

OFFICIAL - SENSITIVE - COMMERCIAL

GP IT Futures Lot 2 Call Off Agreement

Call Off Terms

NHS England

and

MedicalDirector Limited

**CALL OFF AGREEMENT for the provision of
Reasonable Adjustment Flag (Local System
Integration) under**

Lot 2

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BETWEEN

- (1) NHS England ("**Call Off Ordering Party**"); and
- (2) Medicaldirector Limited, company number 11498931, whose registered office is at C/O Telstra Ltd, 2nd Floor, Blue Fin Building, 110 Southwark Street, London SE1 0TA ("**Supplier**").

BACKGROUND

- (A) The Supplier has entered into a Lot 2 framework agreement with the Authority for the provision of services procured via further competitions ("**Framework Agreement**").
- (B) This Call Off Agreement governs the provision of the Services and/or Deliverables by the Supplier to the Call Off Ordering Party following completion of a direct award or further competition under the Framework Agreement.

IT IS AGREED as follows:

1. Interpretation

- 1.1 In these terms and conditions, to the extent that capitalised phrases are not defined in the Framework Agreement:

Abandonment	means the Supplier intentionally ceasing to make reasonable efforts to perform all or substantially all of its material obligations under this Call Off Agreement;
Acceptance Criteria	has the meaning given in clause 7.5;
Achieve	means in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of schedule 2 (<i>Implementation Plans</i>)
Background IP	means any Intellectual Property Rights owned by or licensed to a Party that are not Foreground IP;
Beneficiary	has the meaning given in schedule 10 (<i>Conduct of Claims</i>);
Call Off Change	means any change permitted under this Call Off Agreement in accordance with schedule 6 (<i>Change Procedure</i>);
Central Government or NHS Body	has the meaning given in the Framework Agreement;
Change Communication	means any communication sent or required to be sent pursuant to schedule 6 (<i>Change Procedure</i>);
Change Form	means the form set out at Annex 1 of schedule 6 (<i>Change Procedure</i>) for executing Call Off Changes;
Charges	means the charges for the Services and/or Deliverables as specified in Schedule 3 (<i>Charges and Invoicing</i>);
Claim	has the meaning given in schedule 10 (<i>Conduct of Claims</i>);

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Commercially Sensitive Information	means the information listed in schedule 9 (<i>Commercially Sensitive Information</i>) to this Call Off Agreement, which the Supplier has indicated to the Call Off Ordering Party that, if disclosed by the Call Off Ordering Party, would cause the Supplier significant commercial disadvantage or material financial loss;
Commercial Negotiation	has the meaning given in schedule 8 (<i>Dispute Resolution Procedure</i>);
Contracting Authority	means as defined in the Public Contracts Regulations 2015;
Contract Year	means a consecutive period of 12 Months commencing on the Effective Date and then each consecutive period of 12 Months commencing on the anniversary of the Effective Date;
Confidential Information	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
Contract Managers	has the meaning given in schedule 8 (<i>Dispute Resolution Procedure</i>);
Data Processing Deed	means the prescribed form deed poll instrument pursuant to which the Supplier shall give an undertaking for the benefit of the data controllers for how the Supplier will process personal data relating to the services provided by the Supplier;
Default	has the meaning given in the Framework Agreement;
Delay Payment	has the meaning given in clause 7.6.3;
Deliverables	means anything, including any and all works or materials, created or developed by or on behalf of the Supplier pursuant to the terms of this Agreement or otherwise arising out of or in connection with the provision of the Services and including items set out in Schedule 1 (Specification / Services Description);
Delivery Date(s)	has the meaning given in clause 7.6;
Detailed Implementation Plan	means the plan developed and revised from time to time in accordance with schedule 2 (<i>Implementation Plan</i>);
Dispute	means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Procedure or any matter where this Call Off Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure at schedule 8;
Dispute Notice	means as defined in schedule 8 (<i>Dispute Resolution Procedure</i>);
Effective Date	means the date that this Call Off Agreement is executed by the Parties;
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;
Expedited Timetable	Dispute has the meaning given in paragraph 4 of schedule 8 (<i>Dispute Resolution Procedure</i>);
Expert	means in relation to a Dispute, a person appointed in accordance with paragraph 7 of schedule 8 (<i>Dispute Resolution Procedure</i>);

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Expiry Date	31 st March 2024
FOIA	means the Freedom of Information Act 2000;
Force Majeure Event	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Framework Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of local government, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure, other than a Force Majeure Event, in the Supplier's or a Sub-Contractor's supply chain;
Foreground IP	means any Intellectual Property Rights in the Deliverables;
Framework Agreement	has the meaning given in the recitals to this Call Off Agreement;
Framework Authority	has the same meaning as the definition of "Authority" in the Framework Agreement;
Good Industry Practice	means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services and/or Deliverables to a customer like the Call Off Ordering Party, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
Implementation Plan	has the meaning given in clause 7.1
Indemnified Person	means the Call Off Ordering Party and each and every person to whom the Call Off Ordering Party sub licenses, assigns or novates any Intellectual Property Rights in accordance with this Call Off Agreement;
Indemnifier	has the meaning given in schedule 10 (<i>Conduct of Claims</i>);
Information	has the meaning given under section 84 of the FOIA;
Intellectual Property Rights	means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;
IPRs Claim	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Intellectual Property Rights used to provide the Services and/or Deliverables or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Call Off Ordering Party in the fulfilment of its obligations under this Call Off Agreement;
Key Roles	means the personnel roles specified in Schedule 5 or otherwise notified as such by the Call Off Ordering Party to the Supplier in writing;
Laws	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye law, enforceable right within the meaning of section 2 of the European Communities Act 1972,

