customer prior to the Call Off Commencement Date;
"End User"	means an individual who uses the Service;
"Environmental Information Regulations or EIRs"	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;
"Environmental Policy"	means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of

greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Customer;

"Euro Compliant"

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

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

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

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

incorporate protocols for dealing with rounding and currency conversion;

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

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

"Expedited Dispute Timetable"

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

"FOIA"

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

"Force Majeure"

means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:

acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which

	<p>prevent or materially delay the Affected Party from performing its obligations under this Call Off Contract;</p> <p>riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p> <p>acts of the Crown, local government or Regulatory Bodies;</p> <p>fire, flood or any disaster; and</p> <p>an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:</p> <p>any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and</p> <p>any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</p> <p>any failure of delay caused by a lack of funds;</p>
"Force Majeure Notice"	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Former Supplier"	means a supplier supplying the services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Supplier (or any sub-contractor of any such sub-contractor);
"Framework Agreement"	means the framework agreement between the Authority and the Supplier referred to in the Order Form;
"Framework Commencement Date"	means the date of commencement of this Call Off Contract set out in the Order Form;
"Framework Period"	means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;
"Framework Schedule"	means a schedule to the Framework Agreement;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"Full Audit Transparency"	means Auditor access to those elements set out in Clause 18.2.2(r)
"GDPR"	means: the General Protection Regulation (Regulation (EU)2016/679)
"General Anti-Abuse Rule"	means the legislation in Part 5 of the Finance Act 2013 and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"General Further Competition Procedure"	means the award procedure described in paragraph 4 of Framework Schedule 5 (Call Off Procedures);
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	means Her Majesty's Revenue and Customs;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"ICT Environment"	means the Customer System and the Supplier System;
"ICT Policy"	means the Customer's ICT policy in force as at the Call Off Commencement Date, as updated from time to time in accordance with the Variation Procedure;
"Impact Assessment"	has the meaning given to it in Clause 19.1.3 (Variation Procedure);
"Implementation Plan"	means the plan specified in Clause 6;
"Imposed Carrier Downtime"	means time during which the Supplier is prevented from supplying the Services due to unavailability of an underlying telecommunications service from a third-party provider on which the Services are dependent. In any instance where the Supplier claims Imposed Carrier Downtime, the Supplier must be able to provide evidence to the satisfaction of the Customer that the interruption to the Services was in fact due in its entirety to unavailability of the underlying service,
"Information"	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
"Incident"	means an unplanned incident or interruption to Services, reduction in the quality of the Services or event which could affect the Services in the future;
"Incident Resolution Time"	means the time taken by the Supplier to Resolve an Incident, as set out in Schedule 6 (Service Levels, Service Credits

"Insolvency Event"

and Performance Monitoring);

means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable):

a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

where the Supplier or 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

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

copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;

applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

all other rights having equivalent or similar effect in any

	country or jurisdiction;
"Invalid Service Offer"	has the meaning given to it in paragraph 5.7.3 of Framework Schedule 3 (Catalogue);
"IPR Claim"	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR by a third party used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Framework Agreement;
"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 (Services and Key Performance Indicators);
"Key Personnel"	means the individuals set out in Clause 24.8 or additionally (if any) identified as such in the Order Form;
"Key Role(s) "	has the meaning given to it in Clause 24.1 (Key Personnel);
"Key Sub-Contract"	means each Sub-Contract with a Key Sub-Contractor;
"Key Sub-Contractor"	means any Sub-Contractor: listed in Framework Schedule 7 (Key Sub-Contractors); 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 Services; and/or with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;
"LED"	means: Law Enforcement Directive (Directive (EU) 2016/680)
"Licensed Software"	means all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Customer for the purposes of or pursuant to this Call Off Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;

"Losses"	means all losses, liabilities, damages, costs (including unrecovered amortised capital), expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Man Day"	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Man Hours"	means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Milestone"	means an event or task described in the Order Form which, if applicable, must be completed by the relevant Milestone Date;
"Milestone Date"	means the target date for Achievement of a Milestone as set out against the relevant Milestone in the Order Form;
"Milestone Payment"	means a payment identified in the Order Form;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"New Release"	means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Occasion of Tax Non Compliance"	means: 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: 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; the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or

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

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;

operating expenditure relating to the provision of the Services including an analysis showing:

the unit costs and quantity of goods and any other consumables and bought-in services;

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;

a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and

Overheads;

all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;

the Supplier Profit achieved over the Call Off Contract Period and on an annual basis;

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;

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

the actual Costs profile for each Service Period.

"Open Source Software"

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

"Operating Environment"

means the Customer System and the Sites;

"Order"

means the order for the provision of the Services placed by

	the Customer with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;
"Order Form"	means the form, as completed and forming part of this Call Off Contract, which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied;
"Other Supplier"	means any Supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Overhead"	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Customer or the Supplier and "Parties" shall mean both of them;
"Performance Monitoring System"	has the meaning given to it in paragraph 1 of Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Performance Monitoring Reports"	has the meaning given to it in paragraph 3 of Part B of Schedule 6 (Service Level, Service Credit and Performance Monitoring);
"Personal Data"	means: takes the meaning given in the Data Protection Legislation
"Personal Data Breach"	means: takes the meaning given in the Data Protection Legislation
"Planned Downtime"	means the time agreed in advance in writing by the Supplier and Customer within the Agreed Service Time when a Service is not Available;
"Processor"	means: takes the meaning given in the Data Protection Legislation
"Protective Measures"	means: 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.

"Provisioning"

means the time taken from the placement of an Order for a Service or part thereof until the Service is Available to the Customer and Provision shall be construed accordingly;

"Prohibited Act"

means any of the following:

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

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

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

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

committing any offence:

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

under legislation or common law concerning fraudulent acts; or

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

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

"Project Specific IPR"

means:

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

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

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

"Quality Plans"

shall have the meaning given in Clause 8.2 (Standards and Quality);

"Recipient"

has the meaning given to it in Clause 31.4.1 (Confidentiality);

"Rectification Plan"

means the Rectification Plan pursuant to the Rectification Plan Process;

"Rectification Plan Process"	means the process set out in Clause 35.2 (Rectification Plan Process);
"Registers"	has the meaning given to in Call Off Schedule 9 (Exit Management);
"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;
"Regulatory Body"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Authority or Other Contracting Body or the Supplier or its Parent Company;
"Related Supplier"	means any person who provides services to the Customer which are related to the Services from time to time;
"Relevant Conviction"	means a Conviction that is relevant to the nature of the Services to be provided or as specified by the Customer in the Order Form or elsewhere in this Call Off Contract;
"Relevant Requirements"	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return;
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Relief Notice"	has the meaning given to it in Clause 36.2.2 (Supplier Relief Due to Customer Cause);
"Replacement Services"	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the Call Off Expiry Date, whether those services are provided by the Customer internally and/or by any third party;
"Replacement Supplier"	means any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;
"Request for Information"	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;

"Resolution"	means an action taken by or on behalf of the Supplier to fully repair the root cause of an Incident or to implement a workaround, such that the Services are returned to being Available. Resolve and Resolved shall be construed accordingly;
"Satisfaction Certificate"	means the certificate materially in the form of the document contained in Annex 3 to Call Off Schedule 4 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph 4 of Call Off Schedule 7 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 4 of Call Off Schedule 7 (Security) and as updated from time to time;
"Service Credit Cap"	means: <ul style="list-style-type: none"> (a) in the period from the Call Off Commencement Date to the end of the first Call Off Contract Year fifteen thousand pounds (£15,000); and (b) during the remainder of the Call Off Contract Period, thirty five per cent (35%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the period of twelve (12) Months immediately preceding the Month in respect of which Service Credits are accrued; unless otherwise stated in the Order Form.
"Service Credits"	means any Service Credits specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Desk"	means the single point of contact set up and operated by the Supplier to log, monitor and escalate Incidents, Incident Resolutions and Service Requests;
"Service Failure"	means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future;
"Service Failure Threshold"	means the level of performance of a Service which becomes unacceptable to the Customer, including as set out in each Service Level Performance Criteria and where the Supplier fails to provide the Services in accordance with this Call Off Contract;
"Service Level Failure"	means a failure to meet the Service Level Threshold in respect of a Service Level Performance Criterion;
"Service Level Performance Criteria"	means the criteria identified in paragraph 3.6 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring), against which the individual

metrics are assessed;

"Service Level Threshold"	shall be as set out against the relevant Service Level Performance Criteria in Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Service Levels"	means any service levels applicable to the provision of the Services under this Call Off Contract specified in Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
"Service Period"	means a recurrent period of one month during the Call Off Contract Period, unless otherwise specified in the Order Form;
"Services"	means the services to be provided by the Supplier to the Customer as referred to Call Off Schedule 2 (Services);
"Sites"	<p>means:</p> <p>any delivery point for the Services (including the Customer Premises, the Supplier's premises, third party premises, or any non-premises location, such as kerbside cabinets and bus shelters):</p> <p>from, to or at which:</p> <p>the Services are (or are to be) provided; or</p> <p>the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>where: any part of the Supplier System is situated; or</p> <p>any physical interface with the Customer System takes place;</p>
"Software"	means Specially Written Software, Supplier Software and Third Party Software;
"Software Supporting Materials"	has the meaning given to it in Clause 30.2.1(b) (Licences granted by the Supplier: Specially Written Software and Project Specific IPR);
"Source Code"	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this

	Call Off Contract;
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
"Standards"	<p>means any:</p> <p>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;</p> <p>standards detailed in the specification in Framework Schedule 2 (Services and Key Performance Indicators);</p> <p>standards detailed by the Customer on the Order Form following a General Further Competition Procedure or agreed between the Parties from time to time; and/or</p> <p>relevant Government codes of practice and guidance applicable from time to time.</p>
"Sub-Contract"	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the provision of the Services or any part thereof;
"Sub-Contractor"	means any third party engaged by the Supplier, including any Key Sub-Contractor, from time to time under a Sub-Contract permitted pursuant to the 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;
"Sub-Processor"	means: any third party appointed to process Personal Data on behalf of the supplier under this Call-Off Contract
"Supplier"	means the person, firm or company with whom the Customer enters into this Call Off Contract as identified in the Order Form;
"Supplier Assets"	means all assets and rights used by the Supplier to provide the Services in accordance with this Call Off Contract but excluding the Customer Assets;
"Supplier Background IPR"	<p>means</p> <p>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</p>

	Intellectual Property Rights created by the Supplier independently of this Call Off Contract, but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;
"Supplier Call Off Solution"	means the Supplier's solution in response to the Customer's invitation to Suppliers for formal offers to supply the Customer with the Services pursuant to a General Further Competition Procedure as set out in Annex 2 to Call Off Schedule 2 (Services);
"Supplier Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Call Off Contract;
"Supplier Equipment"	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Call Off Contract;
"Supplier Non-Performance"	has the meaning given to it in Clause 36.1 (Supplier Relief Due to Customer Cause);
"Supplier Profit"	means, in relation to a period or a Milestone (as the context requires), the difference between the total Call Off Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
"Supplier Profit Margin"	means, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Call Off Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supplier Representative"	means the representative appointed by the Supplier named in the Order Form;
"Supplier Software"	means any software which is proprietary to the Supplier (or an Affiliate of the Supplier) and identified as such in the Order Form together with all other software which is not identified as such in the Order Form but which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for the Customer to receive the benefit of and/or make use of the Services;
"Supplier System"	means the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer System);
"Supplier's Confidential Information"	means 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;

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;

information derived from any of the above.

