

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 recurrence of the Default; and/or
- d) will rectify the Default but in a manner which is unacceptable to the Customer.

28.2.4 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 5 Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.

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

29. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

29.1 If the Supplier has failed to:

- 29.1.1 Achieve a Milestone by its Milestone Date;
- 29.1.2 comply with its obligations under this Call Off Contract, (each a "Supplier Non-Performance"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 12 (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 31 (Customer Termination Rights) except Clause 31.6 (Termination Without Cause);
- c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:

- (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
- (ii) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;

- (iii) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and/or

28.2 In order to claim any of the rights and/or relief referred to in Clause 28.1, the Supplier shall:

28.2.1 comply with its obligations under Clause 12 (Notification of Customer Cause); and

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

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

28.3 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.

28.4 Without prejudice to Clauses 7.8.1 (Continuing obligation to provide the Goods), if a Dispute arises as to:

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

28.4.2 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.

28.5 Any Variation that is required to the Implementation Plan or to the Call Off Contract Charges pursuant to this Clause 28 shall be implemented in accordance with the Variation Procedure.

30. FORCE MAJEURE

30.1 Subject to the remainder of this Clause 30 (and, in relation to the Supplier, subject to its compliance with its obligations in Clause 49 (Business Continuity and Disaster Recovery) where this is used), a Party may claim relief under this Clause 30 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.

- 30.2 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.
- 30.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 30 to the extent that consequences of the relevant Force Majeure Event:
- 30.3.1 are capable of being mitigated by any of the Goods, but the Supplier has failed to do so; and/or
- 30.3.2 should have been foreseen and prevented or avoided by a prudent provider of goods similar to the Goods, operating to the standards required by this Call Off Contract.
- 30.4 Subject to Clause 30.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Goods affected by the Force Majeure Event.
- 30.5 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.
- 30.6 Where, as a result of a Force Majeure Event:
- 30.6.1 an Affected Party fails to perform its obligations in accordance with this Call Off Contract, then during the continuance of the Force Majeure Event:
- a) the other Party shall not be entitled to exercise any rights to terminate this Call Off Contract in whole or in part as a result of such failure unless the provision of the Goods is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
 - b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Cause arising as a result of such failure.
- 30.6.2 the Supplier fails to perform its obligations in accordance with this Call Off Contract:
- a) the Customer shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 28.1.1b) and 28.1.1c) (Customer Remedies for inadequate Performance) as a result of such failure; and
 - (ii) to receive Delay Payments pursuant to Clause 6.4 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; - b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only

- to the extent that the Goods (or part of the Goods) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.
- 30.7 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.
- 30.8 Relief from liability for the Affected Party under this Clause 30 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 30.7.

J. TERMINATION AND EXIT MANAGEMENT

31. CUSTOMER TERMINATION RIGHTS

- 31.1 Termination in Relation to Guarantee – Not Applicable
- 31.1.1 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.
- 31.2 Termination on Material Default
- 31.2.1 The Customer may terminate this Call Off Contract for material Default by issuing a Termination Notice to the Supplier where:
- a) The representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading;
 - b) As a result of any Default the Customer incurs losses in a Contract Year which exceeds 80% of the value of the Supplier's aggregate annual liability limit for that Contract year as set out in Clause 25;
 - c) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses 6.2.3, 7.5.2, 11.4, 15.5, 23.4.9, 40.6.2 [and 48.2] where this is used

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

31.2.2 For the purpose of Clause 31.2.1, 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.

31.3 Termination in Relation to Financial Standing

31.3.1 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 Goods under this Call Off Contract; or
- b) could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Goods under this Call Off Contract.

31.4 Termination on Insolvency

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

31.5 Termination on Change of Control

31.5.1 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.

31.6 Termination Without Cause

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

31.7 Termination in Relation to Framework Agreement

31.7.1 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.

31.8 Not Used

31.9 Termination in Relation to Variation

31.9.1 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 as set out in Clause 16.1.7.3.2.

31.10 Termination in relation to Tax Compliance

31.10.1 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 3.2.5 is materially untrue; or
- b) the Supplier commits a material breach of its obligation to notify the Customer of any Occasion of Tax Non-Compliance as required by Clause 18; or
- c) the Supplier fails to provide details of proposed mitigating factors as required by Clause 18.1.2 (a) which in the reasonable opinion of the Customer, are acceptable.