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		regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply. For the avoidance of doubt, this shall include any Laws arising out of or in connection with any withdrawal of the United Kingdom from the European Union;
Losses		has the meaning given in the Framework Agreement;
Mediation Notice		has the meaning given in schedule 8 (<i>Dispute Resolution Procedure</i>);
Medical Devices		has the meaning given in the Framework Agreement;
Milestone		means an event or task described in the Implementation Plan for each which, if applicable, shall be completed by the relevant Milestone Date;
Milestone Achievement Certificate		means the certificate set out in Annex 1 to Schedule 2 (<i>Implementation Plans</i>) which evidences the Supplier's Achievement of a Milestone;
Milestone Date		means the target date set out against the relevant Milestone in the Implementation Plan for each Deliverable by which the Milestone must be Achieved;
Multi-Party Dispute Representatives		has the meaning given in schedule 8 (<i>Dispute Resolution Procedure</i>);
Multi-Party Dispute Resolution Board		has the meaning given in schedule 8 (<i>Dispute Resolution Procedure</i>);
Multi-Party Dispute Resolution Procedure		has the meaning given in schedule 8 (<i>Dispute Resolution Procedure</i>);
Multi-Party Procedure Initiation Notice		has the meaning given in schedule 8 (<i>Dispute Resolution Procedure</i>);
Other Party		has the meaning given in schedule 6 (<i>Change Procedure</i>);
Party		means the Supplier or the Call Off Ordering Party (as appropriate) and "Parties" shall mean both of them;
Related Third Party		means a party to the Framework Agreement or Call Off Agreement to which the Supplier is also a party;
Request Information	For	means a request for information relating to this Call Off Agreement or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIRs
Requesting Party		has the meaning given in schedule 6 (<i>Change Procedure</i>);
Sensitive Claim		has the meaning given in schedule 10 (<i>Conduct of Claims</i>);
Services		means the services to be supplied by the Supplier to the Call Off Ordering Party under this Call Off Agreement as more particularly described in Schedule 1 (<i>Specification/Services Description</i>);
Software		means the software provided by the Supplier under this Call-Off Agreement and/or Third Party Software (as applicable);
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;

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Specification	means the specification for the Services and/or Deliverables (including as to quantity, description and quality) as specified in Schedule 1 (<i>Specification/Services Description</i>);
Staff	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under this Call Off Agreement;
Standards	means any standards reasonably applicable given the Supplier's expertise and the Services and/or Deliverables provided, which shall always include as a minimum the Standards as defined in the Catalogue Agreement between the Supplier and NHS England;
Sub-Contract	means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-Contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-Contractor) all or any part of the Services and/or Deliverables or facilities or services which are material for the provision of the Services and/or Deliverables or any part thereof or necessary for the management, direction or control of the Services and/or Deliverables or any part thereof;
Sub-Contractor	means any third party with whom: <ul style="list-style-type: none"> a) the Supplier enters into a Sub-Contract; or b) a third party under limb (a) above enters into a Sub-Contract, or the servants or agents of that third party;
Supplier Request	has the meaning given in schedule 8 (<i>Dispute Resolution Procedure</i>);
Supporting Documentation	has the meaning given in schedule 3 (<i>Charges and Invoicing</i>);
Term	means the period from the Effective Date to the Expiry Date (as extended in accordance with clause 3.2) or, if earlier, the date this Agreement is terminated in accordance with its terms and conditions;
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 third party software that is used for the provision of the Services and/or Deliverables;
Transparency Information	has the meaning given in clause 16.1;
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
Wilful Default	has the meaning given in the Framework Agreement;
Working Day	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

1.2.1 the singular includes the plural and vice versa;

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

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- 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government or NHS Body;
- 1.2.4 any reference to a named body or organisation shall include reference to successors of that body or organisation and/or any equivalent bodies or organisations that perform the same or substantially similar functions;
- 1.2.5 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 1.2.6 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.7 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.8 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of this Call Off Agreement;
- 1.2.9 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.10 the word 'including' shall be understood as meaning 'including without limitation'.