"Template Call Off Terms"	means the template terms and conditions in Annex 2 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
"Template Order Form"	means the template order form in Annex 1 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
"Tender"	means the tender submitted by the Supplier to the Authority on 19 February 2015 and annexed to Framework Schedule 15;
"Test" and "Testing"	means any tests required to be carried out pursuant to this Call Off Contract as set out in the Test Plan or elsewhere in this Call Off Contract and "Tested" shall be construed accordingly;
"Test Issue"	means any variance or non-conformity of the Services or Deliverables from their requirements as set out in this Call Off Contract;
"Testing Strategy Plan"	means a plan: for the Testing of Deliverables; and setting out other agreed criteria related to the achievement of Milestones, as described further in paragraph 6 of Call Off Schedule 4 (Testing);
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Call Off Contract on a specified date and setting out the grounds for termination;
"Third Party IPR"	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party Software"	means any software identified as such in the Order Form together with all other software which is not listed in the Order Form which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which is or will be used by the Supplier for the purposes of providing the Services);
"Unavailable"	in relation to a Service, means that the Service is not

	Available;
"Undelivered Services"	has the meaning given to it in Clause 7.4 (Supply of Services);
"Undisputed Sums Time Period"	has the meaning given to it Clause 39 (Supplier Termination Rights);
"Update"	means in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
"Upgrade"	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software Supplier (or any Affiliate of the Supplier or any third party) releases during the Call Off Contract Period;
"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph 5 (Invoicing Procedure) of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
"Variation"	has the meaning given to it in Clause 19.1 (Variation Procedure);
"Variation Form"	means the form set out in Call Off Schedule 12 (Variation Form);
"Variation Procedure"	means the procedure set out in Clause 19.1 (Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Day"	means any Day other than a Saturday or Sunday or public holiday in England and Wales.

CALL OFF SCHEDULE 2: SERVICES

1. INTRODUCTION

- 1.1 This Call Off Schedule specifies the Services to be provided under this Call Off Contract; and the Supplier shall deliver the Services in accordance with this Call Off Contract
- 1.2 In the event that the Customer has followed a further competition procedure, Annex 1 of this Call Off Schedule specifies the Customer's Statement of Requirements. In the event that the Customer has conducted a Direct Award for the Services, Annex 1 will be marked "Not Applicable".
- 1.3 Annex 2 specifies the Services that the Supplier will deliver to the Customer. If the Customer's Statement of Requirements is included at Annex 1, in the event of any conflict between Annex 1 and Annex 2, Annex 1 will take precedence over Annex 2.
- 1.4 In the event of any conflict between Annex 2 and Part B of Framework Schedule 2 (Services and Key Performance Indicators), Part B of Framework Schedule 2 (Services and Key Performance Indicators) will take precedence over Annex 2.

ANNEX 1: STATEMENT OF REQUIREMENTS

Guidance note

NOT USED

This annex is not used where a customer makes a Direct Award or runs a Short Form Further Competition.

Direct Award

The requirements will be described by the selected Service Offers as identified in the Order Form.

Short Form Further Competition

Where a Customer has conducted a Short Form Further Competition a Statement of Requirements will be provided to Suppliers as Annex A to the Order Form.

ANNEX 2: SUPPLIER RESPONSE

[Guidance Note: where the Customer has conducted a further competition, insert a copy of the Supplier's response/solution here OR where the Customer has conducted a Direct Award, insert a copy of the Supplier's Service Offer(s) here]

Guidance note

NOT USED

This annex is not used where a customer makes a Direct Award or runs a Short Form Further Competition.

Direct Award

The Supplier solution will be described by the selected Service Offers as identified in the Order Form.

Short Form Further Competition

Where a Customer has conducted a Short Form Further Competition, the Supplier's response will become Annex B of the Order Form.

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

1. GENERAL PROVISIONS

1.1 This Call Off Schedule details:

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

2. CALL OFF CONTRACT CHARGES

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

2.2 The Supplier acknowledges and agrees that subject to paragraph 6 of this Call Off Schedule (Adjustment of Call Off Contract Charges), the Call Off Contract Charges cannot be increased during the Call Off Contract Period.

3. COSTS AND EXPENSES

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

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

4. PAYMENT TERMS/PAYMENT PROFILE

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

5. 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 paragraph 5.5 of this Call Off Schedule and in accordance with the provisions of this Call Off Contract.

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

5.2.1 contains:

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

5.2.2 shows separately:

- (a) any Service Credits due to the Customer; and
- (b) the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 21.2.1 of this Call Off Contract (VAT) and the tax point date relating to the rate of VAT shown; and

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

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

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

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

5.5 The Supplier shall submit invoices directly to the Customer billing address identified on 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 19.2 of this Call Off Contract (Legislative Change);
- 6.1.2 where all or part of the Call Off Contract Charges are reduced as a result of a review of the Call Off Contract Charges in accordance with Clause 15 of this Call Off Contract (Continuous Improvement); or
- 6.1.3 where all or part of the Call Off Contract Charges are reduced as a result of a review of Call Off Contract Charges in accordance with Clause 23 of this Call Off Contract (Benchmarking);

6.2 Subject to paragraph 6.1 of this Call Off Schedule, the Call Off Contract Charges will remain fixed for the Call Off Contract Period.

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 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 19.2.2 of this Call Off Contract (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 15 (Continuous Improvement) of this Call Off Contract where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.1.2 of this Call Off Schedule;
- 7.1.3 in accordance with Clause 23 (Benchmarking) of this Call Off Contract where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 6.1.3 of this Call Off Schedule

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

ANNEX 1: CALL OFF CONTRACT CHARGES

Guidance note

NOT USED

This annex is not used where a customer makes a Direct Award or runs a Short Form Further Competition.

Direct Award

The Call Off Contract Charges will be described in the selected Service Offers as identified in the Order Form.

Short Form Further Competition

Where a Customer has conducted a Short Form Further Competition the Supplier response will become Annex B of the Order Form.

ANNEX 2: PAYMENT TERMS/PROFILE

Guidance note

NOT USED

This annex is not used where a customer makes a Direct Award or runs a Short Form Further Competition.

CALL OFF SCHEDULE 4: TESTING

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Component"	means any constituent parts of the Services, bespoke or COTS, hardware or software;
"COTS"	means commercially available off the shelf software, being software that is commonly used and is provided in a standard form and on standard licence terms which are not typically negotiated by the licensor;
"Material Test Issue"	means a Test Issue of Severity Level 1 or Severity Level 2;
"Severity Level"	means the level of severity of a Test Issue, the criteria for which are described in Annex 1;
"Test Certificate"	means a certificate materially in the form of the document contained in Annex 2 issued by the Customer when a Deliverable has satisfied its relevant Test Success Criteria;
"Test Issue Threshold"	means, in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Testing Strategy Plan ;
"Test Issue Management Log"	means a log for the recording of Test Issues as described further in paragraph 10.1 of this Call Off Schedule;
"Test Reports"	means the reports to be produced by the Supplier setting out the results of Tests;
"Test Specification"	means the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in paragraph 7 of this Call Off Schedule;
"Test Strategy"	means a strategy for the conduct of Testing as described further in paragraph 5 of this Call Off Schedule;
"Test Success Criteria"	means, in relation to a Test, the test success criteria for that Test as referred to in paragraph 7 of this Call Off Schedule;
"Test Witness"	means any person appointed by the Customer pursuant to paragraph 11 of this Call Off Schedule; and
"Testing Procedures"	means the applicable testing procedures and Test Success Criteria set out in this Schedule.

2. INTRODUCTION

2.1 This Call Off Schedule (Testing) sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Testing Strategy Plans.

3. RISK

3.1 The issue of a Test Certificate, a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:

3.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Customer's requirements for that Deliverable or Milestone; or

3.1.2 affect the Customer's right subsequently to reject:

(a) all or any element of the Deliverables to which a Test Certificate relates; or

(b) any Milestone to which the Satisfaction Certificate relates.

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

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

3.2.2 each Service Level is met.

4. TESTING OVERVIEW

4.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Testing Strategy Plans.

4.2 The Supplier shall not submit any Deliverable for Testing:

4.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;

4.2.2 until the Customer has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and

4.2.3 until the Parties have agreed the Testing Strategy Plan and the Test Specification relating to the relevant Deliverable(s).

4.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.

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

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

5. TEST STRATEGY

5.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Call Off Commencement Date but in any case no later than the date specified in the Implementation Plan.

5.2 The final Test Strategy shall include:

5.2.1 an overview of how Testing will be conducted in accordance with the Implementation Plan;

5.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;

- 5.2.3 the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
- 5.2.4 the procedure to be followed to sign off each Test;
- 5.2.5 the process for the production and maintenance of Test Reports, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues
- 5.2.6 the names and contact details of the Customer's and the Supplier's Test representatives;
- 5.2.7 a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Customer and/or third party involvement in the conduct of the Tests;
- 5.2.8 the technical environments required to support the Tests; and
- 5.2.9 the procedure for managing the configuration of the Test environments.

6. TESTING STRATEGY PLANS

6.1 The Supplier shall develop Testing Strategy Plans and submit these for Approval as soon as practicable but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.

6.2 Each Testing Strategy Plan shall include as a minimum:

- 6.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied;
- 6.2.2 a detailed procedure for the Tests to be carried out, including:
 - (a) the relevant Test Issue Thresholds;
 - (b) the timetable for the Tests including start and end dates;
 - (c) the Testing mechanism;
 - (d) dates and methods by which the Customer can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
 - (e) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (f) the format and an example of Test progress reports and the process with which the Customer accesses daily Test schedules;
 - (g) the process which the Customer will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
 - (h) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
 - (i) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

6.3 The Customer shall not unreasonably withhold or delay its Approval of the Testing Strategy Plans provided that the Supplier shall implement any reasonable requirements of the Customer in the Testing Strategy Plans.

7. TEST SUCCESS CRITERIA

7.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Testing Strategy Plan pursuant to paragraph 6 of this Call Off Schedule.

8. TEST SPECIFICATION

8.1 Following approval of a Testing Strategy Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least ten (10) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

8.2 Each Test Specification shall include as a minimum:

- 8.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Customer and the extent to which it is equivalent to live operational data;
- 8.2.2 a plan to make the resources available for Testing;
- 8.2.3 Test scripts;
- 8.2.4 Test pre-requisites and the mechanism for measuring them; and
- 8.2.5 expected Test results, including:
 - (a) a mechanism to be used to capture and record Test results; and
 - (b) a method to process the Test results to establish their content.

9. TESTING

9.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.

9.2 The Supplier shall manage the progress of Testing in accordance with the relevant Testing Strategy Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with paragraph 11 of this Call Off Schedule.

9.3 The Supplier shall notify the Customer at least ten (10) Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Customer shall ensure that the Test Witnesses attend the Tests, except where the Customer has specified in writing that such attendance is not necessary.

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

9.5 The Supplier shall provide to the Customer in relation to each Test:

- 9.5.1 a draft Test Report not less than two (2) Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and

- 9.5.2 the final Test Report within five (5) Working Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 9.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
 - 9.6.1 an overview of the Testing conducted;
 - 9.6.2 identification of the relevant Test Success Criteria that have been satisfied;
 - 9.6.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
 - 9.6.4 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
 - 9.6.5 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with paragraph 10.1 of this Call Off Schedule; and
 - 9.6.6 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
- 9.7 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 9.8 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Customer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 9.9 If the Supplier successfully completes the requisite Tests, the Customer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Services are provided in accordance with this Call Off Contract.