32. SUPPLIER TERMINATION RIGHTS

32.1 Termination on Customer Cause for Failure to Pay

32.1.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call Off Contract if the Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract which in aggregate exceeds £100,000 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:

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

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice)), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 17.3 (Retention and Set off).

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

33. TERMINATION BY EITHER PARTY

33.1 Termination for continuing Force Majeure Event

33.1.1 Either Party may, by issuing a Termination Notice to the other Party terminate this Call Off Contract, in accordance with Clause 30.6.1(a) (Force Majeure).

34. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

34.1

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.

34.2

Any suspension of this Call Off Contract under Clause 34.1 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.

34.3

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

34.3.1 to an increase in the Call Off Contract Charges in respect of the provision of the Goods that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 31 (Customer Termination Rights) except Clause 31.6 (Termination Without Cause); or

34.3.2 to reject the Variation.

35. CONSEQUENCES OF EXPIRY OR TERMINATION

35.1

Consequences of termination under Clauses 31.1 (Termination in Relation to Guarantee), 31.2 (Termination on Material Default), 31.3 (Termination in Relation to Financial Standing), 31.7 (Termination in Relation to Framework Agreement), 31.9 (Termination in Relation to Variation) and 31.10 (Termination in Relation to Tax Compliance)

35.1.1 Where the Customer:

- a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 35.1, and
- b) then makes other arrangements for the supply of the Goods, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period provided that Customer shall take all

reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

35.2

Consequences of termination under Clauses 31.6 (Termination without Cause), 31.7 (Termination in Relation to Framework Agreement), 31.9 (Termination in Relation to Variation) and 32.1 (Termination on Customer Cause for Failure to Pay)

35.2.1

Where:

- a) the Customer terminates (in whole or in part) this Call Off Contract under Clause 31.6 (Termination without Cause); or
- b) the Supplier terminates this Call Off Contract pursuant to Clause 32.1 (Termination on Customer Cause for Failure to Pay).

The Customer shall indemnify the Supplier against any reasonable and proven losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such losses. The Supplier shall submit a fully itemised and costed list of such losses, with supporting evidence, including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 31.6 (Termination without Cause).

35.2.2

The Customer shall not be liable under Clause 35.2.1 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.

35.3

Consequences of termination under Clause 33.1 (Termination for Continuing Force Majeure Event)

35.3.1

The costs of termination incurred by the Parties shall be where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause 33.1 (Termination for Continuing Force Majeure Event).

35.4

Consequences of Termination for Any Reason

35.4.1

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 expiry 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), 22 (Intellectual Property Rights), 23.4 (Confidentiality), 23.6 (Freedom of Information), 23.7 (Protection of Personal Data), 25 (Liability), 35 (Consequences of Expiry or Termination), 41 (Severance), 43 (Entire Agreement), 44 (Third Party Rights) 46 (Dispute Resolution) and 47 (Governing Law and Jurisdiction) Annex 3 to the Terms & Conditions (Dispute Resolution Procedure), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), where these are used, and, without limitation to the foregoing, any other provision of this Call off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

35.5 Exit management

- 35.5.1 In the event that this Call Off Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Goods to a Replacement Supplier. Such assistance shall include as set out in any Exit Plan.

- 35.5.2 In complying with its obligation under Clause 35.5.1 the Supplier shall:

- (a) transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the contracts listed in the Exit Plan (if any) as are notified to the Supplier and/or by the Customer in return for payment of the costs (if any) set out in the Exit Plan in respect of such contracts; and
- (b) promptly provide all information concerning the provision of the Goods which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.

- 35.5.3 On the Call Off Expiry Date, the Supplier shall:

- (a) comply with its obligations in Clause 22.8.3 in relation to the use of any Customer Software, Customer Background IPR and/or Customer Data licensed to it by the Customer (Termination of licences);
- (b) immediately deliver to the Customer any Customer Property issued to the. Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);

- (c) return to the Customer any sums prepaid in respect of the Goods not provided by the Call Off Expiry Date; and

- (d) use reasonable endeavours to procure that the benefit of manufacturer's warranty in respect of any Goods is assigned, or otherwise transferred to the Customer

- 35.5.4 If the Supplier fails to comply with Clauses 35.5.3 (a) and (b), the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its servants, consultants, agents or Sub-Contractors where any such items may be held.