2. Supply of Services and Deliverables

- 2.1 In consideration of the Call Off Ordering Party's agreement to pay the Charges, the Supplier shall supply the Services and/or any Deliverables to the Call Off Ordering Party for the Term subject to and in accordance with the terms and conditions of this Call Off Agreement.
- 2.2 In supplying the Services and/or Deliverables, the Supplier shall:
 - 2.2.1 co-operate with the Call Off Ordering Party in all matters relating to the Services and/or Deliverables and comply with all the Call Off Ordering Party's reasonable instructions;
 - 2.2.2 perform the Services and/or supply the Deliverables with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Supplier's industry, profession or trade;
 - 2.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Call Off Agreement;
 - 2.2.4 ensure that the Services and/or Deliverables shall conform with all descriptions and specifications set out in the Specification;
 - 2.2.5 comply with all applicable Standards, Laws and guidance;
 - 2.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services and/or Deliverables; and
 - 2.2.7 perform the Services and/or supply the Deliverables promptly and in any event within any time limits as may be set out in this Call Off Agreement.
- 2.3 The Call Off Ordering Party may by written notice to the Supplier at any time request a variation to the scope of the Services and/or Deliverables. In the event that the Supplier agrees to any variation to the

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scope of the Services and/or Deliverables (as applicable), the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Call Off Ordering Party and the Supplier.

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

3. Term

- 3.1 This Call Off Agreement shall take effect on the Effective Date and shall continue until Expiry Date (as extended in accordance with clause 3.2) or termination in accordance with the terms and conditions of this Call Off Agreement.
- 3.2 The Call Off Ordering Party may extend this Call Off Agreement for a period or periods of up to 12 months by giving not less than 20 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of this Call Off Agreement shall apply throughout any such extended period.

4. Charges, Payment and Recovery of Sums Due

- 4.1 The Charges for the Services and/or Deliverables shall be as set out Schedule 3 and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services and/or Deliverables. Unless otherwise agreed in writing by the Call Off Ordering Party, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and/or supply of the Deliverables.
- 4.2 The Supplier shall invoice the Call Off Ordering Party as specified in this Call Off Agreement. Each invoice shall include such supporting information required by the Call Off Ordering Party to verify the accuracy of the invoice, including the relevant purchase order number and a breakdown of the Services and/or Deliverables supplied in the invoice period.
- 4.3 In consideration of the supply of the Services and/or Deliverables by the Supplier, the Call Off Ordering Party shall pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid and undisputed invoice which includes a valid purchase order number. The Call Off Ordering Party may, without prejudice to any other rights and remedies under this Call Off Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 4.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Call Off Ordering Party following delivery of a valid VAT invoice.
- 4.5 The Supplier shall indemnify the Call Off Ordering Party on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Call Off Ordering Party at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call Off Agreement. Any amounts due under this clause 4.5 shall be paid in cleared funds by the Supplier to the Call Off Ordering Party not less than five Working Days before the date upon which the tax or other liability is payable by the Call Off Ordering Party.
- 4.6 If there is a dispute between the Parties as to the amount invoiced, the Call Off Ordering Party shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services and/or Deliverables unless the Supplier is entitled to in accordance with clause 22.3. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 25.
- 4.7 If a payment of an undisputed amount is not made by the Call Off Ordering Party by the due date, then the Call Off Ordering Party shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

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4.8 The Call Off Ordering Party may set off any amount owed by the Supplier to the Call Off Ordering Party against any amount due to the Supplier under this Call Off Agreement or under any other agreement between the Supplier and the Call Off Ordering Party.

4.9 If the Call Off Ordering Party wishes to set off any amount owed by the Supplier to the Call Off Ordering Party against any amount due to the Supplier pursuant to clause 4.8 it shall give notice to the Supplier within 30 days of receipt of the relevant Invoice, setting out the Call Off Ordering Party's reasons for withholding or retaining the relevant Charges.

5. Supplier Personnel and Supply Chain

The provisions of clause 14 of the Framework Agreement shall apply in respect of the appointment and management of any Sub-Contractors related to Services and/or Deliverables to be provided under this Call Off Agreement.

6. Income Tax and National Insurance Contributions

6.1 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 under any Call Off Agreement, the Supplier shall:

6.1.1 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

6.1.2 indemnify the Call Off Ordering Party and any other Call Off Ordering Parties against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services and/or Deliverables by the Supplier or any Supplier Personnel.

7. Implementation

7.1 Schedule 2 sets out the agreed milestones and delivery dates applicable to this Agreement ("**Implementation Plan**").

7.2 The parties will comply with their respective obligations set out in the Implementation Plan.

7.3 The Supplier shall immediately notify the Call Off Ordering Party if it anticipates a delay or failure to meet its obligations in the Implementation Plan.

7.4 The Supplier shall perform all tasks and provide the outputs set out in the Implementation Plan and/or as required so that the Supplier is ready to perform the Services and/or supply the Deliverables in accordance with the terms of this Agreement from the Effective Date, and shall minimise any disruptive impact to the Call Off Ordering Party and its other service providers.

7.5 All criteria which shall be used to assess the quality of the Deliverables shall be finalised within 30 days after the Effective Date and added to the Implementation Plan ("**Acceptance Criteria**"). If the Call Off Ordering Party is satisfied that the Deliverable meets the Acceptance Criteria, then the Call Off Ordering Party will confirm in writing that the Acceptance Criteria has been met.