10. TEST ISSUES

- 10.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 10.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Customer upon request.
- 10.3 The Customer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

11. TEST WITNESSING

- 11.1 The Customer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Customer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 11.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 11.3 The Test Witnesses:
 - 11.3.1 shall actively review the Test documentation;
 - 11.3.2 will attend and engage in the performance of the Tests on behalf of the Customer so as to enable the Customer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
 - 11.3.3 shall not be involved in the execution of any Test;
 - 11.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Testing Strategy Plan and Test Specification;
 - 11.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Customer to assess whether the Tests have been Achieved;
 - 11.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
 - 11.3.7 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

12. TEST QUALITY AUDIT

- 12.1 Without prejudice to its rights pursuant to Clause 18 of this Call Off Contract (Records, Audit Access and Open Book Data), the Customer or an agent or contractor appointed by the Customer may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan (if applicable).
- 12.2 The focus of the Testing Quality Audits shall be on:
 - 12.2.1 adherence to an agreed methodology;
 - 12.2.2 adherence to the agreed Testing process;
 - 12.2.3 adherence to the Quality Plan (if applicable);
 - 12.2.4 review of status and key development issues; and
 - 12.2.5 identification of key risk areas.
- 12.3 The Supplier shall allow sufficient time in the Testing Strategy Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 12.4 The Customer will give the Supplier at least five (5) Working Days' written notice of the Customer's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the

Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Customer will materially and adversely impact the Implementation Plan.

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

12.6 If the Testing Quality Audit gives the Customer concern in respect of the Testing Procedures or any Test, the Customer shall:

12.6.1 discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and

12.6.2 subsequently prepare a written report for the Supplier detailing its concerns,

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

12.7 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Satisfaction Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

13. OUTCOME OF TESTING

13.1 The Customer will issue a Test Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.

13.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Customer shall notify the Supplier and:

13.2.1 the Customer may issue a Test Certificate conditional upon the remediation of the Test Issues;

13.2.2 where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Customer may extend the Testing Strategy Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or

13.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Customer's other rights and remedies, such failure shall constitute a material Default.

13.3 The Customer shall be entitled, without prejudice to any other rights and remedies that it has under this Call Off Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of

further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

14. ISSUE OF SATISFACTION CERTIFICATE

- 14.1 The Customer shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:
 - 14.1.1 the issuing by the Customer of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - 14.1.2 performance by the Supplier to the reasonable satisfaction of the Customer of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 14.2 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Schedule 3 (Call Off Contract Charging, Payment and Invoicing).
- 14.3 If a Milestone is not Achieved, the Customer shall promptly issue a report to the Supplier setting out:
 - 14.3.1 the applicable Test Issues; and
 - 14.3.2 any other reasons for the relevant Milestone not being Achieved.
- 14.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Customer shall issue a Satisfaction Certificate.
- 14.5 If there is one or more Material Test Issue(s), the Customer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Customer's other rights and remedies, such failure shall constitute a material Default.
- 14.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Customer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
 - 14.6.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Customer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Customer within ten (10) Working Days of receipt of the Customer's report pursuant to paragraph 13.3 of this Call Off Schedule); and
 - 14.6.2 where the Customer issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES – SEVERITY LEVELS

1. SEVERITY 1 ERROR

1.1 This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss.

2. SEVERITY 2 ERROR

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

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

3. SEVERITY 3 ERROR

3.1 This is an error which:

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

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

4. SEVERITY 4 ERROR

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

5. SEVERITY 5 ERROR

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

ANNEX 2: TEST CERTIFICATE

This annex, which is provided as Appendix 1 to the Direct Award or Short Form Further Competition Order Form, will be used by both parties throughout the life of the Call off Contract as required.

To: [insert name of Supplier]

From: [insert name of Customer]

[insert Date dd/mm/yyyy]

Dear Sirs,

TEST CERTIFICATE

Deliverables:

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

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

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

[We confirm that all of Deliverables listed above have been tested successfully in accordance with the Testing Strategy Plan relevant to those Deliverables.]

[OR]

[This Test Certificate is issued pursuant to paragraph 13.1 of Call Off Schedule 4 (Testing) of this Call Off Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[*Guidance Note: delete as appropriate]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

ANNEX 3: SATISFACTION CERTIFICATE

This annex, which is provided as Appendix 1 to the Direct Award or Short Form Further Competition Order Form, will be used by both parties throughout the life of the Call off Contract as required.

To: [insert name of Supplier]

From: [insert name of Customer]

[insert Date dd/mm/yyyy]

Dear Sirs,

SATISFACTION CERTIFICATE

Milestone:

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

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

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

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

[OR]

[This Satisfaction Certificate is granted pursuant to paragraph 13.1 of Call Off Schedule 4 (Testing) of this Call Off Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

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

[*Guidance Note: delete as appropriate]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

CALL OFF SCHEDULE 5: FINANCIAL DISTRESS

1. DEFINITIONS

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

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

2. CREDIT RATING AND DUTY TO NOTIFY

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

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

where:

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

prices on the Working Day preceding the relevant date;

C is the value at the relevant date of all account receivables of the Rated Organisation(s); and

D is the value at the relevant date of the current liabilities of the Rated Organisation(s).

2.4 The Supplier shall:

2.4.1 regularly monitor the credit ratings of the Rated Organisation(s) with the Rating Agencies; and

2.4.2 promptly notify (or shall procure that its auditors promptly notify) the Customer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).

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

3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1 In the event of:

3.1.1 the credit rating of the Rated Organisation(s) dropping below the applicable Credit Rating Threshold;

3.1.2 the Rated Organisation(s) issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;

3.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Rated Organisation(s);

3.1.4 the Rated Organisation(s) committing a material breach of covenant to its lenders;

3.1.5 a Key Sub-Contractor notifying the Customer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or

3.1.6 any of the following:

(a) commencement of any litigation against the Rated Organisation(s) with respect to financial indebtedness or obligations under a service contract;

(b) non-payment by the Rated Organisation(s) of any financial indebtedness;

- (c) any financial indebtedness of the Rated Organisation(s) becoming due as a result of an event of default; or
- (d) the cancellation or suspension of any financial indebtedness in respect of the Rated Organisation(s),

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

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

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

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

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

- 3.3.1 at the request of the Customer meet the Customer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Customer may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Call Off Contract; and
- 3.3.2 where the Customer reasonably believes (taking into account the discussions and any representations made under paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Call Off Contract:
 - (a) submit to the Customer for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Customer may permit and notify to the Supplier in writing); and
 - (b) provide such financial information relating to the Rated Organisation(s) as the Customer may reasonably require.

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

process shall be repeated until the Financial Distress Service Continuity Plan is Approved by the Customer or referred to the Dispute Resolution Procedure pursuant to paragraph 3.5.

3.5 If the Customer considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

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

3.6.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Call Off Contract;

3.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 3.6.1, submit an updated Financial Distress Service Continuity Plan to the Customer for its Approval, and the provisions of paragraphs 3.5 and 3.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and

3.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

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

4. TERMINATION RIGHTS

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

4.1.1 the Supplier fails to notify the Customer of a Financial Distress Event in accordance with paragraph 2.4;

4.1.2 the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 3.3 to 3.5; and/or

4.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.6.3.

5. PRIMACY OF CREDIT RATINGS

5.1 Without prejudice to the Supplier's obligations and the Customer's rights and remedies under paragraph 3, if, following the occurrence of a Financial

Distress Event pursuant to Paragraphs 3.1.1 to 3.1.6, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

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

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

1. SCOPE

1.1 This Call Off Schedule 6 sets out the service levels which the Supplier is expected to achieve when providing the Services, the mechanism by which Service Level Failures and Critical Service Level Failures will be managed and the method by which the Supplier's performance in the provision by it of the Services will be monitored.

1.2 This Call Off Schedule comprises:

- 1.2.1 Part A: Service Levels and Service Credits;
- 1.2.2 Annex 1 to Part A: Service Levels and Service Credit Tables
- 1.2.3 Annex 2 to Part A: Critical Service Level Failure;
- 1.2.4 Part B: Performance Monitoring; and
- 1.2.5 Annex 1 to Part B: Additional Performance Monitoring Requirements.

2. AGREED SERVICE TIME

2.1 The Services will be made Available by the Supplier to the Customer during the Agreed Service Time.

2.2 The Agreed Service Time applied to the Services will be determined by the Service Maintenance Level selected by the Customer on the Order Form.

2.3 The Service Maintenance Levels and associated Agreed Service Times is set out in the following table:

Service Maintenance Level	Agreed Service Time
Level 1	Monday – Friday (excluding Bank Holidays) 08:00-18:00
Level 2	Monday – Saturday (excluding Bank Holidays) 08:00-18:00
Level 3	Monday – Sunday (including Bank Holidays) 07:00-21:00
Level 4	Monday – Sunday (including Bank Holidays); 00:00-23:59 (24 hours per day, 7 days per week)

3. INCIDENTS

3.1 If the Services become Unavailable, the Customer must report the Unavailability as an Incident to the Service Desk.

3.2 Incidents must be classified to one of the following four severity levels:

Severity Level	Description of impact of Incident
Severity 1	The Services are Unavailable across the entire Customer's estate
Severity 2	The Services are Unavailable at one of the Customer's sites
Severity 3	The Services are Unavailable to an individual user
Severity 4	All other Incidents, including any Incidents raised initially at a higher Severity Level that were subsequently deemed to be attributable to the Customer or in any other way not attributable to the Supplier.

3.3 The Supplier shall manage the Incident to resolution in accordance with this Call Off Schedule, whilst keeping the Customer appropriately informed of progress.

PART A: SERVICE LEVELS AND SERVICE CREDITS

1. GENERAL PROVISIONS

1.1 The Supplier shall provide support and advice, when required by the Customer, on matters relating to:

- 1.1.1 Availability of the Services;
- 1.1.2 quality of the Services;
- 1.1.3 provisioning;
- 1.1.4 essential downtime
- 1.1.5 Customer support;
- 1.1.6 complaints handling; and
- 1.1.7 accurate and timely invoices.

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

2. PRINCIPAL POINTS

2.1 The objectives of the Service Levels and Service Credits are to:

- 2.1.1 incentivise the Supplier to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously;
- 2.1.2 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
- 2.1.3 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of service for which it has contracted to deliver; and
- 2.1.4 provide an incentive to the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.

2.2 The Parties acknowledge that:

- 2.2.1 The Customer will, in all cases, prefer to receive the Services within the Service Levels in preference to receiving the Service Credits; and
- 2.2.2 the Supplier shall, in all cases, seek to deliver the Services within the Service Levels in preference to accepting a liability for Service Credits.

3. SERVICE LEVELS

3.1 The Supplier shall monitor its performance under this Call Off Contract by reference to the relevant Service Level Performance Criteria for achieving the Service Levels and shall send the Customer a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Call Off Schedule.

3.2 The Supplier shall, at all times, provide the Services in such a manner that the Service Level Thresholds are achieved.

3.3 If the level of performance of the Supplier of any element of the provision by it of the Services during the Call Off Contract period:

3.3.1 is likely to or fails to meet any Service Level Threshold; or

3.3.2 is likely to cause or causes a Critical Service Level Failure to occur,

the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights howsoever arising, including under Clause 13 of this Call Off Contract (Service Levels and Service Credits), may:

(A) Require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and

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

(C) If a Service Level Failure has occurred, deduct from the Call Off Contract Charges the applicable Service Credits payable by the Supplier to the Customer in accordance with the calculation formula set out in Annex 1 of this Part A of this Call Off Schedule; or

(D) If a Critical Service Level Failure has occurred, exercise its right to compensation for such non-availability of Services via this Call Off Contract.

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

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

3.6 The Services are subject to the following four Service Level Performance Criteria as set out in this Call Off Schedule:

3.6.1 **Availability** (as further set out in paragraph 3.7 below);

3.6.2 **Incident Resolution** (as further set out in paragraph 3.8 below);

3.6.3 **Quality** (as further set out in paragraph 3.9 below); and

3.6.4 **Provisioning** (as further set out in paragraph 3.10 below).