- 35.5.5 Where the end of the Call Off Contract Period arises due to termination of this Call Off Contract by reason of Default under Clause 31.2 (Termination on Default), the Supplier shall provide all assistance under Clauses 35.5.3 (a) to (d) free of charge. Otherwise the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

- 35.5.6 On the Call Off Expiry Date:

- (a) any licence granted to occupy Customer Premises shall automatically terminate without the need to serve notice; and
- (b) the Supplier shall remove any Supplier Equipment together with any other materials used by the Supplier to supply the Goods and shall leave the Customer Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Customer Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel.

K. MISCELLANEOUS AND GOVERNING LAW

36. COMPLIANCE

36.1 Health and Safety

- 36.1.1 The Supplier shall perform its obligations under this Call Off Contract (including those in relation to the Goods) in accordance with:

- a) all applicable Law regarding health and safety; and
- b) the Customer's health and safety policy (as provided to the Supplier from time to time) whilst at the Customer Premises.

- 36.1.2 Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and

which relate to or arise in connection with the performance of this Call Off Contract.

36.2 NOT USED

36.3 Official Secrets Act and Finance Act

36.3.1 The Supplier shall comply with the provisions of:

- a) the Official Secrets Acts 1911 to 1988; and
- b) section 182 of the Finance Act 1989.

36.4 Environmental Requirements

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

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

37. ASSIGNMENT AND NOVATION

37.1 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.

37.2 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:

- 37.2.1 any other Contracting Body; or
- 37.2.2 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

37.2.3 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 37.2.

37.3 A change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 37.4, affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.

37.4 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 31.4 (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 31.4 (Termination on Insolvency) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee).

38. WAIVER AND CUMULATIVE REMEDIES

38.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 45 (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.

38.2 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.

39. RELATIONSHIP OF THE PARTIES

39.1

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.

40. PREVENTION OF FRAUD AND BRIBERY

40.1

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:

40.1.1 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

40.1.2 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.

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

40.2.1 commit a Prohibited Act; and/or

40.2.2 do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

40.3 The Supplier shall during the Call Off Contract Period:

40.3.1 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;

40.3.2 keep appropriate records of its compliance with its obligations under Clause 40.3.1 and make such records available to the Customer on request.

- 40.3.3 If so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Goods in connection with this Call Off Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
- 40.3.4 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.
- 40.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 40.1, or has reason to believe that it has or any of the Supplier Personnel have:
- 40.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 40.4.2 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
- 40.4.3 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.
- 40.5 If the Supplier makes a notification to the Customer pursuant to Clause 40.4, 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 15 (Records, Audit Access and Open Book Data).
- 40.6 If the Supplier breaches Clause 40.3, the Customer may by notice:
- 40.6.1 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
- 40.6.2 immediately terminate this Call Off Contract for material Default.
- 40.7 Any notice served by the Customer under Clause 40.4 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).
41. SEVERANCE
- 41.1 If any provision of this Call Off Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of the Call Off Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call Off Contract shall not be affected.
- 41.2 In the event that any deemed deletion under Clause 41.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract or materially alters the balance of risks and rewards in this Call Off Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 41.3 If the Parties are unable to resolve the Dispute within twenty (20) Working Days of the date of the notice given pursuant to Clause 41.2, 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 41.
42. FURTHER ASSURANCES
- 42.1 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.
43. ENTIRE AGREEMENT
- 43.1 This Call Off Contract constitutes the entire agreement between the Parties in respect of the matter and supercedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 43.2 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.
- 43.3 Nothing in this Clause 43 shall exclude any liability in respect of misrepresentations made fraudulently.
44. THIRD PARTY RIGHTS
- 44.1 A person who is not a Party to this Call Off Contract has no right under the CTRPA to enforce any term of this Call Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 44.2 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.
- 44.3 Any amendments or modifications to this Call Off Contract may be made and may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.
45. NOTICES
- 45.1 Except as otherwise expressly provided within this Call Off Contract, any notices sent under this Call Off Contract must be in writing. For the purpose of this Clause, an e-mail is accepted as being "in writing".