7.6 If a Deliverable(s) does not meet the Acceptance Criteria by the applicable delivery date(s) in the Implementation Plan ("**Delivery Date(s)**"), then without prejudice to the Call Off Ordering Party's right to terminate this Agreement and any other rights it may have:

7.6.1 the Supplier shall provide the Call Off Ordering Party with a plan for how the Supplier will rectify the delay;

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7.6.2 the Call Off Ordering Party shall be entitled to:

7.6.2.1 refuse to accept a proposed rectification plan and/or any subsequent performance of the Services and/or delivery of the Deliverables which the Supplier attempts to make;

7.6.2.2 purchase substitute services and/or deliverables from elsewhere and reclaim from the Supplier any additional costs incurred as a result of procuring such services and/or deliverables from a third party instead of the Supplier;

7.6.2.3 have any sums previously paid by the Call Off Ordering Party to the Supplier in respect of the affected Services and/or Deliverables refunded by the Supplier; and/or

7.6.3 the Supplier shall pay a delay payment to the Call Off Ordering Party at the rate of 0.5% per day until the date on which the Acceptance Criteria for the relevant Deliverable has been met ("**Delay Payment**").

7.7 The Delay Payment shall be paid by the Supplier to the Call Off Ordering Party on the last day of the month in which the Delay Payment accrued. Where there is an outstanding invoice as at the date the payment of the Delay Payment is due, the Call Off Ordering Party may offset the relevant Delay Payment against any amounts owed by the Call Off Ordering Party and any balance of Delay Payments shall be paid to the Call Off Ordering Party by the Supplier on the last day of the month in which the Delay Payment accrued.

7.8 Delay Payments are without prejudice to any other rights or remedies of the Call Off Ordering Party under this Call Off Agreement or applicable law.

8. Premises and equipment

8.1 If necessary, the Call Off Ordering Party shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services and/or Deliverables, such access to be non-exclusive and revocable. All equipment, tools and vehicles brought onto the Call Off Ordering Party's premises by the Supplier or the Staff shall be at the Supplier's risk.

8.2 If the Supplier supplies all or any of the Services and/or Deliverables at or from the Call Off Ordering Party's premises, on completion of the Services and delivery of all Deliverables, or termination or expiry of this Call Off Agreement (whichever is the earlier) the Supplier shall vacate the Call Off Ordering Party's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and/or Deliverables and leave the Call Off Ordering Party's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Call Off Ordering Party's premises or any objects contained on the Call Off Ordering Party's premises which is caused by the Supplier or any Staff, other than fair wear and tear.

8.3 If the Supplier supplies all or any of the Services and/or Deliverables at or from its premises or the premises of a third party, the Call Off Ordering Party may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services and/or Deliverables are supplied at or from the relevant premises.

8.4 The Call Off Ordering Party shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Call Off Ordering Party's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Call Off Ordering Party's security requirements.

8.5 Where all or any of the Services and/or Deliverables are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Call Off Ordering Party in writing.

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- 8.6 Without prejudice to clause 2.2.6, any equipment provided by the Call Off Ordering Party for the purposes of this Call Off Agreement shall remain the property of the Call Off Ordering Party and shall be used by the Supplier and the Staff only for the purpose of carrying out this Call Off Agreement. Such equipment shall be returned promptly to the Call Off Ordering Party on expiry or termination of this Call Off Agreement.
- 8.7 The Supplier shall reimburse the Call Off Ordering Party for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Call Off Ordering Party shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Call Off Ordering Party is notified otherwise in writing within five Working Days.
- 8.8 The Supplier shall perform its obligations under this Call Off Agreement (including those in relation to the Services and Deliverables) in accordance with:
- 8.8.1 all applicable Law regarding health and safety; and
- 8.8.2 any applicable aspects of the Call Off Ordering Party's health and safety policies whilst at the Call Off Ordering Party Premises.
- 8.9 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Call Off Ordering Party premises of which it becomes aware and which relate to or arise in connection with the performance of this Call Off Agreement. The Supplier shall instruct the Supplier Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 9. Staff**
- 9.1 The Supplier shall ensure that Key Roles are fulfilled at all times during the Term to assist with the fulfilment of the Supplier's obligations. Schedule 5 (*Key Roles*) lists the Key Roles that must be fulfilled at the Effective Date.
- 9.2 The Supplier shall:
- 9.2.1 provide in advance of any admission to Call Off Ordering Party premises a list of the names of all Supplier Staff requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Call Off Ordering Party may reasonably require;
- 9.2.2 ensure that all Supplier Staff:
- 9.2.2.1 are appropriately qualified, trained and experienced to provide the Services and/or Deliverables with all reasonable skill, care and diligence;
- 9.2.2.2 are vetted in accordance with Good Industry Practice; and
- 9.2.2.3 comply with all reasonable requirements of the Call Off Ordering Party concerning conduct at the Call Off Ordering Party premises; and
- 9.2.3 be liable at all times for all acts or omissions of Supplier Staff, so that any act or omission of a member of any Staff which results in a Default under this Call Off Agreement shall be a Default by the Supplier.
- 9.3 If the Call Off Ordering Party reasonably believes that any of the Supplier Staff are unsuitable to undertake work in respect of this Call Off Agreement, it may:

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- 9.3.1 refuse admission to the relevant person(s) to the Call Off Ordering Party premises; and/or
- 9.3.2 direct the Supplier to end the involvement in the provision of the Services and/or Deliverables of the relevant person(s).