3.7 **Availability:**

3.7.1 The Supplier shall ensure that the Services are Available during the Agreed Service Time.

3.7.2 Achieved Availability is calculated as a percentage of the total time in a Service Period that the Services should have otherwise been Available to the Customer using the following formula:

$$\text{Achieved Availability \%} = \frac{(\text{MP} - \text{SD}) \times 100}{\text{MP}}$$

Where:

MP means total time within the Agreed Service Time (excluding Planned Downtime, Imposed Carrier Downtime and any Unavailability attributable to Severity 3 or Severity 4 Incidents) within the relevant Service Period; and

SD means total service downtime within the Agreed Service Time within the relevant Service Period during which a Service and/or part thereof is Unavailable (excluding Planned Downtime, Imposed Carrier Downtime and any Unavailability attributable to Severity 3 or Severity 4 Incidents) within the relevant Service Period.

3.8 Incident Resolution

3.8.1 The Supplier shall ensure that Incidents are resolved within the Maximum Incident Resolution Time.

3.8.2 Maximum Incident Resolution Times are determined by the Severity Levels and Service Maintenance Levels as set out in the following table:

Service Maintenance Level	Severity 1, Severity 2	Severity 3	Severity 4 (Indicative Only)
Level 1	End of next Working Day	5 Working Days	1 Month
Level 2	End of next Working Day	5 Working Days	1 Month
Level 3	Incident reported by 13:00, resolved same day; reported after 13:00, resolved by 13:00 next Working Day	End of next Working Day	15 Working Days
Level 4	6 hours	End of next Working Day	10 Working Days

3.8.3 Each Incident will either be Resolved within the Maximum Incident Resolution Time, or it will not; and will be reported as such by the Supplier. The time taken to resolve the Incident is not material to this Service Level Performance Criteria.

3.8.4 Achieved Incident Resolution is calculated as a percentage of the total number of Incidents in a Service Period that should have been resolved within the Maximum Incident Resolution Time using the following formula:

$$\text{Achieved Incident Resolution \%} = \frac{(\text{TI} - \text{FI}) \times 100}{\text{TI}}$$

Where:

TI means the total number of Incidents raised by the Customer during the Service Period (excluding Severity 4 Incidents); and

FI means the total number of Incidents raised by the Customer during the Service Period that were not resolved within the Maximum Incident Resolution Time (excluding Severity 4 Incidents).

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

3.8.6 The Incident will only be deemed to be Resolved once the Services are Available. However, the Supplier shall not formally close any Incident until the Customer has confirmed that the Services are Available.

3.9 Quality

3.9.1 The Supplier shall ensure that the Services are delivered of a sufficient quality to meet the provisions of this Call Off Schedule.

3.9.2 Measurement of answer and response times of the Service Desk will be based on the time taken for the Supplier to respond to the Customer's call or email. Calls and emails receiving an automated response or calls placed into a queuing system shall be deemed not to have been answered.

3.10 Provisioning

3.10.1 The Services will be provisioned at the outset in accordance with the Implementation Plan and any failure to meet Milestones will be dealt with in accordance with the Implementation Plan.

3.10.2 Any delivery of Services or part thereof subsequent to the successful conclusion of the Implementation Plan will be subject to the Service Levels identified in the variation to this agreement that incorporates those changes; or failing any other agreed Service Level, in accordance with the Supplier's standard provisioning Service Levels.

4. SERVICE CREDITS

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

4.2 Service Credit payments are subject to the Service Credit Cap.

4.3 Annex 1 to this Part A of this Call Off Schedule details the Service Credits available for each Service Level Performance Criterion in the event that the applicable Service Level Threshold is not met by the Supplier.

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

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

4.6 The amount of Service Credit is determined by the tables in Annex 1 of this Part A of Call Off Schedule, using the calculated Achieved Service Level

Performance Criteria (e.g. Achieved Availability), the Service Level Threshold and the Service Failure Threshold and is calculated by using the straight line formula below:

Service Credit % = $(m \cdot (a - x) + c)$, where

a is the Service Level Threshold (%) below which Service Credits become payable;

b is the Service Failure Threshold (%);

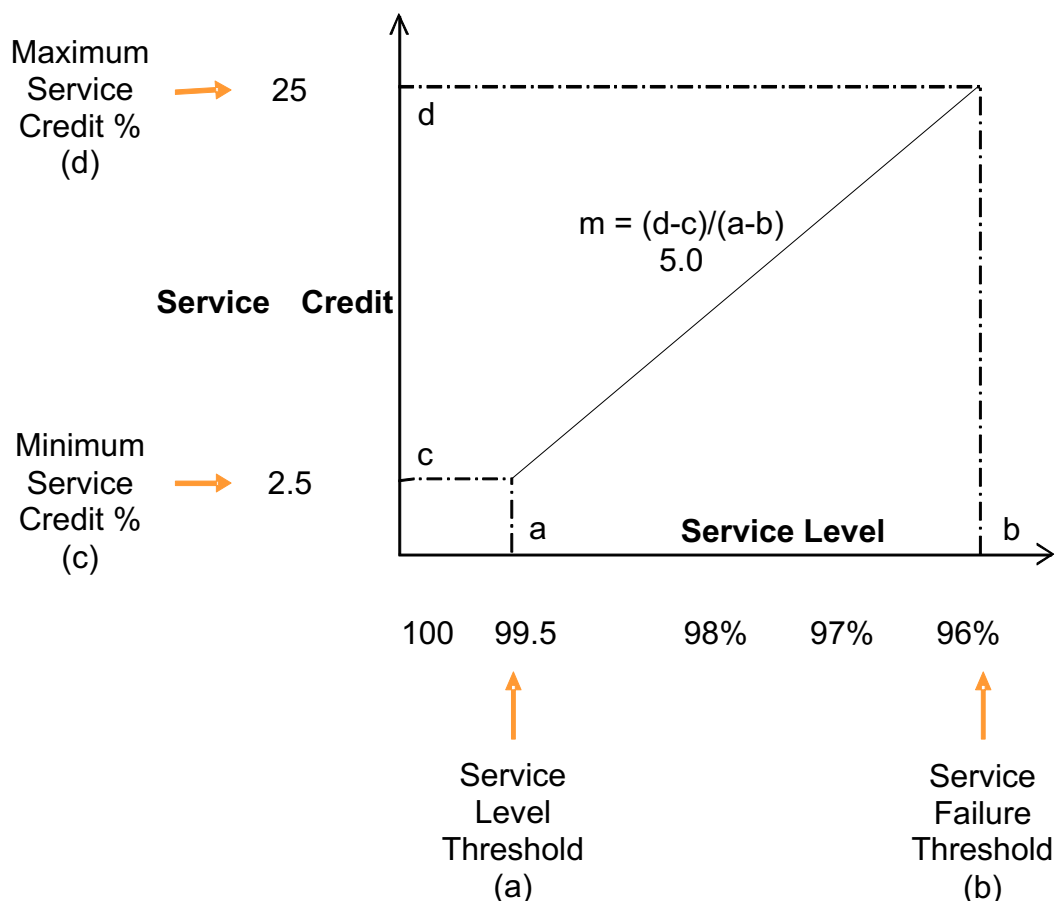
x is the Achieved Service Level Performance Criteria (%) for a Service Period;

c is the minimum Service Credit (%) payable if the Achieved Service Level falls below the Service Level Threshold;

d is the maximum Service Credit (%) payable if the Achieved Service Level Reaches the Service Failure Threshold;

M is a coefficient defined for the services, which is calculated from the Formula $m = (d - c) / (a - b)$, that is the slope of the straight line;

4.7 Consequently, the Service Credit regime is shown diagrammatically as follows:



4.8 The Service Credit (£) is subsequently derived as follows:

Service Credit (£) = contract charges x Service Credit (%)

4.9 An example Service Credit calculation for the Availability of a service, (offered herein for illustrative purposes only), is as follows:

Criteria	Coefficient (m)	Service Level Threshold % (a)	Service Failure Threshold % (b)	Minimum Service Credit % (c)	Maximum Service Credit % (d)
Availability	5.0	99.5%	95.00%	2.5%	25%

4.9.1 The Achieved Availability of a service was recorded as 97% for a Service Period. For this service, the Service Level Threshold is 99.5% and the Service Failure Threshold is 95%. The contract charges for the service for the Service Period are £3,000. Previous performance had exceeded the Service Level Threshold for Availability.

4.9.2 In this illustration example:

$$\text{Service Credit \%} = 5.0 \times (99.5 - 97.0) + 2.5 = 15\%;$$

therefore the Service Credit calculation is:

$$\text{Service Credit (£)} = £3,000 \times 15\% = £450.$$

4.10 An example Service Credit calculation for Incident Resolution is as follows:

Criteria	Coefficient (m)	Service Level Threshold % (a)	Service Failure Threshold % (b)	Minimum Service Credit % (c)	Maximum Service Credit % (d)
Incident Resolution	0.25	95.0%	85.00%	2.5%	5%

4.10.1 The Service Level Threshold is 95% of all incidents to be resolved within a specified time with the Service Failure Threshold being 85%. Assume that the Customer has 80 Incidents within a Service Period, 10 of which were not resolved within the specified time. Therefore, the Achieved Incident Resolution is 87.5% for the Service Period. The contract charges for all the services that the Customer is consuming are £50,000 per Service Period. Previous performance had exceeded the Service Level Threshold for Incident Resolution Times.

4.10.2 In this illustration example:

$$\text{Service Credit \%} = 0.25 \times (95 - 87.5) + 2.5 = 4.375\%$$

4.10.3 Consequently, the illustrated Service Credit calculation is:

$$\text{Service Credit (£)} = £50,000 \times 4.375\% = £2,187.50.$$

ANNEX 1 TO PART A: SERVICE LEVELS AND SERVICE CREDITS TABLES

1. AVAILABILITY

1.1 Services (excluding the Service Desk)

Service Maintenance Level	Coefficient (m)	Service Level Threshold % (a)	Service Failure Threshold % (b)	Minimum Service Credit % (c)	Maximum Service Credit % (d)
1	N/A	N/A	N/A	N/A	N/A
2	1.3	95%	80%	5%	25%
3	2.86	97%	90%	5%	25%
4	5	99%	95%	5%	25%

1.2 Service Desk

Service Maintenance Level	Coefficient (m)	Service Level Threshold % (a)	Service Failure Threshold % (b)	Minimum Service Credit % (c)	Maximum Service Credit % (d)
All	5	99%	95%	5%	25%

2. INCIDENT RESOLUTION

Number of Incidents per Service Period	Coefficient (m)	Service Level Threshold (a)	Service Failure Threshold (b)	Minimum Service Credit % (c)	Maximum Service Credit % (d)
39 or fewer	Not applicable	No more than 2 Incidents are Resolved in excess of the max Incident Resolution Times	5 or more Incidents are Resolved in excess of the max Incident Resolution Times	2.5% (payable when 3 Incidents breach the Service Level Threshold in any Service Period)	5% (payable when 4+ Incidents breach the Service Level Threshold in any Service Period)
40 and more	0.25	95%	85%	2.5%	5%

3. QUALITY

3.1 Service Desk:

Criteria	Coefficient	Service Level Threshold	Service Failure Threshold	Minimum Service Credit	Maximum Service Credit
Calls Answered within 60 seconds	0.25	90%	80%	2.5%	5%
Email Responded to within one (1) Working Day	0.083	90%	60%	2.5%	5%
Abandoned Calls	0.25	95%	85%	2.5%	5%

3.2 Data Service

3.2.1 Where the Customer has procured Services that include data services, the following provisions will apply:

- (a) The Services will only be deemed to have been Delivered once the Customer has tested and Accepted the quality of the data service;
- (b) Subsequent to Services commencement, where the Customer believes the quality of the data service is not acceptable:
 - (A) an Incident will be raised with the Service Desk;
 - (B) the Supplier shall investigate the Incident;
 - (C) Subsequent to the investigation, if:
 - (A) a fault is found, the Incident is Resolved as any other Incident;
 - (B) a fault is not found and the Customer still believes the quality of the data service is unacceptable, the Supplier shall evidence to the Customer that the data service complies with relevant Standards.
 - (D) In the event that a fault is not found and the Supplier cannot evidence to the satisfaction of the Customer that the data service complies with relevant Standards, the Service will be deemed Unavailable from the time that the Incident was first raised with the Service Desk and the Incident Resolution Time will be accordingly measured from that time.