45.2 Subject to Clause 45.3, 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 45.3 and 45.4)	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 TM 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

45.3 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 ForTM 1st Class or other prepaid in the manner set out in the table in Clause 45.2:

45.3.1 any Termination Notice (Clause 31),

45.3.2 any notice in respect of:

a) partial termination, suspension or partial suspension (Clause 34),

b) waiver (Clause 38)

c) Default or Customer Cause; and

45.3.3 any Dispute Notice.

45.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 45.3 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 ForTM 1st Class delivery (as set out in the table in Clause 45.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

45.5 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

45.6 For the purposes of this Clause 45, the address and email address of each Party shall be the address and email address set out in the Order Form.

46. DISPUTE RESOLUTION

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

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

47. GOVERNING LAW AND JURISDICTION

47.1 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.

47.2 Subject to Clause 46 (Dispute Resolution) and Annex 3 to these Call Off Terms (Dispute Resolution Procedure) (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.

48. NOT USED

ANNEX 1: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION

- 1.1 This Annex to the Call Off Terms specifies the range of Alternative Clauses and Additional Clauses that may be requested at paragraph 7 of the Order Form and, if requested, 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 below);
- 2.1.2 Northern Ireland Law (see paragraph 4.2 below)
- 2.1.3 Termination (see paragraph 4.2 below);
- 2.1.4 Non-Crown Bodies (see paragraph 4.3 below); or
- 2.1.5 Non-FOIA Public Bodies (see paragraph 4.4 below).

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

- 2.2.1 Relevant Convictions
- 2.2.2 Installation Works
- 2.2.3 Disaster Recovery
- 2.2.4 Not Used
- 2.2.5 Key Personnel
- 2.2.6 Customer Premises
- 2.2.7 Customer Property
- 2.2.8 Supplier Equipment
- 2.2.9 Security Measures (see paragraph 5.8 below);
- 2.2.10 (MOD Additional Clauses) (see paragraph 6 below); - Not Applicable

3. IMPLEMENTATION

- 3.1 The appropriate changes have been made in this Call Off Contract to implement the Alternative Clauses specified in paragraph 2 and the Additional Clauses specified in paragraph 2 shall be deemed to be incorporated into this Call Off Contract.

4. ALTERNATIVE CLAUSES

4.1 SCOTS LAW

Law and Jurisdiction (Clause 47)

The original Clause 47 shall be replaced with:

This Call Off Contract shall be governed by and interpreted in accordance with the Laws of Scotland and the Parties agree to submit to the exclusive jurisdiction of the Scottish courts any dispute that arises in connection with this Call Off Contract including, without limitation, any dispute relating to any contractual or non-contractual obligation and the existence, validity or termination of this Call Off Contract.

4.2 NORTHERN IRELAND LAW

Law and Jurisdiction (Clause 47)

The original Clause 47 shall be replaced with:

This Call Off Contract shall be governed by and interpreted in accordance with the Laws of Northern Ireland and the Parties agree to submit to the exclusive jurisdiction of the Northern Irish courts any dispute that arises in connection with this Call Off Contract including, without limitation, any dispute relating to any contractual or non-contractual obligation and the existence, validity or termination of this Call Off Contract.

TERMINATION (Clause 32)

In the definition of "Insolvency Event", Section 123 of the Insolvency Act 1986 shall be replaced with "Article 103 of the Insolvency (NI) Order 1986".

4.3 NON-CROWN BODIES

Replace Clause 36.3 with the following :

"36.3 Finance Act

36.3.1 The supplier shall comply with section 182 of the Finance Act 1986

4.4 NON-FOIA PUBLIC BODIES

FREEDOM OF INFORMATION

" [24.6] The Customer has notified the Supplier that the Customer is exempt from the provisions of FOIA."

5. ADDITIONAL CLAUSES

5.1 RELEVANT CONVICTIONS

5.1.1 The following definitions to be added to Call Off Schedule 1:

"Relevant Conviction"

means a Conviction that is relevant to the nature of the Goods to be provided or as specified by the Customer in the Order Form or elsewhere in the Call Off Contract;

21.4 [RELEVANT CONVICTIONS] - NOT APPLICABLE

21.4.1

The Supplier shall ensure that no person who discloses that he has 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) checks or otherwise), is employed or engaged in any part of the provision of the Goods and/or Services without Approval.

21.4.2

For each member of the Supplier Personnel who, in providing the Goods, 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 Goods any person who has a Relevant Conviction or an inappropriate record.)

5.2 INSTALLATION WORKS

48. [INSTALLATION WORKS] - NOT APPLICABLE

48.1

Where the Customer has specified Installation Works in the Call-Off Contract and the Supplier reasonably believes it has completed the Installation Works it shall notify the Customer in writing. Following receipt of such notice, the Customer shall inspect the Installation Works and shall, by giving written notice to the Contractor:

- 48.1.1 accept the Installation Works, or
- 48.1.2 reject the Installation Works and provide reasons to the Supplier if, in the Customer's reasonable opinion, the Installation Works do not meet the requirements set out in the Order Form.

48.2

If the Customer rejects the Installation Works in accordance with Clause 48.1.2, the Supplier shall immediately rectify or remedy any defects and if, in the Customer's reasonable opinion, the Installation Works do not, within five

(5) Working Days of such rectification or remedy, meet the requirements set out in the Order Form, the Customer may terminate this Call Off Contract for Material Breach.

48.3

The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Customer in accordance with Clause 48.1.1. Notwithstanding the acceptance of any Installation Works in accordance with Clause 48.1.1, the Supplier shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the Order Form. No rights of estoppel or waiver shall arise as a result of the acceptance by the Customer of the Installation Works.

48.4

Throughout the Call Off Contract Period, the Supplier shall have at all times all licences, approvals and consents necessary to enable the Supplier and the Staff to carry out the Installation Works.

5.3

BUSINESS CONTINUITY AND DISASTER RECOVERY

5.3.1 The following definitions to be added to Call Off Schedule 1:

"Business Continuity and Disaster Recovery Plan" or "BCDR Plan"

means the Supplier's plan relating to business continuity and disaster recovery as referred to in Clause 49 and Call Off Schedule 10 (Business Continuity and Disaster Recovery)] - NOT APPLICABLE

"Disaster"

means the occurrence of one or more events which, either separately or cumulatively, mean that the Goods, or a material part thereof will be unavailable for a period of [insert period] or which is reasonably anticipated will mean that the Goods or a material part thereof will be unavailable for that period.] - NOT APPLICABLE

49. [BUSINESS CONTINUITY AND DISASTER RECOVERY - NOT APPLICABLE

49.1 The Supplier shall comply with the provisions of Call Off Schedule 10 (Business Continuity and Disaster Recovery).]

5.4

NOT USED

5.5

KEY PERSONNEL

5.5.1 The following definitions to be added to Call Off Schedule 1:

"Key Personnel"

means the individuals (if any) identified as such in the Order Form/Schedule 4.)

50. [KEY PERSONNEL] - NOT APPLICABLE

- 50.1 The Parties have agreed to the appointment of the Key Personnel.
- 50.2 The Supplier shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.
- 50.3 Unless otherwise agreed by the Customer in writing, the Supplier shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.
- 50.4 The Customer shall not unreasonably delay or withhold its decision to approve the removal or appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-Contractor.
- 50.5 The Supplier acknowledges and agrees that the persons designated as Key Personnel from time to time are essential to the proper provision of the Goods to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 50.6 The Customer may also 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.

5.6 CUSTOMER PREMISES

51. [CUSTOMER PREMISES] - NOT APPLICABLE

Licence to occupy Customer Premises

- 51.1.1 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 11 (Exit Management).
- 51.1.2 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.
- 51.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2.1.1 (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 51.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 51.1.4 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.

51.1.5 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.

Security of Customer Premises

51.1.6 The Customer shall be responsible for maintaining the security of the Customer Premises in accordance with the Security Policy. The Supplier shall comply with the Security Policy and any other reasonable security requirements of the Customer while on the Customer Premises.

51.1.7 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.

5.7 CUSTOMER PROPERTY

52. [CUSTOMER PROPERTY] - NOT APPLICABLE

- 52.1 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.
- 52.2 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.
- 52.3 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.
- 52.4 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.
- 52.5 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.

52.6 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 the Customer's Security Policy and the Customer's reasonable security requirements from time to time.

52.7 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 due to 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.

5.8 SUPPLIER EQUIPMENT

53. [SUPPLIER EQUIPMENT] - NOT APPLICABLE

53.1 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 supply of the Services.

53.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Sites without obtaining Approval.

53.3 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.

53.4 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.

53.5 Subject to any express provision of the BCDR Plan 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 Goods in accordance with this Call Off Contract, including the Service Level Performance Measures.

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

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

53.7.1 remove from the Sites 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

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

53.8 Where a failure of Supplier Equipment or any component part of Supplier Equipment causes (two (2)) or more Service Failures in any (twelve (12)) Month period, the Supplier shall notify the Customer in writing and shall, at the Customer's request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier

Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced).

5.9 SECURITY MEASURES

5.10 The following definitions to be added to Call Off Schedule 1:

"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.

5.11 The following new Clause [56] shall apply:

54. [SECURITY MEASURES] - NOT APPLICABLE

54.1 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:

54.1.1 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;

54.1.2 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;

54.1.3 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

54.1.4 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.

54.2 Without prejudice to the provisions of Clause 54.1, the Supplier shall, both before and after the completion or termination of this Call Off Contract, take all reasonable steps to ensure:

54.2.1 no such person as is mentioned in Clauses 54.1, 54.1.1 or 54.1.2, thereof 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;

54.2.2 that no visitor to any premises in which there is any item to be supplied under this Call Off Contract or where Goods 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;

54.2.3

that no photograph of any item to be supplied under this Call Off Contract or any portions of the Goods 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;

54.2.4

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

54.2.5

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 54.2.4, 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.

54.3

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 54 shall be final and conclusive.

54.4

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.

54.5

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 1968 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.

54.6

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.

54.7

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 54.1 and 54.2 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 54 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.

54.8

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 54, but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:

54.8.1

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

54.8.2

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 54, notify such breach forthwith to the Customer; and

54.8.3

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 54.11.

54.9

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 54 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.

54.10

Nothing in this Clause 54 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.

54.11

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

54.11.1

that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause 54; or

54.11.2

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

- 54.11.3 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 54.11.2, 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.
- 54.12 A decision of the Customer to terminate this Call Off Contract in accordance with the provisions of Clause 54.11 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.
- 54.13 Supplier's notice
- 54.13.1 The Supplier may within five (5) Working Days of the termination of this Call Off Contract in accordance with the provisions of Clause 54.11, 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 54.11, 54.11.1 or 54.11.2 and to give particulars of that event; and
- 54.13.2 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.
- 54.14 Matters pursuant to termination
- 54.14.1 The termination of this Call Off Contract pursuant to Clause 54.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;
- 54.14.2 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 the Call Off Contract had not been terminated, or at a reasonable price;
- 54.14.3 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 54 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over at 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 54.14.3, 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 54.14.3; and
- 54.14.4 Save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination of this Call Off Contract

- 54.15 If, after notice of termination of this Call Off Contract pursuant to the provisions of 54.11:
- 54.15.1 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 deleted in Clause 54.13.1; or
- 54.15.2 the Customer shall state in the statement and particulars deleted in Clause 54.13.2, that the event upon which the Customer's decision to terminate this Call Off Contract was based is an event mentioned in Clause 54.11.3,
- the respective rights and obligations of the Supplier and the Customer shall be terminated in accordance with the following provisions:
- 54.15.3 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 54.11 and properly provided for 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;
- 54.15.4 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;
- 54.15.5 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;
- 54.15.6 If hardship to the Supplier should arise from the operation of this Clause 54.15 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 54.15.6 shall be final and conclusive; and
- 54.15.7 subject to the operation of Clauses 54.15.3, 54.15.4, 54.15.5 and 54.15.6 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. MOD ADDITIONAL CLAUSES - NOT APPLICABLE
- 6.1 The following definitions shall be inserted in the Glossary to the Call Off Terms:

6.1.1 "MoD Terms and Conditions" means the contractual terms and conditions listed in Schedule [14] which form part of the Call Off Terms

8.2 The following clauses shall be inserted into Clause [2] (Due Diligence):

[2.2] 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.

[2.3] 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.

8.3 The following new Clause [57] shall apply:

55. [ACCESS TO MOD SITES] - NOT APPLICABLE

55.1 In this Clause 57:

55.1.1 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 Goods and/or Services.

55.1.2 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.

55.1.3 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.

55.1.4

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 whenever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.

55.1.5

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.

55.1.6

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.

55.1.7

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.

55.1.8

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.

6.4 The following new Call Off Schedule [14] shall apply:

CALL OFF SCHEDULE [14]: MOD DEFCONS AND DEFFORMS

THE FOLLOWING MOD DEFCONS AND DEFORMS FORM THE MOD TERMS AND CONDITIONS AND PART OF THIS CALL OFF CONTRACT:

DEFCONS

DEFCON No	Version	Description
DEFCON 5J	Edition 07/08	Unique Identifiers
DEFCON 128J	Edition 07/08	The Use Of The Electronic Business Delivery Form
DEFCON 522J	Edition 05/03	Payment Under P2P
DEFCON 522JA	Edition 04/09	Payment Under P2P
DEFCON 78	Edition 12/06	Contractor's Personnel At Government Establishments
DEFCON 113	Edition 18/04	Diversions Orders
DEFCON 693	Edition 04/06	Government Procurement Card

DEFORMs (Ministry of Defence Forms)

DEFORM No	Version	Description
DEFORM 30	Edition 01/07	Electronic Transactions Agreement
DEFORM 111	Edition 10/13	Addresses and Other Information
DEFORM 128J	Edition XX	Shipping Form Design

ANNEX 2: VARIATION FORM

No of Order Form being varied:

.....

Variation Form No:

.....

BETWEEN:

[Insert name of (Customer) ("the Customer")

and

Phoenix Software Ltd ("the Supplier")

The Call Off Contract is varied as follows and shall take effect on the date signed by both Parties;

Words and expressions in this Variation shall have the meanings given to them in the Call Off Contract.

The 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

REDACTED

REDACTED

REDACTED

ANNEX 3: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

In this Annex 3, the following definitions shall apply:

- "CEDR" the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
- "Exception" a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Goods;
- "Expert" the person appointed by the Parties in accordance with paragraph 5.2 of this Annex 3; and
- "Mediator" the independent third party appointed in accordance with paragraph 4.2 of this Annex 3.

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, the reason why.
- 2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Call Off Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.
- 2.4 Subject to paragraph 3.2, the Parties shall seek to resolve Disputes:
 - 2.4.1 first by commercial negotiation (as prescribed in paragraph 3);
 - 2.4.2 then by mediation (as prescribed in paragraph 4); and
 - 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6) or litigation (in accordance with Clause 47 (Governing Law and Jurisdiction)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5) where specified under the provisions of the Call Off

Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5.

- 2.6 In exceptional circumstances where the use of the times in this Annex 3 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 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 10 Working Days;
 - 2.7.2 in paragraph 4.2, 10 Working Days;
 - 2.7.3 in paragraph 5.2, 5 Working Days; and
 - 2.7.4 in paragraph 6.2, 10 Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

- 3.1 Following the service of a Dispute Notice, the Customer and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Customer's [insert role] and the Supplier's [insert role].
 - 3.2 If:
 - 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
 - 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3; or
 - 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 within 30 Working Days of service of the Dispute Notice,
- either Party may serve a written notice to proceed to mediation (a "Mediation Notice") in accordance with paragraph 4.
- ### 4. MEDIATION
- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Call Off Contract.

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

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

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

5. EXPERT DETERMINATION

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

5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 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 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 20 Working Days of the Expert's determination being notified to the Parties;

5.3.5 the process shall be conducted in private and shall be confidential; and

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

6. ARBITRATION

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

6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have 15 Working Days following receipt of such notice to serve a reply (a "Counter Notice") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 or be subject to the jurisdiction of the courts in accordance with Clause 47 (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.

6.3 If:

6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 shall apply;

6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 47 (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 15 Working Days period referred to in paragraph 6.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 or commence court proceedings in the courts in accordance with Clause 47 (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

6.3.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3, the Parties hereby confirm that:

6.3.4.1 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(e), (f) and (g));

6.3.4.2 the arbitration shall be administered by the LCIA;

6.3.4.3 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;

6.3.4.4 if the Parties fail to agree the appointment of the arbitrator within 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 LGIA;

6.3.4.5 the chair of the arbitral tribunal shall be British;

6.3.4.6 the arbitration proceedings shall take place in London and in the English language; and

6.3.4.7 the seat of the arbitration shall be London.

7. URGENT RELIEF

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

7.1.1 for interim or interlocutory remedies in relation to this Call Off Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or

7.1.2 where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

CALL OFF SCHEDULE 1: DEFINITIONS

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

"Achieve"

means in respect of a Test, to successfully pass such Test without any Test issues in accordance with the Test 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;

"Additional Clauses"

means the additional Clauses in Annex 1 to the Call Off Terms (Alternative and Additional Clauses) and any other additional Clauses stipulated by the Customer during a 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;

"Alternative Clauses"

means the alternative Clauses in Annex 1 to the Call Off Terms (Alternative and Additional Clauses) and any other alternative Clauses stipulated by the Customer during a 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) a Central Government Body;
- b) any third party providing services to a Central Government Body; and/or
- c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;

"Auditor"

means:

- a) the Customer's internal and external auditors;
- b) the Customer's statutory or regulatory auditors;
- c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office

d) HM Treasury or the Cabinet Office

e) any party formally appointed by the Customer to carry out audit or similar review functions; and

f) successors or assignees of any of the above; means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") as represented by Government Procurement Service, a trading fund of the Cabinet Office, on behalf of the Crown, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;

means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Goods made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);

means the effective date of commencement of the Call Off Contract set out in the Order Form;

means this Call-Off Agreement 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;

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 the Order Form or, where used, 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 the Call Off Contract less any Deductions;

means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date, which shall in no event exceed a maximum duration of thirty six (36) Months plus two optional extension period of a further twelve (12) Months each;

means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;

means:

a) the end date of the Call Off Initial Period or any Call Off Extension Period; or

b) if the Call Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call Off Contract;

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"Call Off Extension Period"

"Call Off Guarantee"

"Call Off Guarantor"

Call Off Initial Period

"Call Off Schedule"

"Call-Off Terms"

"Central Government Body"

"Change in Law"

"Change of Control"

"Charges"

"Charging Structure"

"Commercially Sensitive Information"

the extension term of this Call Off Contract from the end date of the Call Off Initial Period to the end date of the extension period stated in the Order Form;

means a deed of guarantee in favour of the Customer in the form set out in Call-Off Schedule 13 (Guarantee) granted pursuant to Clause 4 (Call Off Guarantee); - NOT APPLICABLE

means the person acceptable to the Customer to give a Call Off Guarantee; - NOT APPLICABLE

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;

means a schedule to this Call Off Contract;

means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Goods, together with the Call Off Schedules hereto;

means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

a) Government Department;

b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);

c) Non-Ministerial Department; or

d) Executive Agency;

means any change in Law which impacts on the supply of the Goods and performance of the Call-Off Terms which comes into force after the Call Off Commencement Date;

means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

means the charges raised under or in connection with a Call-Off Agreement from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure;

means the structure to be used in the establishment of the charging model which is applicable to each Call-Off Agreement, which structure is set out in Framework Schedule 3 (Charging Structure);

means the Confidential Information listed in the Order Form (if any) comprising of a commercially sensitive information relating to the Supplier, its

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"Comparable Supply"	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; means the supply of Goods to another customer of the Supplier that are the same or similar to the Goods;
"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 Goods and/or reducing the Changes produced by the Supplier;
"Contracting Body"	means the Authority, the Customer and any other bodies listed in paragraph VI.3 of the OJEU Notice;
"Contract"	means contract as defined in section 1124 and 450 Corporation Tax Act 2010 and "Contracts" and "Contracted" shall be interpreted accordingly;
"Conviction"	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1022) 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 1979 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;
"Costs"	means the buy-in price from an external supply chain for Lots 1, 2 or 3 or the cost of manufacture for Lot 4;
"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

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"Customer Background IPR"	owned by and/or licensed or leased to the Customer and which is or may be used in connection with the supply of the Goods and Services; means: a) IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, processes and procedures; b) IPRs created by the Customer independently of this Call Off Contract; and/or c) Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract;
"Customer Cause"	licensed to the Supplier under the terms of this Call Off Contract and necessary for the performance of the Supplier's obligations hereunder, but excluding IPRs owned by the Customer subsisting in the Customer Software; 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: a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which: i) are supplied to the Supplier by or on behalf of the Customer; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or b) any Personal Data for which the Customer is the Data Controller;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to the Call Off Contract;
"Customer Responsibilities"	means the responsibilities of the Customer set out in the Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities [and Key Personnel]) and any other responsibilities of the Customer in the Order Form or agreed in writing between the Parties from time to time in connection

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