10. Assignment and sub-contracting

- 10.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Call Off Agreement without the prior written consent of the Call Off Ordering Party.
- 10.2 The Call Off Ordering Party may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Call Off Agreement and/or any associated licences to:
 - 10.2.1 any Central Government or NHS Body; or
 - 10.2.2 any Potential Call Off Ordering Party; or
 - 10.2.3 to a body other than a Central Government or NHS Body (including any private sector body) which performs any of the functions that previously had been performed by the Call Off Ordering Party,

and the Supplier shall, at the Call Off Ordering Party's request, enter into a novation agreement in such form as the Call Off Ordering Party shall reasonably specify in order to enable the Call Off Ordering Party to exercise its rights pursuant to this clause 10.2.

- 10.3 The Call Off Ordering Party may not assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Call Off Agreement and/or any associated licences to a body other than a Central Government or NHS Body (including any private sector body) without the consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 10.4 A change in the legal status of the Call Off Ordering Party such that it ceases to be a Central Government or NHS Body shall not affect the validity of this Call Off Agreement and this Call Off Agreement shall be binding on any successor body to the Call Off Ordering Party.

11. Intellectual Property Rights

- 11.1 All Foreground IP shall vest in the Call Off Ordering Party absolutely, and the Supplier hereby assigns to the Call Off Ordering Party, absolutely with full title guarantee (and free from all third party rights), any and all of its right, title and interest in and to all the existing and future Foreground IP, to the fullest extent permitted by law.
- 11.2 All Background IP is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom that Party's right to use the Background IP has derived) and nothing in this Agreement shall operate to transfer any Background IP of one Party to the other.
- 11.3 The Supplier hereby grants the Call Off Ordering Party a perpetual, royalty-free, irrevocable, worldwide, non-exclusive licence (with a right sub-licence, to the extent required for the purposes of this Call Off Agreement, to any third party) to use all the present and future Background IP that is owned by the Supplier and/or the use of which the Supplier is able to license, including any modifications to or derivative versions of any such Background IP, which the Call Off Ordering Party reasonably requires in order to exercise its rights under and to take the full benefit of this Call Off Agreement including the Services and/or Deliverables provided, including, without limitation, to receive, use, re-use, adapt, modify, reproduce, exploit, produce derivative versions of, supply and/or publish (including as open source software) or deal in any other way with the Deliverables.

Call Off Terms

- 11.4 Each Party undertakes that it shall promptly execute all documents, make all applications, give all assistance and do or procure the doing of all acts and things as may be necessary or desirable to vest all the Foreground IP in, and to register it in, the name of the Call Off Ordering Party and/or to give full effect to the licences granted under this clause 11.
- 11.5 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in a Call Off Agreement, each Party hereby assigns to the other Party, by way of present and future assignment, ownership of such Intellectual Property Rights which it has acquired.
- 11.6 The Supplier warrants that the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Deliverables by the Call Off Ordering Party and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 11.7 The Call Off Ordering Party hereby grants to the Supplier, for the Term of this Agreement, a non-exclusive, royalty-free, non-transferable licence to use any Foreground IP or any Background IP that is owned by the Call Off Ordering Party and/or the use of which the Call Off Ordering Party is able to license, to the extent such use is necessary for the purpose of the Supplier performing its obligations under this Agreement and/or providing the Services and Deliverables.
- 11.8 The Supplier hereby grants to the Call Off Ordering Party, for the Term of this Agreement, a non-exclusive, royalty-free, non-transferable licence to use any Background IP that is owned by the Supplier and/or the use of which the Supplier is able to license, to the extent such use is necessary for the purpose of the Call Off Ordering Party performing its obligations under this Agreement and/or receiving the Services and Deliverables.
- 11.9 The Parties shall identify any third party licences for software or other Intellectual Property Rights which are required for supply of the Services or the Deliverables and the Parties shall agree and record in writing who shall be responsible for procuring and paying for any such licence.
- 11.10 Subject to clause 11.11 below, 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.
- 11.11 Each Party hereby grants the other Party a royalty-free, non-exclusive, non-transferable, revocable licence during the Term of this Call Off Agreement to use its relevant names, logos or trade marks for the sole purpose and to the extent necessary, for the proper exercise of the other Party's rights and obligations under this Call Off Agreement.]

12. IPR Indemnity

- 12.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Call Off Ordering Party and each other Indemnified Person, and keep the Call Off Ordering Party and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim, but only to the extent that the IPRs Claim is not a direct result of a breach by the relevant Indemnified Person of licence terms (as referred to in this Call Off Agreement) for the relevant IPRs.
- 12.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- 12.2.1 procure for the Call Off Ordering Party or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
- 12.2.2 replace or modify the relevant item with non-infringing substitutes provided that:

Call Off Terms

12.2.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

12.2.2.2 the replaced or modified item does not have an adverse effect on any other services or the Call Off Ordering Party's IT environment;

12.2.2.3 there is no cost to the Call Off Ordering Party or relevant Indemnified Person (as the case may be); and

12.2.2.4 the terms and conditions of this Call Off Agreement shall apply to the replaced or modified services and/or deliverables.