3.3 Voice Service

3.3.1 Where the Customer has procured Services that include voice services, the following provisions will apply:

- (c) The Services will only be deemed to have been Delivered once the Customer has tested and Accepted the quality of the voice service;

- (d) Subsequent to Services commencement, where the Customer believes the quality of the voice service is not acceptable:
 - (A) an Incident will be raised with the Service Desk;
 - (B) the Supplier shall investigate the Incident;
 - (C) Subsequent to the investigation, if:
 - (A) a fault is found, the Incident is Resolved as any other Incident;
 - (B) a fault is not found and the Customer still believes the quality of the voice service is unacceptable, the Supplier shall evidence to the Customer that the voice service complies with relevant Standards.
 - (D) In the event that a fault is not found and the Supplier cannot evidence to the satisfaction of the Customer that the voice service complies with relevant Standards, the Service will be deemed Unavailable from the time that the Incident was first raised with the Service Desk and the Incident Resolution Time will be accordingly measured from that time.

ANNEX 2 TO PART A: CRITICAL SERVICE LEVEL FAILURE

1. CRITICAL SERVICE LEVEL FAILURE

1.1 A Critical Service Level Failure will be deemed to have occurred if the performance of the Services falls below the same Service Failure Threshold on three (3) occasions in any six (6) consecutive Service Periods.

1.2 In the event of a Critical Service Level Failure, the Customer shall be entitled to terminate this Call Off Contract for material Default.

PART B: PERFORMANCE MONITORING

1. PRINCIPAL POINTS

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

1.1.1 to ensure that the Supplier is complying with the Service Levels; and

1.1.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services (may also be referred to as a "Performance Monitoring System").

1.2 The Supplier shall provide the Customer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties on the Order Form; and the Parties will endeavour to agree such process as soon as reasonably possible.

2. REPORTING OF SERVICE FAILURES

2.1 The Supplier shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Customer in accordance with the processes agreed in Paragraph 1.2 of Part B of this Call Off Schedule above.

3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

3.1 The Supplier shall provide the Customer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 1.2 of Part B of this Call Off Schedule above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:

3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;

3.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;

3.1.3 any Critical Service Level Failures and details in relation thereto;

3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;

3.1.5 the Service Credits to be applied in respect of the relevant Service Period indicating the failures and Service Levels to which the Service Credits relate; and

3.1.6 such other details as the Customer may reasonably require from time to time.

3.2 The Parties shall attend meetings to discuss Performance Monitoring Reports (which may also be referred to as "**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

3.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;

- 3.2.2 take place at such location and time (within normal business hours on Working Days) as the Customer shall reasonably require unless otherwise agreed in advance;
 - 3.2.3 be attended by the Supplier's representative and the Customer's representative; and
 - 3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's representative and the Customer's representative at each meeting.
- 3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 3.4 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

4. SATISFACTION SURVEYS

- 4.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 4.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with this Call Off Contract.
- 4.3 All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement provisions agreed herein.

ANNEX 1 TO PART B: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS

Guidance note

NOT USED

This annex is not used where a customer makes a Direct Award or runs a Short Form Further Competition.

CALL OFF SCHEDULE 7: SECURITY

1. DEFINITIONS

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

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

2. SECURITY POLICY

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

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

3. ISMS

3.1 By the date specified in the Implementation Plan the Supplier shall develop and submit to the Customer an ISMS for the purposes of this Call Off Contract, which:

3.1.1 if required by the Implementation Plan, shall have been tested in accordance with Call Off Schedule 4 (Testing); and

3.1.2 shall comply with this Call Off Schedule 7 (Security).

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

3.3 The Customer acknowledges that

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

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

3.4 The ISMS shall:

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

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

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

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

3.4.3 at all times provide a level of security which:

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

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

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

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

3.5 Subject to Clause 31 of this Call Off Contract (Security And Protection of Information) the references to standards, guidance and policies set out in paragraph 3.4 of this Call Off Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

3.6 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 3.4 of this Call Off Schedule, the Supplier shall immediately notify the Customer Representative of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.

3.7 If the Customer has stipulated on the Order Form during a General Further Competition Procedure that it requires a bespoke ISMS then the following provisions will apply:

3.7.1 if the ISMS submitted to the Customer pursuant to paragraph 3.1 of this Call Off Schedule is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule;

3.7.2 if the ISMS is not Approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Customer. If the Customer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph 2 of this Call Off Schedule may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 3.4 to 3.6 of this Call Off Schedule shall be deemed to be reasonable; and

3.7.3 Approval by the Customer of the ISMS pursuant to paragraph 3.7 of this Call Off Schedule or of any change or amendment to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

4. SECURITY MANAGEMENT PLAN

4.1 Within twenty (20) Working Days after the Call Off Commencement Date, the Supplier shall prepare and submit to the Customer for Approval in accordance with paragraph 4 of this Call Off Schedule a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 4.2 of this Call Off Schedule.

4.2 The Security Management Plan must:

- 4.2.1 be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan) (where applicable);
 - 4.2.2 comply with this Call Off Schedule 7;
 - 4.2.3 unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites, the Supplier System and any ICT, information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract;
 - 4.2.4 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Call Off Schedule 7 (including the requirements set out in paragraph 3.4 of this Call Off Schedule);
 - 4.2.5 set out the plans for transiting all security arrangements and responsibilities from those in place at the Call Off Commencement Date to those incorporated in the Supplier's ISMS at the date set out in the Implementation Plan for the Supplier to meet the full obligations of the security requirements set out in Schedule Annex 1 (Security Policy) to this Schedule 7.
 - 4.2.6 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
 - 4.2.7 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall reference only documents which are in the possession of the Customer or whose location is otherwise specified in this Call Off Schedule 7.
- 4.3 If the Security Management Plan submitted to the Customer pursuant to paragraph 3.1 of this Call Off Schedule is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule. If the Security Management Plan is not approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the Customer of the Security Management Plan. If the Customer does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on

the grounds that it does not comply with the requirements set out in paragraph 4.2 of this Call Off Schedule shall be deemed to be reasonable.

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

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

- 5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier from time to time and at least annually to reflect:

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

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

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

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

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

6. TESTING OF THE ISMS

- 6.1 The Supplier shall conduct tests of the ISMS ("**Security Tests**") from time to time and at least annually and additionally after any change or amendment to the ISMS or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of

such Security Tests shall be agreed in advance with the Customer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Service Level Thresholds, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.

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

7. COMPLIANCE OF THE ISMS WITH ISO/IEC 27001

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

7.3 If, as a result of any such independent audit as described in paragraph 7.2 of this Call Off Schedule the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

8. BREACH OF SECURITY

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

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

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

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

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

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

ANNEX 1: SECURITY POLICY

Guidance note

NOT USED

This annex is not used where a customer makes a Direct Award or runs a Short Form Further Competition.

ANNEX 2: SECURITY MANAGEMENT PLAN

Guidance note

NOT USED

This annex is not used where a customer makes a Direct Award or runs a Short Form Further Competition.

CALL OFF SCHEDULE 8: BUSINESS CONTINUITY AND DISASTER RECOVERY

1. BCDR POLICY

- 1.1 Unless the Supplier has provided a bespoke BCDR Plan during a General Further Competition Procedure, the Supplier's BCDR policy at Annex 1 will apply. Where the Customer has required a bespoke BCDR Plan during a General Further Competition Procedure, the Supplier's BCDR Plan at Annex 2 will also apply.

ANNEX 1: BCDR TENDER POLICY

Guidance note

NOT USED

This annex is not used where a customer makes a Direct Award or runs a Short Form Further Competition.

The Supplier's standard BCDR policy is available on request from the Supplier.

ANNEX 2: BCDR PLAN

Guidance note

NOT USED

This annex is not used where a customer makes a Direct Award or runs a Short Form Further Competition.

CALL OFF SCHEDULE 9: EXIT MANAGEMENT

1. DEFINITIONS

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

"Exclusive Assets"	means those Supplier Assets used by the Supplier or a Key Sub-Contractor which are used exclusively in the provision of the Services;
"Exit Information"	has the meaning given to it in paragraph 4.1 of this Call Off Schedule;
"Exit Manager"	means the person appointed by each Party pursuant to paragraph 3.3 of this Call Off Schedule for managing the Parties' respective obligations under this Call Off Schedule;
"Exit Plan"	means the plan described in paragraph 5 of this Call Off Schedule
"Net Book Value"	means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Customer of even date with this Call Off Contract;
"Non-Exclusive Assets"	means those Supplier Assets (if any) which are used by the Supplier or a Key Sub-Contractor in connection with the Services but which are also used by the Supplier or Key Sub-Contractor for other purposes;
"Registers"	means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Call Off Schedule;
"Termination Assistance"	means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Customer pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in paragraph 6.1 of this Call Off Schedule;
"Termination Assistance Period"	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of this Call Off Schedule;
"Transferable Assets"	means those of the Exclusive Assets which

"Transferable Contracts"	are capable of legal transfer to the Customer; means the Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Customer or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation;
"Transferring Assets"	has the meaning given to it in paragraph 9.2.1 of this Call Off Schedule;
"Transferring Contracts"	has the meaning given to it in paragraph 9.2.3 of this Call Off Schedule.

2. INTRODUCTION

2.1 This Call Off Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Customer leading up to and covering the Call Off Expiry Date and the transfer of service provision to the Customer and/or a Replacement Supplier.

2.2 The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Services from the Supplier to the Customer and/or a Replacement Supplier at the Call Off Expiry Date.

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

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

3.1.1 create and maintain a Register of all:

(a) Supplier Assets, detailing their:

(A) make, model and asset number;

(B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;

(C) Net Book Value;

(D) condition and physical location; and

(E) use (including technical specifications); and

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

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

- 3.1.3 agree the format of the Registers with the Customer as part of the process of agreeing the Exit Plan; and
- 3.1.4 at all times keep the Registers up to date, in particular in the event that Supplier Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.

3.2 The Supplier shall:

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

3.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Call Off Schedule and provide written notification of such appointment to the other Party within three (3) months of the Call Off Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Call Off Schedule. The Supplier shall ensure that its Exit Manager has the requisite Authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Call Off Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination or expiry of this Call Off Contract and all matters connected with this Call Off Schedule and each Party's compliance with it.

4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

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

- 4.1.1 detailed descriptions of the Service(s);
- 4.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
- 4.1.3 an inventory of Customer Data in the Supplier's possession or control;
- 4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- 4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
- 4.1.6 all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Call Off Contract; and
- 4.1.7 such other material and information as the Customer shall reasonably require,

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

4.2 The Supplier shall:

- 4.2.1 notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Customer regarding such proposed material changes; and
 - 4.2.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.
- 4.3 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
 - 4.3.1 prepare an informed offer for those Services; and
 - 4.3.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

5. EXIT PLAN

- 5.1 The Supplier shall, within three (3) months after the Call Off Commencement Date, deliver to the Customer an Exit Plan which:
 - 5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Customer and/or its Replacement Supplier on the expiry or termination of this Call Off Contract;
 - 5.1.2 complies with the requirements set out in paragraph 5.3 of this Call Off Schedule;
 - 5.1.3 is otherwise reasonably satisfactory to the Customer.
- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.3 Unless otherwise specified by the Customer or Approved, the Exit Plan shall set out, as a minimum:
 - 5.3.1 how the Exit Information is obtained;
 - 5.3.2 the management structure to be employed during both transfer and cessation of the Services;
 - 5.3.3 the management structure to be employed during the Termination Assistance Period;
 - 5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 5.3.5 how the service provision will transfer to the Replacement Supplier and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Customer's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - 5.3.6 details of contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon the Call Off Expiry Date together with any reasonable costs required to effect

such transfer (and the Supplier agrees that all Transferable Assets and Transferable Contracts will be available for such transfer);

- 5.3.7 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Replacement Services following the Call Off Expiry Date charged at rates agreed between the Parties at that time;
- 5.3.8 proposals for the process of handing over to the Customer or a Replacement Supplier copies of all documentation:
 - (a) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Services;
- 5.3.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
- 5.3.10 proposals for the identification and return of all Customer Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
- 5.3.11 proposals for the disposal of any redundant Services and materials;
- 5.3.12 how each of the issues set out in this Call Off Schedule will be addressed to facilitate the transition of the service provision from the Supplier to the Replacement Supplier and/or the Customer with the aim of ensuring that there is no disruption to or degradation of the provision of service to the Customer during the Termination Assistance Period; and
- 5.3.13 proposals for the supply of any other information or assistance reasonably required by the Customer or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

6. TERMINATION ASSISTANCE

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

- 6.1.1 the date from which Termination Assistance is required;
- 6.1.2 the nature of the Termination Assistance required; and
- 6.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Services.

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

7. TERMINATION ASSISTANCE PERIOD

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

- 7.1.1 continue to provide the Services (as applicable) and, if required by the Customer pursuant to paragraph 6.1 of this Call Off Schedule, provide the Termination Assistance;
- 7.1.2 in addition to providing the Services and the Termination Assistance, provide to the Customer any reasonable assistance requested by the Customer to allow the Services to continue without interruption following the termination or expiry of this Call Off Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Customer and/or its Replacement Supplier;
- 7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Call Off Schedule without additional costs to the Customer;
- 7.1.4 provide the Services and the Termination Assistance at no detriment to the Service Level Thresholds, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and
- 7.1.5 at the Customer's request and on reasonable notice, deliver up-to-date Registers to the Customer.

7.2 Without prejudice to the Supplier's obligations under paragraph 7.1.3 of this Call Off Schedule, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Call Off Schedule without additional costs to the Customer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Change Control Procedure.

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

8. TERMINATION OBLIGATIONS

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

8.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule), the Supplier shall:

- 8.2.1 cease to use the Customer Data;
- 8.2.2 provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the Customer);
- 8.2.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Customer Data and promptly certify to the Customer that it has completed such deletion;
- 8.2.4 return to the Customer such of the following as is in the Supplier's possession or control:
 - (a) all copies of the Customer Software and any other software licensed by the Customer to the Supplier under this Call Off Contract;
 - (b) all materials created by the Supplier under this Call Off Contract in which the IPRs are owned by the Customer;
 - (c) any parts of the IT Environment and any other equipment which belongs to the Customer;
 - (d) any items that have been on-charged to the Customer, such as consumables; and
 - (e) all Customer Property issued to the Supplier under Clause 28 of this Call Off Contract (Customer Property). Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);
 - (f) any sums prepaid by the Customer in respect of Services not Delivered by the Call Off Expiry Date;
- 8.2.5 vacate any Customer Premises;
- 8.2.6 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;
- 8.2.7 provide access during normal working hours to the Customer and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:
 - (a) such information relating to the Services as remains in the possession or control of the Supplier; and

- (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.

8.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

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

9. ASSETS, SUB-CONTRACTS AND SOFTWARE

9.1 Following notice of termination of this Call Off Contract and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:

- 9.1.1 terminate, enter into or vary any Sub-Contract;
- 9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
- 9.1.3 terminate, enter into or vary any licence for software in connection with the provision of Services.

9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5 of this Call Off Schedule, the Customer shall provide written notice to the Supplier setting out:

- 9.2.1 which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Supplier ("**Transferring Assets**");

- 9.2.2 which, if any, of:

- (a) the Exclusive Assets that are not Transferable Assets; and
- (b) the Non-Exclusive Assets,

the Customer and/or the Replacement Supplier requires the continued use of; and

- 9.2.3 which, if any, of Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Supplier (the "**Transferring Contracts**") in order for the Customer and/or its Replacement Supplier to provide the Replacement Services from the expiry of the Termination

Assistance Period. Where requested by the Customer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Customer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Customer and/or its Replacement Supplier requires to provide the Services or the Replacement Services.

- 9.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Customer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Call Off Contract Charges at the Call Off expiry Date, in which case the Customer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Call Off Contract Charges.
- 9.4 Risk in the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) on payment for the same.
- 9.5 Where the Supplier is notified in accordance with paragraph 9.2.2 of this Call Off Schedule that the Customer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 9.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Customer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - 9.5.2 procure a suitable alternative to such assets and the Customer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 9.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Customer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.
- 9.7 The Customer shall:
- 9.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - 9.7.2 once a Transferring Contract is novated or assigned to the Customer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

9.8 The Supplier shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has been effected.

9.9 The Supplier shall indemnify the Customer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Customer (and/or Replacement Supplier) pursuant to paragraph 9.6 of this Call Off Schedule in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

10. SUPPLIER PERSONNEL

10.1 [NOT USED]

10.2 The Supplier shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Customer and/or the Replacement Supplier.

10.3 During the Termination Assistance Period, the Supplier shall give the Customer and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Customer and/or the Replacement Supplier.

10.4 The Supplier shall immediately notify the Customer or, at the direction of the Customer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.

10.5 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, Suppliers or Sub-Contractors whose employment or engagement is transferred to the Customer and/or the Replacement Supplier.

11. CHARGES

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

12. APPORTIONMENTS

12.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

12.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

12.1.2 the Customer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as

the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

12.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

12.2 Each Party shall pay (and/or the Customer shall procure that the Replacement Supplier shall pay) any monies due under paragraph 12.1 of this Call Off Schedule as soon as reasonably practicable.

CALL OFF SCHEDULE 10: AGENCY AGREEMENT

This annex is not used where a customer makes a Direct Award or runs a Short Form Further Competition.

1. DEFINITIONS AND INTERPRETATION

1.1 Where the Customer has appointed the Supplier to provide Agency Services, the provisions of this Schedule shall apply.

2. EXTENT OF AUTHORITY

2.1

[Guidance Note:

General: Customer needs to specify clearly the extent of authority. This is to avoid the Agent acting beyond what you require them to do, e.g. entering into contracts you don't want them to enter or in any way that doesn't comply with your expectations. This will strengthen your position should a dispute ever arise between you, the Agent and/or any third parties in respect of the Agent's authority.

Customer may want to consider:

- ***limiting the Agent to certain Lots (e.g. if you want to procure from particular Lots without the Agent).***
- ***whether the appointment is on an exclusive/non-exclusive basis. For example, a non-exclusive arrangement may be preferable if you want the flexibility of procuring the services yourself or using another Agent;***
- ***limiting the Agent's authority by imposing controls and approvals over procurement strategy, documentation and evaluation; and***
- ***limiting the Agent's authority in light of poor performance.]***

Please note that agents should only be used within the scope of the Agency Service. By using your Agents outside of this scope (e.g. using the Agent to procure services outside of the Framework Agreement) may expose you to procurement risk. Therefore, the Authority strongly suggest limiting the scope of the Agency Service.]

Various regulations may be engaged by the scope and extent of authority, such as the Commercial Agents (Council Directive) Regulations 1993 (this will not apply if the agent is only purchasing/selling services (and not goods) on your behalf) and the Provision of Services Regulations 2009, which can impose additional obligations on the Customer and the Agent. Customer should therefore consider obtaining expert legal advice on these regulations, together with any Intellectual Property implications of entering into such agreements and provide necessary provisions.]

3. AGENT'S OBLIGATIONS

3.1 [to be defined by the Customer]

[Guidance Note:

General: Customer might want to impose obligations on the Agent and consider the following common ones:

- ***obeying lawful instructions;***
- ***obligation to assist in disputes;***
- ***obligation to comply with the Law and the terms of the Framework Agreement;***
- ***acting in accordance with sound commercial principles and doing nothing which could be prejudicial to the Customer's goodwill or commercial, statutory or governance interests;***
- ***acting within limits of authority;***
- ***any additional/alternative confidentiality provisions;***
- ***using reasonable diligence and care;***
- ***not to put himself into potential conflicts;***
- ***acting proactively to managing and minimising risk;***
- ***disclosing relevant issues and facts to the Customer promptly;***
- ***not to make a secret profit;***
- ***not to delegate his authority; and***
- ***to keep the Customer informed of developments in the market.]***

4. PRICE AND PAYMENT

[Guidance Note: There are detailed provisions in the Commercial Agents (Council Directive) Regulations 1993 relating to how commission/fees should be calculated and when it should be paid. Some of these provisions cannot be contracted out of.]

4.1 FINANCIAL DELEGATION

4.1.1 [to be defined by the Customer]

4.2 FEES

4.2.1 [to be defined by the Customer]

4.3 EXPENSES

4.3.1 [to be defined by the Customer]

4.4 INVOICING INSTRUCTIONS

4.4.1 [to be defined by the Customer]

4.5 PAYMENTS

4.5.1 [to be defined by the Customer]

5. LIABILITY

5.1 [to be defined by the Customer]

[Guidance Note:

General: Customer should consider any risk exposure to potential liabilities that may arise from appointing an Agent to procure on your behalf. For example, procurement challenges arising from faulty or negligent processes or evaluation or the Agent going beyond its authority. Customer may want to consider:

- **clause 32 and whether it appropriately allocates risk. For example, you may wish to factor any additional risk by increasing the Supplier's financial caps or perhaps obtaining an indemnity from the Agent to cover potential losses arising from its breaches of this Schedule. It may be more appropriate to request an indemnity but note that you should clarify in clause 33 whether this falls within or outside the financial caps on the Supplier's liability. It is advisable that you seek legal advice with regards to liability; and**
- **the effect of section 7 of the Bribery Act 2010 which has introduced a new strict liability offence for a commercial organisation. The Call Off provisions are probably sufficient for these purposes. However, to further bolster your position, you may want to refer to the MOJ principles (proportionate procedures, top level commitment, risk assessment, due diligence, communication, and monitoring and review) explicitly and also include a requirement for training for Agents and their staff. Please consult your designated Anti-Bribery officer.]**

6. TERMINATION

6.1 [to be defined by the Customer]

[Guidance Notes:

General: This Call Off Contract is very specific about termination and breach of this Schedule might not necessarily trigger termination rights. There is a general material Default contract termination right (clause 38.2 (e),(f)&(g)) but unless you specify which provisions trigger a material Default then it will not be clear whether the right will arise. Customer should therefore consider specifying which provisions will trigger a material Default termination right.

Customer may also want to consider whether the Commercial Agents Regulations apply because the Regulations provide a statutory framework of mandatory payments on termination either as compensation or on an indemnity basis. The intention is to protect the Agent, who is treated as the weaker party under the Directive. You should seek expert legal advice on this issue and tailor the termination and liability provisions accordingly.]

7. CUSTOMER'S RESPONSIBILITIES

7.1 [to be defined by the Customer]

[Guidance Note: Agents might want reassurances that you will perform certain duties and that they will be provided with adequate remedies if you don't. Please describe what those obligations are, such as a duty to act in good faith at all times.]

CALL OFF SCHEDULE 11: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

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

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Counter Notice”	has the meaning given to it in paragraph 6.2 of this Call Off Schedule;
“Exception”	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Services;
“Expert”	the person appointed by the Parties in accordance with paragraph 5.2 of this Call Off Schedule 13; and
“Mediation Notice”	has the meaning given to it in paragraph 3.2 of this Call Off Schedule;
“Mediator”	the independent third party appointed in accordance with paragraph 4.2 of this Call Off Schedule 13.