12.3 If the Supplier elects to procure a licence in accordance with clause 12.2.1 or to modify or replace an item pursuant to clause 12.2.2, but this has not avoided or resolved the IPRs Claim, then:

12.3.1 the Call Off Ordering Party may terminate this Call Off Agreement (if subsisting) with immediate effect by written notice to the Supplier; and

12.3.2 without prejudice to the indemnity set out in clause 12.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

13. Source Code Escrow – NOT USED

14. Collaboration

Where required by the Call Off Ordering Party, the Supplier shall comply with the requirements set out in Schedule 11 (*Collaboration*) with regard to how it interacts and shares responsibilities with other suppliers.

15. Governance and Records

15.1 The Supplier shall:

15.1.1 attend progress meetings with the Call Off Ordering Party at the frequency and times specified by the Call Off Ordering Party and shall ensure that its representatives are suitably qualified to attend such meetings; and

15.1.2 submit progress reports to the Call Off Ordering Party at the times and in the format specified by the Call Off Ordering Party.

15.2 The Supplier shall keep and maintain until six years after the end of this Call Off Agreement, or as long a period as may be agreed between the Parties, full and accurate records of this Call Off Agreement including the Services and/or Deliverables supplied under it and all payments made by the Call Off Ordering Party. The Supplier shall on request afford the Call Off Ordering Party or the Call Off Ordering Party's representatives such access to those records as may be reasonably requested by the Call Off Ordering Party in connection with this Call Off Agreement.

16. Transparency and Freedom of Information

16.1 The Parties acknowledge that the content of this Call Off Agreement, including any changes to this Call Off Agreement agreed from time to time, except for:

16.1.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Call Off Ordering Party; and

Call Off Terms

16.1.2 Commercially Sensitive Information;

shall be the “**Transparency Information**” and shall not be treated as Confidential Information.

- 16.2 Notwithstanding any other provision of this Call Off Agreement, the Supplier hereby gives its consent for the Call Off Ordering Party to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Call Off Ordering Party shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 16.3 The Supplier shall assist and co-operate with the Call Off Ordering Party to enable the Call Off Ordering Party to publish the Transparency Information.
- 16.4 If the Call Off Ordering Party believes that publication of any element of the Transparency Information would be contrary to the public interest, the Call Off Ordering Party shall be entitled to exclude such information from publication. The Call Off Ordering Party acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Call Off Ordering Party acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 16.5 The Call Off Ordering Party shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Call Off Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 16.6 The Supplier agrees that any Information it holds that is not included in the Transparency Information but is reasonably relevant to or that arises from the provision of the Supplier's obligations under this Call Off Agreement or the Services and/or Deliverables shall be provided to the Call Off Ordering Party on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Call Off Ordering Party may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information and Confidential Information (subject always to the Call Off Ordering Party's over-riding rights of disclosure of Supplier's Confidential Information as set out at clause 17.2.6.3) also publish such Information. The Supplier shall provide to the Call Off Ordering Party within five working days (or such other period as the Call Off Ordering Party may reasonably specify) any such Information requested by the Call Off Ordering Party.
- 16.7 The Supplier acknowledges that the Call Off Ordering Party is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 16.7.1 provide all necessary assistance and cooperation as reasonably requested by the Call Off Ordering Party to enable the Call Off Ordering Party to comply with its obligations under the FOIA and EIRs;
- 16.7.2 transfer to the Call Off Ordering Party all Requests for Information relating to this Call Off Agreement that it receives as soon as practicable and in any event within two Working Days of receipt;
- 16.7.3 provide the Call Off Ordering Party with a copy of all Information held on behalf of the Call Off Ordering Party which is requested in a Request For Information and which is in its possession or control in the form that the Call Off Ordering Party requires within five Working Days (or such other period as the Call Off Ordering Party may reasonably specify) of the Call Off Ordering Party's request for such Information; and

Call Off Terms

16.7.4 not respond directly to a Request For Information addressed to the Call Off Ordering Party unless authorised in writing to do so by the Call Off Ordering Party.

16.8 The Supplier acknowledges that the Call Off Ordering Party may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Call Off Ordering Party 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 Agreement) the Call Off Ordering Party 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 EIRs.

17. Confidentiality

17.1 Subject to clause 17.2, each Party shall:

17.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

17.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call Off Agreement.

17.2 Notwithstanding clause 17.1, a Party may disclose Confidential Information which it receives from the other Party:

17.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

17.2.2 to its auditors or for the purposes of regulatory requirements;

17.2.3 on a confidential basis, to its professional advisers;

17.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

17.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under this Call Off Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 17.2.5 shall observe the Supplier's confidentiality obligations under this Call Off Agreement; and

17.2.6 where the receiving Party is the Call Off Ordering Party:

17.2.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Call Off Ordering Party or of the relevant Central Government Body;

17.2.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

17.2.6.3 to the extent that the Call Off Ordering Party (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

17.2.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clauses 17.2.6.1 for any purpose relating to or connected with this Call Off Agreement;

Call Off Terms

17.2.6.5 excluding any Commercially Sensitive Information, which the Call Off Ordering Party determines in its absolute discretion is exempt from disclosure in accordance with the provisions of FOIA, as part of the Call Off Ordering Party's re-procurement process for the Services and/or Deliverables, on a confidential basis and subject to an appropriate confidentiality agreement to bidders for the purposes of undertaking due diligence and/or to a Replacement Supplier for the purposes of providing Replacement Services;

17.2.6.6 on a confidential basis for the purpose of the exercise of its rights under this Call Off Agreement; or

17.2.6.7 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Call Off Agreement,

and for the purposes of the foregoing, references to disclosure "on a confidential basis" shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this clause 17.

17.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Agreement is not Confidential Information and the Supplier hereby gives its consent for the Call Off Ordering Party to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to this Call Off Agreement agreed from time to time. The Call Off Ordering Party may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of this Call Off Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

17.4 Further provisions in relation to transparency and disclosure of information are set out in the Framework Agreement.

18. Protection of Personal Data

18.1 The Parties shall comply with the terms of schedule 12 (*Data Processing*) in respect of all Processing under this Call Off Agreement.

19. Liability

19.1 Subject to clauses 19.4 , 19.5 and 19.6 neither party shall be liable for:

19.1.1 any indirect, special or consequential Loss; or

19.1.2 any loss of profits, turnover, business opportunities, sales, revenue, anticipated savings, or damage to goodwill or reputation (in each case whether direct or indirect).

19.2 For the purposes of this clause 19, where the Secretary of State for Health is the Call Off Ordering Party, with the NHS England acting as its agent, references to the Call Off Ordering Party shall include the NHS England.

19.3 The maximum aggregate liability of the Call Off Ordering Party under this Call Off Agreement shall in no event exceed a sum equal to 100% of the Charges paid and payable under this Call Off Agreement to the Supplier.

19.4 Nothing in this Call Off Agreement shall be construed to limit or exclude either Party's liability for:

19.4.1 death or personal injury caused by its negligence or that of its Staff;

Call Off Terms

- 19.4.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
- 19.4.3 any other matter which, by law, may not be excluded or limited.
- 19.5 The indemnities in clause 12.1 shall not be subject to any limitation.
- 19.6 The Supplier's liability shall also be unlimited in respect of any Losses relating to:
 - 19.6.1 disclosure of Confidential Information which is not permitted by clause 16;
 - 19.6.2 any Abandonment by the Supplier; and
 - 19.6.3 any Wilful Default of the Supplier.
- 19.7 Subject to clauses 19.4 to 19.6 the Supplier's aggregate liability in each Contract Year in respect of Losses incurred under or in connection with this Call Off Agreement, shall in no event exceed:
 - 19.7.1 £500,000 (subject to indexation); or if greater
 - 19.7.2 an amount equal to the 150% of the Charges paid or payable under this Call Off Agreement to the Supplier,

save that in the case of any Default arising from or related to clinical safety and/or Medical Devices, the reference to £500,000 (subject to indexation) set out in clause 19.7.1 shall instead be £2,000,000 per Default (subject to indexation), and the Supplier's liability in respect of data processing shall be in accordance with Schedule 12 (*Data Processing*).
- 19.8 The Supplier acknowledges that the Call Off Ordering Party may, amongst other things, recover from the Supplier the following Losses incurred by the Call Off Ordering Party to the extent that they arise as a result of a Default relating to this Call Off Agreement by the Supplier:
 - 19.8.1 any additional operational and/or administrative costs and expenses incurred by the Call Off Ordering Party, including costs relating to time spent by or on behalf of the Call Off Ordering Party in dealing with the consequences of the Default;
 - 19.8.2 any wasted expenditure or charges;
 - 19.8.3 the additional cost of procuring a replacement contract if the Call Off Ordering Party terminates this Call Off Agreement pursuant to clause 22;
 - 19.8.4 any compensation or interest paid to a third party by the Call Off Ordering Party;
 - 19.8.5 any fine or penalty incurred by the Call Off Ordering Party pursuant to Law and any costs incurred by the Call Off Ordering Party in defending any proceedings which result in such fine or penalty.
- 19.9 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call Off Agreement.

20. Conduct of indemnity claims

Where under this Call Off Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of schedule 10 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

21. Force Majeure

- 21.1 Subject to the remaining provisions of this clause 21, either Party may claim relief under this clause 21 from liability for failure to meet its obligations under this Call Off Agreement 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 Agreement 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.
- 21.2 The Affected Party shall as soon as reasonably practicable following the occurrence of a Force Majeure Event 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.
- 21.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this clause 21 to the extent that consequences of the relevant Force Majeure Event:
- 21.3.1 are capable of being mitigated by any of the Services, but the Supplier has failed to do so; and/or
- 21.3.2 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 Agreement.
- 21.4 Subject to clause 21.5, 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 and/or Deliverables affected by the Force Majeure Event.
- 21.5 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.
- 21.6 Where, as a result of a Force Majeure Event, but subject to clause 21.3:
- 21.6.1 an Affected Party fails to perform its obligations in accordance with this Call Off Agreement, then during the continuance of the Force Majeure Event:
- 21.6.1.1 the other Party shall not be entitled to exercise any rights to terminate this Call Off Agreement as a result of such failure other than pursuant to clause 22; and
- 21.6.1.2 neither Party shall be liable for any Default arising as a result of such failure; and
- 21.6.2 the Supplier fails to perform its obligations in accordance with this Call Off Agreement, the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services and/or Deliverables (or part of the Services and/or Deliverables) continue to be performed or supplied in accordance with the terms of this Call Off Agreement during the occurrence of the Force Majeure Event.
- 21.7 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 Agreement.

Call Off Terms

- 21.8 Relief from liability for the Affected Party under this clause 21 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 Agreement and shall not be dependent on the serving of notice under clause 21.7.

22. Termination

- 22.1 The Call Off Ordering Party may terminate this Call Off Agreement at any time by providing notice in writing to the Supplier to take effect on any date falling at least 30 days (or, if this Call Off Agreement is less than three months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

- 22.2 Without prejudice to any other right or remedy it might have, the Call Off Ordering Party may terminate this Call Off Agreement by written notice to the Supplier with immediate effect if the Supplier:

22.2.1 (without prejudice to clause 22.2.4), is in material breach of any obligation under this Call Off Agreement which is not capable of remedy;

22.2.2 repeatedly breaches any of the terms and conditions of this Call Off Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of this Call Off Agreement;

22.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

22.2.4 breaches any of the provisions of clauses 16 and 18; or

22.2.5 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 22.2.5) in consequence of debt in any jurisdiction.

- 22.3 The Supplier may terminate this Call Off Agreement by written notice to the Call Off Ordering Party if the Call Off Ordering Party has not paid any undisputed amounts within 90 days of them falling due.

- 22.4 This Call Off Agreement shall terminate automatically upon the termination of the Framework Agreement.

- 22.5 Termination or expiry of this Call Off Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2.2, 8.1, 8.2, 8.6, 8.7, 9, 11, 15.2, 16, 18, 22.6, 25 and 28.7 or any other provision of this Call Off Agreement that either expressly or by implication has effect after termination.

- 22.6 Upon termination or expiry of this Call Off Agreement, the Supplier shall:

22.6.1 give all reasonable assistance to the Call Off Ordering Party and any incoming supplier of the Services and/or Deliverables; and

22.6.2 return all requested documents, information and data to the Call Off Ordering Party as soon as reasonably practicable;

22.6.3 comply with the exit plan set out at Schedule 7 (as updated from time to time by the agreement of the parties, in writing).

23. Consequences of Termination

Each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified in the Award Form.

24. Prevention of Fraud and Corruption

- 24.1 The provisions relating to prevention of fraud and corruption set out in clause 30 of the Framework Agreement shall apply to this Call Off Agreement.
- 24.2 Any breach of those provisions shall entitle the Call Off Ordering Party to suspend the Services and/or terminate this Call Off Agreement.

25. Non-Solicitation

The Parties shall not (except with the prior written consent of the other Party) directly solicit or entice away (or attempt to solicit or entice away) from the employment of the that other Party any person employed or engaged by that Party in relation to this Call Off Agreement (including any contractors) at any time during the Call Off Duration. For the avoidance of doubt, this restriction shall not prevent either Party from employing or engaging any of the other Party's employees following a bona fide recruitment process where a public advertisement has been placed to seek to recruit new employees or staff.

26. Dispute Resolution

The Parties shall comply with the provisions of Schedule 8 (*Dispute Resolution*) in relation to any Dispute under this Call Off Agreement.

27. Change Procedure

The Change Procedure which shall apply to this Call Off Agreement is set out at Schedule 6.

28. General

- 28.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Call Off Agreement, and that this Call Off Agreement is executed by its duly authorised representative.
- 28.2 A person who is not a party to this Call Off Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, except for parties to the Framework Agreement (if different from the parties to this Call Off Agreement)..
- 28.3 This Call Off Agreement cannot be varied except in accordance with Schedule 6 (*Change Procedure*).
- 28.4 This Call Off Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Call Off Agreement on the basis of any representation that is not expressly incorporated into this Call Off Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 28.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of this Call Off Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Call Off Agreement.

Call Off Terms

- 28.6 This Call Off Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Call Off Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 28.7 Except as otherwise expressly provided by this Call Off Agreement, all remedies available to either Party for breach of this Call Off Agreement (whether under this Call Off Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 28.8 If any provision of this Call Off Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Call Off Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Call Off Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Call Off Agreement.

29. Notices

The parties shall comply with clause 35 of the Framework Agreement in terms of provision of notices in relation to this Call Off Agreement.

30. Governing Law and Jurisdiction

The validity, construction and performance of this Call Off Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

31. Counterparts

- 31.1 This Call Off Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart.
- 31.2 Each counterpart shall constitute an original of this Call Off Agreement, but all the counterparts shall together constitute one and the same instrument.

OFFICIAL - SENSITIVE - COMMERCIAL

GP IT Futures Lot 2 Call Off Agreement

Call Off Terms

IN WITNESS of which this Call Off Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