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; and
- 2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this Call Off Schedule, the reason why.

2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Call Off Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

2.4 Subject to paragraph 3.2 of this Call Off Schedule, the Parties shall seek to resolve Disputes:

- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Call Off Schedule);

- 2.4.2 then by mediation (as prescribed in paragraph 4 of this Call Off Schedule); and
 - 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Call Off Schedule) or litigation (in accordance with Clause 55 of this Call Off Contract (Governing Law and Jurisdiction)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Call Off Schedule) where specified under the provisions of this Call Off Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Call Off Schedule.
- 2.6 In exceptional circumstances where the use of the times in this Call Off Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- 2.7.1 in paragraph 3.2.3, ten (10) Working Days;
 - 2.7.2 in paragraph 4.2, ten (10) Working Days;
 - 2.7.3 in paragraph 5.2, 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 Customer's **Representative** [if different from the contact details given in section A of the Order Form will be specified by the Customer in section B] and the Supplier's **Representative** [which the Supplier will provide in their response at section D or section E of the Order Form as appropriate].
- 3.2 If:
- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
 - 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to

the conduct of commercial negotiations in accordance with this paragraph 3 of this Call Off Schedule; or

- 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Call Off Schedule within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation (a “**Mediation Notice**”) in accordance with paragraph 4 of this Call Off Schedule.

4. **MEDIATION**

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

5. **EXPERT DETERMINATION**

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

6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 55 of this Call Off Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

6.3 If:

- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Call Off Schedule shall apply;
- 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 61 of this Call Off Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
- 6.3.3 the Customer does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Call Off Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Call Off Schedule or commence court proceedings in the courts in accordance with Clause 55 of this Call Off Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

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

- 6.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International

Arbitration (“**LCIA**”) (subject to paragraphs 6.4.5 to 6.4.6 of this Call Off Schedule);

- 6.4.2 the arbitration shall be administered by the LCIA;
- 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 6.4.5 the chair of the arbitral tribunal shall be British;
- 6.4.6 the arbitration proceedings shall take place in London **[or as specified by the Customer in section B of the Order Form]** and in the English language; and
- 6.4.7 the seat of the arbitration shall be London **[or as specified by the Customer in section B of the Order Form]**

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

7. URGENT RELIEF

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

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

CALL OFF SCHEDULE 12: VARIATION FORM

This schedule, for use, as required, by both Parties throughout the life of the Call Off Contract has been provided as Appendix 2 to the Direct Award or Short Form Further Competition Order Form.

No of Order Form being varied:

.....

Variation Form No:

.....

BETWEEN:

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

and

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

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

[Guidance Note: Insert details of the Variation]

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

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

CALL OFF SCHEDULE 13: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION

1.1 This Call Off Schedule 12 specifies the range of Alternative Clauses and Additional Clauses that may be requested in the Order Form and, if requested in the Order Form, shall apply to this Call Off Contract.

2. CLAUSES SELECTED

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

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

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

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

3. IMPLEMENTATION

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

4. ALTERNATIVE CLAUSES

4.1 SCOTS LAW

Law and Jurisdiction (Clause 55)

References to "England and Wales" in the original Clause 55 of this Call Off Contract (Law and Jurisdiction) shall be replaced with "Scotland".

4.2 NORTHERN IRELAND LAW

Law and Jurisdiction (Clause 55)

References to "England and Wales" in the original Clause 55 of this Call Off Contract (Law and Jurisdiction) shall be replaced with "Northern Ireland".

Insolvency Event

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

4.3 NON-CROWN BODIES

Clause 43.3.1(a) of this Call Off Contract (Official Secrets Act and Finance Act) shall be deleted.

4.4 NON-FOIA PUBLIC BODIES

Replace Clause 31.6 of this Call Off Contract (Freedom of Information) with "The Customer has notified the Supplier that the Customer is exempt from the provisions of FOIA and EIR."

5. ADDITIONAL CLAUSE: SECURITY MEASURES

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

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

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

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

5.2 The following new Clause 58 shall apply:

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

58. SECURITY MEASURES

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

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

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

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

58.1.4. disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Call Off Contract that such person shall have the information.

58.2. Without prejudice to the provisions of Clause 58.1, the Supplier shall, both before and after the completion or termination of this Call Off Contract, take all reasonable steps to ensure:

- 58.2.1. no such person as is mentioned in Clauses 58.1, 58.1.1 or 58.1.2 hereof shall have access to any item or document under the control of the Supplier containing information about a secret matter except with the prior consent in writing of the Customer;
- 58.2.2. that no visitor to any premises in which there is any item to be supplied under this Call Off Contract or where Services are being supplied shall see or discuss with the Supplier or any person employed by him any secret matter unless the visitor is authorised in writing by the Customer so to do;
- 58.2.3. that no photograph of any item to be supplied under this Call Off Contract or any portions of the Services shall be taken except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;
- 58.2.4. that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and
- 58.2.5. that if the Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such document, model or item as is mentioned in Clause 58.2.3, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
- 58.3. The decision of the Customer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 58 shall be final and conclusive.
- 58.4. If and when directed by the Customer, the Supplier shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 58.5. If and when directed by the Customer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act

1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Call Off Contract.

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

Clause 58, notify such breach forthwith to the Customer;
and

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

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

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

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

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

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

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

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

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

58.13. Supplier's notice

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

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

58.14. Matters pursuant to termination

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

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

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

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

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

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

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

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

58.15.3. the Customer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Supplier upon the termination of this Call Off Contract under the provisions of Clause 58.11 and properly provided by or supplied to the Supplier for the performance of this Call Off Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Customer, elect to retain;

58.15.4. the Supplier shall prepare and deliver to the Customer within an agreed period or in default of agreement within such period as the Customer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Customer and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;

58.15.5. the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Call Off Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract;

58.15.6. if hardship to the Supplier should arise from the operation of this Clause 58.15 it shall be open to the Supplier to refer the circumstances to the Customer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this Clause shall be final and conclusive; and

subject to the operation of Clauses 58.15.3, 58.15.4, 58.15.5 and 58.15.6 termination of this Call Off Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

6. ACCESS TO MOD SITES

6.1 The definition of Call Off Contract in Call Off Schedule 1 (Definitions) to the Call Off Terms shall be replaced with the following:

6.1.1 **"Call Off Contract"** means this written agreement between the Customer and the Supplier consisting of the Order Form and the Call Off Terms and the MoD Terms and Conditions.

6.2 The following definitions shall be inserted into in Call Off Schedule 1 (Definitions) to the Call Off Terms:

6.2.1 **"MoD Terms and Conditions"** means the contractual terms and conditions listed in Schedule [...] which form part of the Call Off Terms **[Guidance Note: read with the Guidance Note below]**

6.2.2 **"Site"** shall include any of Her Majesty's Ships or Vessels and Service Stations.

6.2.3 **"Officer in charge"** shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.

6.3 The following clauses shall be inserted into Clause 2 of this Call Off Contract (Due Diligence):

6.3.1 The Supplier confirms that it has had the opportunity to review the MoD Terms and Conditions and has raised all due diligence questions in relation to those documents with the Customer prior to the Commencement Date.

6.3.2 Where required by the Customer, the Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Supplier.

6.4 The following new Clause 59 shall apply:

[Guidance Note: the intention is for this clause to follow after the final clause in the T&Cs and/or the Additional Clause "Security Measures"]

59. ACCESS TO MOD SITES

59.1. In this Clause 59:

- 59.1.1. The Customer shall issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Customer and shall be surrendered on demand or on completion of the supply of the Services.
- 59.1.2. The Supplier's representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.
- 59.1.3. The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Customer wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Call Off Contract where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Customer and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Customer with other evidence relating to the costs of this Call Off Contract.
- 59.1.4. Where the Supplier's representatives are required by this Call Off Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Supplier shall make such arrangements through the Technical Branch named for this purpose in this Call Off Contract. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Customer shall reimburse the Supplier's reasonable costs for such

transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Call Off Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.

- 59.1.5. Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.
- 59.1.6. Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 59.1.7. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 59.1.8. The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Customer shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Customer shall be recovered from the Supplier.

6.5 Ministry of Defence (MoD) DEFCON 129J shall apply and will form part of this Call Off Contract.

6.6 The following new Call Off Schedule [15] shall apply:

CALL OFF SCHEDULE 15: MOD DEFCONS AND DEFFORMS

This schedule, where used, will be completed by the Customer prior to the issue of the Short Form Further Competition Order Form to supplier to request a Short Form Tender Response.

This schedule is provided as Appendix 3 to the Short Form Further Competition Order Form.

This schedule cannot be used for Direct Award Call Off Contracts.

The following MOD DEFCONS and DEFFORMs form part of this Call Off Contract:

DEFCONS

DEFCON No	Version	Description

DEFFORMs (Ministry of Defence Forms)

DEFFORM No	Version	Description

[Guidance Note: the above documents can be found at <http://www.aof.mod.uk/>]

[Guidance Note for the Ministry of Defence: Upon placing of an Order the Ministry of Defence shall select and refine the DEFCONs or DEFFORMs from the tables above, in accordance with the DEFCONs and DEFFORMs which are appropriate to the specific Call Off Contract, and set them out in Call Off Schedule [11].]

CALL OFF SCHEDULE 14: BENCHMARKING

1. DEFINITIONS

In this Call Off Schedule the following definitions shall apply:

“Benchmark Review”	a review of the Services carried out in accordance with Paragraph 6 of this Call Off Schedule to determine whether any or all of the Services represent Good Value;
“Benchmarked Services”	the Services that the Customer elects to include in a Benchmark Review under Paragraph 3.1 of this Call Off Schedule, and where a sub-set of Services is selected, such Services shall be related;
“Benchmarker”	the independent third party appointed under Paragraph 5.1 of this Call Off Schedule;
“Benchmarking Report”	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 7 of this Call Off Schedule;
“Benchmark Review”	a review of the Services carried out in accordance with Paragraph 6 of this Call Off Schedule to determine whether any or all of the Services represent Good Value;
“Good Value”	that: (a) the Charges attributable to a Benchmarked Service are, having taken into account the Service Level Thresholds less than or equal to the Average Price or within the Upper Quartile (as specified in the Order Form); and (b) any Service Levels Performance Measure attributable to Benchmarked Services are, having taken into account the Charges, equal to or greater than the median or mean average (as specified in the Order Form) service levels for Comparable Services as adjusted using Equivalent Services Data;
“Average Price”	in relation to the Comparable Services provided by the Comparison Group(s), the mean average of prices for those Comparable Services as adjusted to produce Equivalent Services Data over the previous twelve (12) month period or other period as agreed in writing between the Parties. The “mean average price” shall be calculated by aggregating the prices derived from Equivalent Services Data for each of the services and dividing the same by the number instances of Comparable Services;
“Comparable Services”	services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar services exist in the market, the Benchmarker shall propose an approach for developing a comparable service benchmark;
“Equivalent Services	data (including price data) derived from an analysis of the

Data”	Comparable Services provided by the Comparison Group(s) as adjusted in accordance with Paragraph 6.8.1 of this Call Off Schedule;
“Comparison Group(s)”	a sample group or groups of organisations providing Comparable Services identified by the Benchmark under Paragraph 6.8 of this Call Off Schedule which consist(s) of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmark's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmark, are best practice organisations;
“Upper Quartile”	that based on an analysis of Equivalent Services Data, the Charges for the Benchmarked Services, as compared to the range of prices for Comparable Services, are within the top twenty five percent (25%) in terms of best value for money or the recipients of Comparable Services;

2. INTRODUCTION

- 2.1 The purpose of this Schedule is to enable the Customer to ensure that the provision of Services and payment of Charges continues to represent value for money for the Customer throughout the Term.

3. FREQUENCY OF BENCHMARK REVIEW

- 3.1 The Customer may, by written notice to the Supplier (with a copy being simultaneously sent to the Authority), require a Benchmark Review of any or all of the Services.
- 3.2 The Customer shall not be entitled to carry out a Benchmark Review during the twelve (12) month period from the Call Off Commencement Date nor at intervals of less than twelve (12) months after any previous Benchmark Review.
- 3.3 The Benchmarking Review may be undertaken by or on behalf of the Customer. If the Customer wishes the Authority to carry out a Benchmarking Review on its behalf, the Customer shall approach the Authority but the Authority shall not be obliged to carry out such Benchmarking Review. The costs and expenses of the Authority shall be borne by the Parties in accordance with Paragraph 5.3 below. The Authority shall have no liability for any costs or expenses of the Benchmark and the Benchmark Review if it agrees to undertake the Benchmarking Review on behalf of the Customer.

4. PURPOSE AND SCOPE OF BENCHMARK REVIEW

- 4.1 The purpose of a Benchmark Review shall be to establish whether a Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 4.2 The Services that are to be the Benchmarked Services shall be identified by the Customer in the written request given under Paragraph 3.1 above.

5. APPOINTMENT OF BENCHMARKER

- 5.1 The Parties shall appoint the Benchmarker to carry out the Benchmark Review from the list of organisations set out in the Order Form. The terms under which the Benchmarker is engaged shall be:
- 5.1.1 consistent with the relevant provisions set out in this Schedule; and
 - 5.1.2 determined and agreed solely by the Customer (unless otherwise advised by the Customer). The Customer may consult with the Supplier on the terms under which the Benchmarker is engaged but the Supplier agrees that such terms shall be determined and agreed solely by the Customer.
- 5.2 The Customer will, at the written request of the Supplier, require the Benchmarker to enter into an appropriate confidentiality undertaking with the Supplier provided that nothing shall prevent the Benchmarker from using anonymised data about the Services in future benchmarks for its other clients.
- 5.3 The costs and expenses of the Benchmarker and the Benchmark Review (including any costs and expenses incurred by the Authority pursuant to Paragraph 3.3 above) shall be shared equally between the Parties provided that each Party shall bear its own internal costs of the Benchmark Review.
- 5.4 In order to enable the Benchmarker to be in a position to effectively and efficiently conduct Benchmark Reviews, the Parties acknowledge that a newly appointed Benchmarker will need to be given a sufficient opportunity, prior to its initial Benchmark Review, to:
- 5.4.1 become familiar with the requirements of this Schedule and the information that will be required from the Parties to facilitate any Benchmark Review; and
 - 5.4.2 determine that its methodology is not ineffective or inadequate to any material extent and make any changes that it deems appropriate.
- 5.5 Where the Authority carries out a Benchmark Review on behalf of the Customer, the Authority will require the Benchmarker to enter into an appropriate confidentiality undertaking with the Supplier, provided that nothing shall prevent the Benchmarker from using anonymised data about the Services in future benchmarks for its other clients.

6. BENCHMARKING PROCESS

- 6.1 The Customer shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review (a copy of the plan shall be provided to the Authority upon request) within eight (8) Working Days (or such other period as the Parties agree in writing) after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
- 6.1.1 the scope, proposed timetable and description of Services for the Benchmark Review;
 - 6.1.2 a description of the information that the Benchmarker requires each Party to provide;
 - 6.1.3 a description of the benchmarking methodology to be used and the means by which Good Value will be established;

- 6.1.4 a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives;
 - 6.1.5 an estimate of the resources required from each Party to underpin the delivery of the plan;
 - 6.1.6 a description of how the Benchmarker will scope and identify the Comparison Group(s) and the minimum number of samples required to establish each Comparison Group; and
 - 6.1.7 details of any entities which the Benchmarker proposes to include within the Comparison Group(s) including a description of the methodology which the Benchmarker may use to normalise or otherwise adjust the results from the Comparison Group(s).
- 6.2 Each Party must give notice in writing to the Benchmarker and to the other Party within eight (8) Working Days (or such other period as the Parties agree in writing) after receiving the draft plan, advising whether it approves the draft plan or, if it does not approve the draft plan, suggesting amendments to that plan. Neither Party may unreasonably withhold or delay its approval of the draft plan nor suggest any amendments which are unreasonable.
- 6.3 Where a Party suggests amendments to the draft plan in accordance with Paragraph 6.2 above, the Benchmarker must, if it believes the amendments are reasonable, produce an amended draft plan. In making a determination as to whether or not to accept amendments put forward by either Party, the Benchmarker must act reasonably and in accordance with the terms under which it has been engaged by the Customer. Paragraph 6.2 above shall apply to any amended draft plan.
- 6.4 Failure by a Party to give notice under Paragraph 6.2 above shall be treated as approval of the draft plan by that Party.
- 6.5 Once the plan is approved by both Parties (a copy of the approved plan shall be provided to the Authority upon request), the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any material information requested from it by the Benchmarker and does not promptly remedy such failure once such omission has been identified such failure shall constitute a material Default for the purposes of Clause 38.2.1.
- 6.6 Each Party shall cooperate fully with the Benchmarker including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Benchmarked Services.
- 6.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 6.8 Once it has received the information it requires, the Benchmarker shall finalise a sample of entities constituting the Comparison Group(s) and collect data relating to Comparable Services. The selection of the Comparison Group(s) (both in terms of number and identity of entities) and

Comparable Services shall be a matter for the Benchmarker's professional judgment by:

- 6.8.1 applying the adjustment factors listed in Paragraph 6.10 below and from an analysis of the Comparable Services derive the Equivalent Services Data;
 - 6.8.2 using the Equivalent Services Data calculate (as set out in the Order Form) the Average Price or the Upper Quartile and/or the mean or median Service Levels;
 - 6.8.3 comparing the Charges attributable to the Benchmarked Services (having regard in particular to the Service Level Thresholds and Service Credits regime) with (as set out in the Order Form) the Average Price or Upper Quartile using the Equivalent Services Data;
 - 6.8.4 comparing the Service Level Thresholds attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with (as set out in the Order Form) the median or mean average service levels using the Equivalent Services Data; and
 - 6.8.5 determining whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 6.9 Members of the Comparison Group(s) with unusually high or low prices due, for example, to loss-leading prices or cross-subsidised prices, will be identified by the Benchmarker and removed from the Comparison Group(s) with the agreement of the Parties (not to be unreasonably withheld or delayed). The Benchmarker shall ensure that both Parties have full visibility of such Comparison Group(s) before and after the elimination of the identified members. No other organisations shall be removed from the Comparison Group(s).
- 6.10 In carrying out the benchmarking analysis the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services and the Comparable Services in order to derive Equivalent Services Data:
- 6.10.1 the contractual and business environment under which the Benchmarked Services are being provided (including the scope, scale, complexity and geographical spread of the Benchmarked Services);
 - 6.10.2 any front-end investment and development costs of the Supplier;
 - 6.10.3 the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Benchmarked Services as a whole;
 - 6.10.4 the extent of the Supplier's management and contract governance responsibilities; and
 - 6.10.5 any other factors reasonably identified by the Supplier which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing or over-aggressive pricing).
- 6.11 The Benchmarker shall maintain an audit trail which is sufficiently detailed for any Expert appointed pursuant to Paragraph 7.10 below to

understand all work conducted by the Benchmarker, including, so far as is reasonably practicable, details of the relevant information referred to in Paragraphs 6.8 to 6.10 (inclusive) above, calculations, cost base information, source data, analyses, normalisation and adjustment.

7. BENCHMARKER'S REPORT

- 7.1 The Customer shall be entitled to disclose the Benchmarking Report to the Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).
- 7.2 The Benchmarker shall be required to prepare a Benchmarking Report and deliver it simultaneously to both Parties (a copy of the Benchmarking Report shall be provided to the Authority upon request), at the time specified in the plan approved under Paragraph 6 above, setting out its findings. Those findings shall be required to:
 - 7.2.1 identify whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
 - 7.2.2 address the quality and competitiveness or otherwise of those Benchmarked Services; and
 - 7.2.3 if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges or Service Level Thresholds, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value.
- 7.3 The Benchmarker shall act as an expert and not as an arbitrator.
- 7.4 Benchmark Reviews shall not result in any increase to the Charges or any decrease in the performance of any Services or Service Level Thresholds.
- 7.5 If the Benchmarking Report states that any Benchmarked Service is not Good Value, or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraph 7.7 below) implement the changes set out in the Benchmarking Report as soon as reasonably practicable within a timescale agreed in writing with the Customer but (in the case only of a reduction in the Charges) in any event within no more than one (1) month of receipt of the Benchmarking Report and otherwise no more than three (3) months of receipt of the Benchmark Report.
- 7.6 Subject to the Supplier's right to dispute or reject the Benchmarking Report under Paragraph 7.8 below, if the Benchmarking Report determines that any or all of the Benchmarked Services are not Good Value, any failure by the Supplier to reduce the Charges in accordance with such timescales agreed between the Parties under Paragraph 7.5 above shall, without prejudice to any other rights or remedies of the Customer, constitute a material Default for the purposes of Clause 38.2.1.
- 7.7 The Supplier shall not be obliged to:
 - 7.7.1 reduce any Charges which relate to a Service which has a service term specified in this Call Off Contract and such service term has not expired. In such instance and notwithstanding anything to the contrary in this Call Off Contract, the Customer shall be entitled to terminate such Service for convenience (and pay the early service termination charge (if any) relating to such

Service stated in this Call Off Contract (or the Supplier's Pricing Catalogue where such is required by the Customer)) and re-order such Service from the Supplier (at the reduced price) or another Supplier; or

7.7.2 implement any Benchmarking Report to the extent this would cause the Supplier to provide the Benchmarked Services at a loss or to the extent the Supplier cannot technically implement the recommended changes.

7.8 If the Supplier believes that implementation of any changes set out in the Benchmarking Report would cause the Supplier to provide the Services at a loss, it shall be entitled to provide a written submission to the Customer explaining why it believes this. Any such submission must be made to the Customer within ten (10) Working Days of receipt of the Benchmarking Report and must demonstrate clearly:

7.8.1 how specific elements of the Supplier's profit and profit margin would be impacted by implementation of the proposed changes; and

7.8.2 that it has taken full account of the financial impact of the change on all other Services due to be performed under this Call Off Contract.

7.9 If the Customer receives a written submission from the Contactor pursuant to Paragraph 7.8 above, it shall review the evidence provided by the Supplier and shall, acting reasonably and in good faith, within ten (10) Working Days, either:

7.9.1 accept the Supplier's submission that implementation of the changes set out in the Benchmarking Report would cause the Supplier to provide the Services at a loss, in which case the Supplier shall implement the changes set out in the Benchmarking Report only to the extent that such changes could be implemented without the Supplier incurring a loss in respect of performance of the Services; or

7.9.2 reject the Supplier's submission, in which case the Customer shall provide a written explanation of its rationale for rejecting the Supplier's submission; and the Supplier shall implement the changes set out in the Benchmarking Report.

7.10 In the event of a Dispute or rejection of the Benchmarking Report under Paragraph 7.9 above, the matter shall be referred to an Expert for determination in accordance with Schedule 11 (Dispute Resolution). In the event of a Dispute between the Parties, the Customer shall continue to pay the Charges to the Supplier in accordance with the terms of this Call Off Contract pending the conclusion of the Expert determination process.

On conclusion of the Expert determination process, if the Expert determines that all or any part of the Benchmarking Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall, within four (4) Working Days, repay to the Customer the difference between the Charges paid by the Customer up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect.