



**Department for
International Trade**

**Call Off Contract for the Provision of
Occupational Health Services**

**(Under the CCS Framework RM3795 – Lot
1 Full Service Occupational Health
Services and Employee Assistance
Programmes)**

Between

**The Department for International Trade,
Department for Exiting the European
Union and UK Export Finance**

And

Health Management Ltd

Contract Ref: DN 297931

FRAMEWORK SCHEDULE 4

CALL OFF ORDER FORM AND CALL OFF TERMS

PART 1 – CALL OFF ORDER FORM

SECTION A

This Call Off Order Form is issued in accordance with the provisions of the Framework Agreement for the provision of Full Service Occupational Health Services and Employee Assistance Programmes dated 6th November 2017.

The Supplier agrees to supply the Goods and/or Services specified below on and subject to the terms of this Call Off Contract.

For the avoidance of doubt this Call Off Contract consists of the terms set out in this Call Off Order Form and the Call Off Terms.

Order Number	DN297931
From	Department for International Trade, UK Export Finance and Department for Exiting the European Union ("CUSTOMER")
To	Health Management Ltd ("SUPPLIER")

SECTION B

1. CALL OFF CONTRACT PERIOD

1.1.	Commencement Date: 2nd January 2018
1.2.	Expiry Date: End date of Initial Period Three (3) years, 1st January 2021 End date of Extension Period up to a maximum of twelve (12) months, 1st January 2022 Minimum written notice to Supplier in respect of extension: three (3) months

2. GOODS AND/OR SERVICES

2.1	Goods and/or Services required: In Call Off Schedule 2 (Goods and/or Services)
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3. IMPLEMENTATION PLAN

3.1.	Implementation Plan: The Supplier shall provide the Customer with a draft Implementation Plan for
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	Approval within ten (10) Working Days from the Call Off Contract Date.
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4. CONTRACT PERFORMANCE

4.1.	Standards: The following standards shall apply: • Cyber Essentials Scheme Basic Certificate; • CESG CHECK Accreditation; • BS EN ISO 9001 or agreed equivalent; and • ISO 27001 Information Security Management or agreed equivalent. • HMG Baseline Personnel Security Standard.
4.2	Service Levels/Service Credits: In Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) Service Credit Cap (Call Off Schedule 1 (Definitions)): For the purpose of the definition of Service Credit Cap in Call Off Schedule 1 (Definitions), service credits shall be capped at 3% of the annual Call Off Contract Charges. Customer periodic reviews of Service Levels (Clause 13.7.1 of the Call Off Terms): Not applied
4.3	Critical Service Level Failure: Not applied
4.4	Performance Monitoring: In Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)
4.5	Period for providing Rectification Plan: In Clause 38.2.1(a) of the Call Off Terms

5. PERSONNEL

5.1	Key Personnel:
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5.2	Relevant Convictions (Clause 27.2 of the Call Off Terms): Not applied

6. PAYMENT

6.1	Call Off Contract Charges (including any applicable discount(s), but excluding VAT): In Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing) In Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)
6.2	Payment terms/profile (including method of payment e.g. Government Procurement Card (GPC) or BACS): In Annex 2 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)
6.3	Reimbursable Expenses: Not permitted
6.4	Call Off Contract Charges fixed for (paragraph 8.2 of Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): Three (3) Call Off Contract Years from the Call Off Commencement Date
6.5	Supplier periodic assessment of Call Off Contract Charges (paragraph 9.2 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)) will be carried out

	on: 6th May of each Call Off Contract Year during the Call off Contract Period
6.7	Supplier request for increase in the Call Off Contract Charges (paragraph 10 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): Permitted after two (2) Call Off Contract Years At the time of placing this Call-Off Contract pricing will be fixed for two (2) years, after which this can be reviewed for potential price increases to be agreed with the Customer and the Supplier.

7. LIABILITY AND INSURANCE

7.1	Estimated Year 1 Call Off Contract Charges: The sum of £87,525 for Department for International Trade, UK Export Finance and Department for Exiting the European Union combined.
7.2	Supplier's limitation of Liability (Clause 36.2.1 of the Call Off Terms); The wording " <i>ten million pounds (£10,000,000) or a sum equal to one hundred and fifty per cent (150%)</i> " in Clause 36.2.1(b)(i) shall be amended to: <i>a sum equal to one hundred and fifty per cent (150%) of the Estimated Year 1 Call Off Contract Charges</i> The wording " <i>ten million pounds (£10,000,000) in each such Call Off Contract Year or a sum equal to one hundred and fifty percent (150%)</i> " in Clause 36.2.1(b)(ii) shall be amended to <i>a sum equal to one hundred and fifty per cent (150%) of the Estimated Year 1 Call Off Contract Charges</i> The wording " <i>ten million pounds (£10,000,000) in each such Call Off Contract Year or a sum equal to one hundred and fifty percent (150%)</i> " in Clause 36.2.1(b)(iii) shall be amended to <i>a sum equal to one hundred and fifty per cent (150%) of the Estimated Year 1 Call Off Contract Charges</i>
7.3	Insurance (Clause 37.3 of the Call Off Terms): Third party insurance, not less than five million pounds (£5,000,000). Professional indemnity, not less than five million pounds (£5,000,000).

8. TERMINATION AND EXIT

8.1	Termination on material Default (Clause 41.2.1(c) of the Call Off Terms)): In Clause 41.2.1(c) of the Call Off Terms
8.2	Termination without cause notice period (Clause 41.7.1 of the Call Off Terms): In Clause 41.7.1 of the Call Off Terms
8.3	Undisputed Sums Limit:

	In Clause 42.1.1 of the Call Off Terms
8.4	Exit Management: In Call Off Schedule 9 (Exit Management)

9. SUPPLIER INFORMATION

9.1	Supplier's inspection of Sites, Customer Property and Customer Assets: Not required
9.2	Commercially Sensitive Information: None

10. OTHER CALL OFF REQUIREMENTS

10.1	Recitals (in preamble to the Call Off Terms): Recital A
10.2	Call Off Guarantee (Clause 4 of the Call Off Terms): Not required
10.3	Security: Short form security requirements
10.4	ICT Policy: To be provided by the Customer before the Commencement Date and included within this Call Off Order by the Contract Change Notice process.
10.5	Testing: Call Off Schedule 5 (Testing) shall be amended as follows: During the implementation phase the Supplier shall ensure that full testing is carried out on the portal during the implementation phase to ensure the system is fully operational for the go live date.
10.6	Business Continuity & Disaster Recovery: In Call Off Schedule 8 (Business Continuity and Disaster Recovery)
10.7	Failure of Supplier Equipment (Clause 32.8 of the call off Terms): Not applied
10.8	Protection of Customer Data (Clause 34.2.3 of the Call Off Terms): To be specified by the Customer from time to time in writing.

10.10	Transparency Reports In Call Off Schedule 13 (Transparency Reports)
10.11	Alternative and/or additional provisions (including any Alternative and/or Additional Clauses under Call Off Schedule 14): Not applied
10.12	Call Off Tender: In Schedule 15 (Call Off Tender)

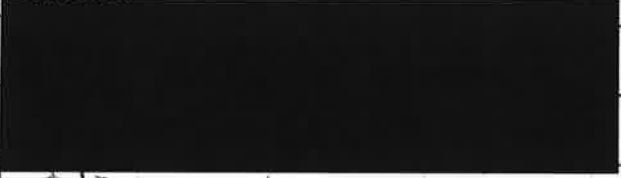
FORMATION OF CALL OFF CONTRACT

BY SIGNING AND RETURNING THIS CALL OFF ORDER FORM (which may be done by electronic means) the Supplier agrees to enter a Call Off Contract with the Customer to provide the Goods and/or Services in accordance with the terms Call Off Order Form and the Call Off Terms.

The Parties hereby acknowledge and agree that they have read the Call Off Order Form and the Call Off Terms and by signing below agree to be bound by this Call Off Contract.

In accordance with paragraph 7 of Framework Schedule 5 (Call Off Procedure), the Parties hereby acknowledge and agree that this Call Off Contract shall be formed when the Customer acknowledges (which may be done by electronic means) the receipt of the signed copy of the Call Off Order Form from the Supplier within two (2) Working Days from such receipt.

For and on behalf of the Supplier:

Name and Title		
Signature		
Date		18 December 2017

For and on behalf of the Customer:

Name and Title		
Signature		
Date		14/12/17

TABLE OF CONTENT

A.	PRELIMINARIES	13
1.	DEFINITIONS AND INTERPRETATION	13
2.	DUE DILIGENCE	14
3.	REPRESENTATIONS AND WARRANTIES.....	15
4.	CALL OFF GUARANTEE	17
B.	DURATION OF CALL OFF CONTRACT	17
5.	CALL OFF CONTRACT PERIOD.....	17
C.	CALL OFF CONTRACT PERFORMANCE	17
6.	IMPLEMENTATION PLAN	17
7.	GOODS AND/ OR SERVICES.....	19
8.	SERVICES	21
9.	GOODS	22
10.	INSTALLATION WORKS	26
11.	STANDARDS AND QUALITY	26
12.	TESTING.....	27
13.	SERVICE LEVELS AND SERVICE CREDITS	27
14.	CRITICAL SERVICE LEVEL FAILURE.....	28
15.	BUSINESS CONTINUITY AND DISASTER RECOVERY	29
16.	DISRUPTION	29
17.	SUPPLIER NOTIFICATION OF CUSTOMER CAUSE.....	29
18.	CONTINUOUS IMPROVEMENT	30
D.	CALL OFF CONTRACT GOVERNANCE	30
19.	PERFORMANCE MONITORING	30
20.	REPRESENTATIVES	30
21.	RECORDS, AUDIT ACCESS AND OPEN BOOK DATA.....	31
22.	CHANGE	33
E.	PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS	35
23.	CALL OFF CONTRACT CHARGES AND PAYMENT	35
24.	PROMOTING TAX COMPLIANCE	37
25.	BENCHMARKING	37
F.	SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS.....	38
26.	KEY PERSONNEL.....	38
27.	SUPPLIER PERSONNEL	39
28.	STAFF TRANSFER	41
29.	SUPPLY CHAIN RIGHTS AND PROTECTION.....	41

G.	PROPERTY MATTERS	46
	30. CUSTOMER PREMISES	46
	31. CUSTOMER PROPERTY	47
	32. SUPPLIER EQUIPMENT	48
H.	INTELLECTUAL PROPERTY AND INFORMATION	49
	33. INTELLECTUAL PROPERTY RIGHTS	49
	34. SECURITY AND PROTECTION OF INFORMATION	55
	35. PUBLICITY AND BRANDING	63
I.	LIABILITY AND INSURANCE	64
	36. LIABILITY	64
	37. INSURANCE	66
J.	REMEDIES AND RELIEF	67
	38. CUSTOMER REMEDIES FOR DEFAULT	67
	39. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE	69
	40. FORCE MAJEURE	71
K.	TERMINATION AND EXIT MANAGEMENT	72
	41. CUSTOMER TERMINATION RIGHTS	72
	42. SUPPLIER TERMINATION RIGHTS	75
	43. TERMINATION BY EITHER PARTY	75
	44. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION ..	76
	45. CONSEQUENCES OF EXPIRY OR TERMINATION	76
L.	MISCELLANEOUS AND GOVERNING LAW	78
	46. COMPLIANCE	78
	47. ASSIGNMENT AND NOVATION	79
	48. WAIVER AND CUMULATIVE REMEDIES	79
	49. RELATIONSHIP OF THE PARTIES	80
	50. PREVENTION OF FRAUD AND BRIBERY	80
	51. SEVERANCE	81
	52. FURTHER ASSURANCES	82
	53. ENTIRE AGREEMENT	82
	54. THIRD PARTY RIGHTS	82
	55. NOTICES	82
	56. DISPUTE RESOLUTION	84
	57. GOVERNING LAW AND JURISDICTION	84
	CALL OFF SCHEDULE 1: DEFINITIONS	85
	CALL OFF SCHEDULE 2: GOODS AND/OR SERVICES	111

ANNEX 1: THE SERVICES	112
ANNEX 2: THE GOODS	113
CALL OFF SCHEDULE 3: CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING	114
ANNEX 1: CALL OFF CONTRACT CHARGES	121
ANNEX 2: PAYMENT TERMS/PROFILE	133
CALL OFF SCHEDULE 4: IMPLEMENTATION PLAN	134
CALL OFF SCHEDULE 5: TESTING	136
ANNEX 1: SATISFACTION CERTIFICATE	139
CALL OFF SCHEDULE 6: SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING	140
ANNEX 1 TO PART A: SERVICE LEVELS AND SERVICE CREDITS TABLE	141
ANNEX 1 TO PART B: PERFORMANCE MONITORING	149
CALL OFF SCHEDULE 7: SECURITY	151
ANNEX 1: SECURITY POLICY	156
ANNEX 2: SECURITY MANAGEMENT PLAN	163
CALL OFF SCHEDULE 8: BUSINESS CONTINUITY AND DISASTER RECOVERY	164
CALL OFF SCHEDULE 9: EXIT MANAGEMENT	171
CALL OFF SCHEDULE 10: STAFF TRANSFER	182
ANNEX TO PART A: PENSIONS	191
ANNEX TO PART B: PENSIONS	200
ANNEX TO SCHEDULE 10: LIST OF NOTIFIED SUB-CONTRACTORS	214
CALL OFF SCHEDULE 11: DISPUTE RESOLUTION PROCEDURE	215
CALL OFF SCHEDULE 12: VARIATION FORM	221
CALL OFF SCHEDULE 13: TRANSPARENCY REPORTS	222
ANNEX 1: LIST OF TRANSPARENCY REPORTS	223
CALL OFF SCHEDULE 14: ALTERNATIVE AND/OR ADDITIONAL CLAUSES	224
CALL OFF SCHEDULE 15: CALL OFF TENDER	225

PART 2 –CALL OFF TERMS

TERMS AND CONDITIONS

RECITALS

- A. Where recital A has been selected in the Call Off Order Form, the Customer has followed the call off procedure set out in paragraph 1.2 of Framework Schedule 5 (Call Off Procedure) and has awarded this Call Off Contract to the Supplier by way of direct award.
- B. Where recitals B to E have been selected in the Call Off Order Form, the Customer has followed the call off procedure set out in paragraph 1.3 of Framework Schedule 5 (Call Off Procedure) and has awarded this Call Off Contract to the Supplier by way of further competition.
- C. The Customer issued its Statement of Requirements for the provision of the Goods and/or Services on the date specified at paragraph 10.1 of the Call Off Order Form.
- D. In response to the Statement of Requirements the Supplier submitted a Call Off Tender to the Customer on the date specified at paragraph 10.1 of the Call Off Order form through which it provided to the Customer its solution for providing the Goods and/or Services.
- E. On the basis of the Call Off Tender, the Customer selected the Supplier to provide the Goods and/or Services to the Customer in accordance with the terms of this Call Off Contract.

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Call Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions) or the relevant Call Off Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Call Off Schedule 1 (Definitions) or relevant Call Off Schedule, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Call Off Contract, unless the context otherwise requires:
 - 1.3.1 the singular includes the plural and vice versa;
 - 1.3.2 reference to a gender includes the other gender and the neuter;
 - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

- 1.3.5 the words **"including"**, **"other"**, **"in particular"**, **"for example"** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words **"without limitation"**;
 - 1.3.6 references to **"writing"** include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.3.7 references to **"representations"** shall be construed as references to present facts, to **"warranties"** as references to present and future facts and to **"undertakings"** as references to obligations under this Call Off Contract;
 - 1.3.8 references to **"Clauses"** and **"Call Off Schedules"** are, unless otherwise provided, references to the clauses and schedules of this Call Off Contract and references in any Call Off Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Call Off Schedule in which these references appear; and
 - 1.3.9 the headings in this Call Off Contract are for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract.
- 1.4 Subject to Clauses 1.5 and 1.6 (Definitions and Interpretation), in the event of and only to the extent of any conflict between the Call Off Order Form, the Call Off Terms and the provisions of the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 the Framework Agreement, except Framework Schedule 21 (Tender);
 - 1.4.2 the Call Off Order Form;
 - 1.4.3 the Call Off Terms, except Call Off Schedule 15 (Call Off Tender);
 - 1.4.4 Call Off Schedule 15 (Call Off Tender); and
 - 1.4.5 Framework Schedule 21 (Tender).
- 1.5 Any permitted changes by the Customer to the Template Call Off Terms and the Template Call Off Order Form under Clause 5 (Call Off Procedure) of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to them becoming the Call Off Terms and the Call Off Order Form which comprise this Call Off Contract shall prevail over the Framework Agreement.
- 1.6 Where Call Off Schedule 15 (Call Off Tender) or Framework Schedule 21 (Tender) contain provisions which are more favourable to the Customer in relation to (the rest of) this Call Off Contract, such provisions of the Call Off Tender or the Tender shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Call Off Tender or Tender is more favourable to it in this context.

2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that:

- 2.1.1 the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Call Off Contract;
- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- 2.1.3 it has raised all relevant due diligence questions with the Customer before the Call Off Commencement Date;
- 2.1.4 it has undertaken all necessary due diligence and has entered into this Call Off Contract in reliance on its own due diligence alone; and
- 2.1.5 it shall not be excused from the performance of any of its obligations under this Call Off Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
 - (a) misinterpretation of the requirements of the Customer in the Call Off Order Form or elsewhere in this Call Off Contract;
 - (b) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
 - (c) failure by the Supplier to undertake its own due diligence.

3. REPRESENTATIONS AND WARRANTIES

3.1 Each Party represents and warranties that:

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

3.2 The Supplier represents and warrants that:

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call Off Contract;
- 3.2.3 its execution, delivery and performance of its obligations under this Call Off Contract does not and will not constitute a breach of any Law

- or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
- 3.2.4 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender, Call Off Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract;
- 3.2.5 if the Call Off Contract Charges payable under this Call Off Contract exceed or are likely to exceed five (5) million pounds, as at the Call Off Commencement Date it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
- 3.2.6 it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Goods and/or Services by the Customer;
- 3.2.7 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;
- 3.2.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Contract;
- 3.2.9 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 3.2.10 for the Call Off Contract Period and for a period of twelve (12) months after the termination or expiry of this Call Off Contract, the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Goods and/or Services without Approval or the prior written consent of the Customer which shall not be unreasonably withheld.
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.
- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

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

4. CALL OFF GUARANTEE

- 4.1 Where the Customer has stipulated in the Call Off Order Form that this Call Off Contract shall be conditional upon receipt of a Call Off Guarantee, then, on or prior to the Call Off Commencement Date or on any other date specified by the Customer, the Supplier shall deliver to the Customer:

- 4.1.1 an executed Call Off Guarantee from a Call Off Guarantor; and
- 4.1.2 a certified copy extract of the board minutes and/or resolution of the Call Off Guarantor approving the execution of the Call Off Guarantee.

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

B. DURATION OF CALL OFF CONTRACT

5. CALL OFF CONTRACT PERIOD

- 5.1 This Call Off Contract shall take effect on the Call Off Commencement Date and the term of this Call Off Contract shall be the Call Off Contract Period.

- 5.2 Where the Customer has specified a Call Off Extension Period in the Call Off Order Form, the Customer may extend this Call Off Contract for the Call Off Extension Period by providing written notice to the Supplier before the end of the Initial Call Off Period. The minimum period for the written notice shall be as specified in the Call Off Order Form.

C. CALL OFF CONTRACT PERFORMANCE

6. IMPLEMENTATION PLAN

- 6.1 Formation of Implementation Plan

- 6.1.1 Where an Implementation Plan has not been agreed and included in Call Off Schedule 4 (Implementation Plan) on the Call Off Commencement Date, but the Customer has specified in the Call Off Order Form that the Supplier shall provide a draft Implementation Plan prior to the commencement of the provision of the Goods and/or Services, the Supplier's draft must contain information at the level of detail necessary to manage the implementation stage effectively and as the Customer may require. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.

- 6.1.2 The Supplier shall submit the draft Implementation Plan to the Customer for Approval (such decision of the Customer to Approve or not shall not be unreasonably delayed or withheld) within such period as specified by the Customer in the Call Off Order Form.

- 6.1.3 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that

Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.

- 6.1.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in this Call Off Contract and report to the Customer on such performance.

6.2 Control of Implementation Plan

- 6.2.1 Subject to Clause 6.2.2, the Supplier shall keep the Implementation Plan under review in accordance with the Customer's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Goods and/or Services. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 6.2.2 Changes to the Milestones (if any), Milestone Payments (if any) and Delay Payments (if any) shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- 6.2.3 Where so specified by the Customer in the Implementation Plan or elsewhere in this Call Off Contract, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

6.3 Rectification of Delay in Implementation

- 6.3.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Call Off Contract:
- (a) it shall:
 - (i) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
 - (ii) include in its notification an explanation of the actual or anticipated impact of the Delay;
 - (iii) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - (b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Implementation Plan, Clause 6.4 (Delay Payments) shall apply.

6.4 Delay Payments

- 6.4.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the

Supplier shall pay to the Customer such Delay Payments (calculated as set out by the Customer in the Implementation Plan) and the following provisions shall apply:

- (a) the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to Achieve the corresponding Milestone;
- (b) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
 - (i) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.7 (Termination Without Cause); or
 - (ii) the delay exceeds the number of days (the "**Delay Period Limit**") specified in Call Off Schedule 4 (Implementation Plan) for the purposes of this sub-Clause, commencing on the relevant Milestone Date;
- (c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified by the Customer in the Implementation Plan);
- (d) no payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver complies with Clause 48 (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Customer's rights to claim Delay Payments; and
- (e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 6.4.1 and Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 36 (Liability).

7. GOODS AND/ OR SERVICES

7.1 Provision of the Goods and/or Services

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

- 7.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:
- (a) all applicable Law;
 - (b) Good Industry Practice;
 - (c) the Standards;
 - (d) the Security Policy;
 - (e) the ICT Policy (if so required by the Customer); and
 - (f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 7.1.3(a) to 7.1.3(e).
- 7.1.4 The Supplier shall:
- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Goods and/or Services in accordance with this Call Off Contract;
 - (b) subject to Clause 22.1 (Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Goods and/or Services;
 - (c) ensure that any goods and/or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Goods and/or Services shall enable the Deliverables and/or the Goods and/or the Services to meet the requirements of the Customer;
 - (d) ensure that the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer);
 - (e) ensure that the Goods and/or Services are fully compatible with any Customer Property or Customer Assets described in Call Off Schedule 4 (Implementation Plan) (or elsewhere in this Call Off Contract) or otherwise used by the Supplier in connection with this Call Off Contract;
 - (f) minimise any disruption to the Sites and/or the Customer's operations when providing the Goods and/or Services;
 - (g) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - (h) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Goods and/or Services to any Other Supplier and, on the Call Off Expiry Date for any reason, to enable the timely transition of the supply of the Goods and/or Services (or any of them) to the Customer and/or to any Replacement Supplier;

- (i) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Goods and/or Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
- (j) provide the Customer with such assistance as the Customer may reasonably require during the Call Off Contract Period in respect of the supply of the Goods and/or Services;
- (k) deliver the Goods and/or Services in a proportionate and efficient manner;
- (l) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and
- (m) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.

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

8. SERVICES

8.1 General application

8.1.1 This Clause 8 shall apply if any Services have been included in Annex 1 of Call Off Schedule 2 (Goods and/or Services).

8.2 Time of Delivery of the Services

8.2.1 The Supplier shall provide the Services on the date(s) specified in the Call Off Order Form (or elsewhere in this Call Off Contract) and the Milestone Dates (if any).

8.3 Location and Manner of Delivery of the Services

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

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

8.4 Undelivered Services

- 8.4.1 In the event that any of the Services are not Delivered in accordance with Clauses 7.1 (Provision of the Goods and/or Services), 8.2 (Time of Delivery of the Services) and 8.3 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.
- 8.4.2 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 7.1, (Provision of the Goods and/or Services), 8.2 (Time of Delivery of the Services) and 8.3 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

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

- 8.5.1 Subject to Clauses 33.9.2 and 33.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 8.4.2 (Undelivered Services) and 38 (Customer Remedies for Default)), the Supplier shall, where practicable:
- (a) remedy any breach of its obligations in Clauses 7 and 8 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
 - (b) meet all the costs of, and incidental to, the performance of such remedial work.

8.6 Continuing Obligation to Provide the Services

- 8.6.1 The Supplier shall continue to perform all of its obligations under this Call Off Contract and shall not suspend the provision of the Services, notwithstanding:
- (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
 - (b) the existence of an unresolved Dispute; and/or
 - (c) any failure by the Customer to pay any Call Off Contract Charges,
- unless the Supplier is entitled to terminate this Call Off Contract under Clause 42.1 (Termination on Customer Cause for Failure to Pay) for failure by the Customer to pay undisputed Call Off Contract Charges.

9. GOODS

9.1 General application

- 9.1.1 This Clause 9 shall apply if any Goods have been included in Annex 2 of Call Off Schedule 2 (Goods and/or Services).

9.2 Time of Delivery of the Goods

- 9.2.1 The Supplier shall provide the Goods on the date(s) specified in the Call Off Order Form (or elsewhere in this Call Off Contract) and the Milestone Dates (if any).
- 9.2.2 Subject to Clause 9.2.3 (Time of Delivery of the Goods), where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle and transferred at the Sites. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
- 9.2.3 Where the Customer has specified any Installation Works in the Call Off Order Form, Delivery shall include installation of the Goods by the Supplier Personnel at the Sites (or at such place as the Customer may reasonably direct) in accordance with Clause 10 (Installation Works) and the Call Off Order Form.

9.3 Location and Manner of Delivery of the Goods

- 9.3.1 Except where otherwise provided in this Call Off Contract, the Supplier shall deliver the Goods to the Customer through the Supplier Personnel at the Sites.
- 9.3.2 If requested by the Customer prior to Delivery, the Supplier shall provide the Customer with a sample or samples of Goods for evaluation and Approval, at the Supplier's cost and expense.
- 9.3.3 The Goods shall be marked, stored, handled and delivered in a proper manner and in accordance the Customer's instructions as set out in the Call Off Order Form (or elsewhere in this Call Off Contract), Good Industry Practice, any applicable Standards and any Law. In particular, the Goods shall be marked with the Order number and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- 9.3.4 On dispatch of any consignment of the Goods the Supplier shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the number of packages, their weight and volume together with the all other relevant documentation and information required to be provided under any Laws.
- 9.3.5 The Customer may inspect and examine the manner in which the Supplier supplies the Goods at the Sites and, if the Sites are not the Customer Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.

9.4 Undelivered Goods

- 9.4.1 In the event that not all of the Goods are Delivered in accordance with Clauses 7.1 (Provision of the Goods and/or Services), 9.2 (Time of Delivery of the Goods) and 9.3 (Location and Manner of Delivery of the Goods) ("**Undelivered Goods**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract

Charges for the Goods that were not so Delivered until such time as the Undelivered Goods are Delivered.

- 9.4.2 The Customer, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising deem the failure to comply with Clauses 7.1 (Provision of the Goods and/or Services), 9.2 (Time of Delivery of the Goods) and 9.3 (Location and Manner of Delivery of the Goods) and meet the relevant Milestone Date (if any) to be a material Default.

9.5 Over-Delivered Goods

- 9.5.1 The Customer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity specified in the Call Off Order Form (or elsewhere in this Call Off Contract) ("**Over-Delivered Goods**").
- 9.5.2 If the Customer elects not to accept such Over-Delivered Goods it may, without prejudice to any other rights and remedies of the Customer howsoever arising, give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such Over-Delivered Goods (including but not limited to the costs of moving and storing the Over-Delivered Goods).
- 9.5.3 If the Supplier fails to comply with the Customer's notice under Clause 9.5.2, the Customer may dispose of such Over-Delivered Goods and charge the Supplier for the costs of such disposal. The risk in any Over-Delivered Goods shall remain with the Supplier.

9.6 Delivery of the Goods by Instalments

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

9.7 Risk and Ownership in Relation to the Goods

- 9.7.1 Without prejudice to any other rights or remedies of the Customer howsoever arising:
- (a) risk in the Goods shall pass to the Customer at the time of Delivery; and
 - (b) ownership of the Goods shall pass to the Customer on the earlier of Delivery of the Goods or payment by the Customer of the Call Off Contract Charges;

9.8 Responsibility for Damage to or Loss of the Goods

- 9.8.1 Without prejudice to the Supplier's other obligations to provide the Goods in accordance with this Call Off Contract, the Supplier accepts responsibility for all damage to or loss of the Goods if the:

- (a) same is notified in writing to the Supplier within three (3) Working Days of receipt and inspection of the Goods by the Customer; and
 - (b) Goods have been handled by the Customer in accordance with the Supplier's instructions.
- 9.8.2 Where the Supplier accepts responsibility under Clause 9.8.1, it shall, at its sole option, replace or repair the Goods (or part thereof) within such time as is reasonable having regard to the circumstances and as agreed with the Customer.
- 9.9 Warranty of the Goods
 - 9.9.1 The Supplier hereby guarantees the Goods for the Warranty Period against faulty materials and workmanship.
 - 9.9.2 If the Customer shall within such Warranty Period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies of the Customer howsoever arising) promptly remedy such faults or defects (whether by repair or replacement as the Customer shall elect) free of charge.
- 9.10 Obligation to Remedy Default in the Supply of the Goods
 - 9.10.1 Subject to Clauses 33.9.2 and 33.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 9.4.2 (Undelivered Goods) and 38 (Customer Remedies for Default)), the Supplier shall, where practicable:
 - (a) remedy any breach of its obligations in this Clause 9 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
 - (b) meet all the costs of, and incidental to, the performance of such remedial work.
- 9.11 Continuing Obligation to Provide the Goods
 - 9.11.1 The Supplier shall continue to perform all of its obligations under this Call Off Contract and shall not suspend the provision of the Goods, notwithstanding:
 - (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
 - (b) the existence of an unresolved Dispute; and/or
 - (c) any failure by the Customer to pay any Call Off Contract Charges,

unless the Supplier is entitled to terminate this Call Off Contract under Clause 42.1 (Termination on Customer Cause for Failure to Pay) for failure to pay undisputed Call Off Contract Charges.

10. INSTALLATION WORKS

10.1 This Clause 10 shall apply if any Goods have been included in Annex 2 of Call Off Schedule 2 (Goods and/or Services) and the Customer has specified Installation Works in the Call Off Order Form.

10.2 Where 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 Supplier:

10.2.1 accept the Installation Works, or

10.2.2 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 Call Off Order Form (or elsewhere in this Call Off Contract).

10.3 If the Customer rejects the Installation Works in accordance with Clause 10.2, 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 Call Off Order Form (or elsewhere in this Call Off Contract), the Customer may terminate this Call Off Contract for material Default.

10.4 The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Customer in accordance with Clause 10.2. Notwithstanding the acceptance of any Installation Works in accordance with Clause 10.2 (Installation Works), the Supplier shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the specification in the Call Off Order Form (or elsewhere in this Call Off Contract). No rights of estoppel or waiver shall arise as a result of the acceptance by the Customer of the Installation Works.

10.5 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 Supplier Personnel to carry out the Installation Works.

11. STANDARDS AND QUALITY

11.1 The Supplier shall at all times during the Call Off Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.

11.2 Throughout the Call Off Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Customer, of the Goods and/or Services. The adoption of any such new or emergent standard, or changes to existing Standards (including any specified in the Call Off Order Form), shall be agreed in accordance with the Variation Procedure.

11.3 Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Customer's receipt of the Goods and/or Services

is explained to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.

11.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Call Off Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard or Standards shall require Approval (and the written consent of the Customer where the relevant Standard or Standards is/are included in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) and shall be implemented within an agreed timescale.

11.5 Where a standard, policy or document is referred to by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall agree the impact of such change.

12. TESTING

12.1 This Clause 12 shall apply if so specified by the Customer in the Call Off Order Form.

12.2 The Parties shall comply with any provisions set out in Call Off Schedule 5 (Testing).

13. SERVICE LEVELS AND SERVICE CREDITS

13.1 This Clause 13 shall apply where the Customer has specified Service Levels and Service Credits in the Call Off Order Form. Where the Customer has specified Service Levels but not Service Credits, only sub-clauses 13.2, 13.3 and 13.7 shall apply.

13.2 When this Clause 13.2 applies, the Parties shall also comply with the provisions of Part A (Service Levels and Service Credits) of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).

13.3 The Supplier shall at all times during the Call Off Contract Period provide the Goods and/or Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.

13.4 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to the rights set out in Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.

13.5 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier's failure to meet any Service Level Performance Measure.

13.6 A Service Credit shall be the Customer's exclusive financial remedy for a Service Level Failure except where:

13.6.1 the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;

13.6.2 the Service Level Failure:

(a) exceeds the relevant Service Level Threshold;

- (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and
 - (c) results in:
 - (i) the corruption or loss of any Customer Data (in which case the remedies under Clause 34.2.8 (Protection of Customer Data) shall also be available); and/or
 - (ii) the Customer being required to make a compensation payment to one or more third parties; and/or
- 13.6.3 the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.7 (Termination Without Cause).
- 13.7 Not more than once in each Call Off Contract Year, the Customer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Level Performance Criteria and the Supplier shall not be entitled to object to, or increase the Call Off Contract Charges as a result of such changes, provided that:
 - 13.7.1 the total number of Service Level Performance Criteria for which the weighting is to be changed does not exceed the number set out, for the purposes of this clause, in the Call Off Order Form;
 - 13.7.2 the principal purpose of the change is to reflect changes in the Customer's business requirements and/or priorities or to reflect changing industry standards; and
 - 13.7.3 there is no change to the Service Credit Cap.

14. CRITICAL SERVICE LEVEL FAILURE

- 14.1 This Clause 14 shall apply if the Customer has specified both Service Credits and Critical Service Level Failure in the Call Off Order Form.
- 14.2 On the occurrence of a Critical Service Level Failure:
 - 14.2.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
 - 14.2.2 the Customer shall (subject to the Service Credit Cap set out in Clause 36.2.1(a) (Financial Limits)) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Call Off Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this Clause 14.2 shall be without prejudice to the right of the Customer to terminate this Call Off Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.
- 14.3 The Supplier:
 - 14.3.1 agrees that the application of Clause 14.2 is commercially justifiable where a Critical Service Level Failure occurs; and
 - 14.3.2 acknowledges that it has taken legal advice on the application of Clause 14.2 and has had the opportunity to price for that risk when calculating the Call Off Contract Charges.

15. BUSINESS CONTINUITY AND DISASTER RECOVERY

15.1 This Clause 15 shall apply if the Customer has so specified in the Call Off Order Form.

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

16. DISRUPTION

16.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call Off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.

16.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.

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

16.4 If the Supplier's proposals referred to in Clause 16.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.

16.5 If the Supplier is temporarily unable to fulfil the requirements of this Call Off Contract owing to disruption of normal business solely due to a Customer Cause, then subject to Clause 17 (Supplier Notification of Customer Cause), an appropriate allowance by way of an extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

17. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

17.1 Without prejudice to any other obligations of the Supplier in this Call Off Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 42.1.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall:

- 17.1.1 notify the Customer as soon as reasonably practicable ((and in any event within two (2) Working Days of the Supplier becoming aware)) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:
 - (a) the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Call Off Contract; and
 - (b) any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
 - (c) use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

18. CONTINUOUS IMPROVEMENT

18.1 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Goods and/or Services in accordance with this Clause 18 with a view to reducing the Customer's costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Goods and/or Services and their supply to the Customer. As part of this obligation the Supplier shall identify and report to the Customer once every twelve (12) months:

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

18.1.2 new or potential improvements to the provision of the Goods and/or Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support goods and/or services in relation to the Goods and/or Services;

18.1.3 changes in business processes and ways of working that would enable the Goods and/or Services to be provided at lower costs and/or at greater benefits to the Customer; and/or

18.1.4 changes to the Sites business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Goods and/or Services.

18.2 The Supplier shall ensure that the information that it provides to the Customer shall be sufficient for the Customer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Customer requests.

18.3 If the Customer wishes to incorporate any improvement identified by the Supplier, the Customer shall request a Variation in accordance with the Variation Procedure and the Supplier shall implement such Variation at no additional cost to the Customer.

D. CALL OFF CONTRACT GOVERNANCE

19. PERFORMANCE MONITORING

19.1 The Supplier shall comply with the monitoring requirements set out in Part B (Performance Monitoring) of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).

20. REPRESENTATIVES

20.1 Each Party shall have a representative for the duration of this Call Off Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Call Off Contract.

20.2 The initial Supplier Representative shall be the person named as such in the Call Off Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 27 (Supplier Personnel).

20.3 If the initial Customer Representative is not specified in the Call Off Order Form, the Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Call Off Commencement Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.

21. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

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

21.2 The Supplier shall:

- 21.2.1 keep the records and accounts referred to in Clause 21.1 in accordance with Good Industry Practice and Law; and
- 21.2.2 afford any Auditor access to the records and accounts referred to in Clause 21.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 21.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call Off Contract including in order to:
 - (a) verify the accuracy of the Call Off Contract Charges and any other amounts payable by the Customer under this Call Off Contract (and proposed or actual variations to them in accordance with this Call Off Contract);
 - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Goods and/or Services;
 - (c) verify the Open Book Data;
 - (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Framework Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to perform the Goods and/or Services;
 - (g) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial,

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

- (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Call Off Contract;
- (i) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;
- (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
- (k) review any Performance Monitoring Reports provided under Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Goods and/or Services and to verify that these reflect the Supplier's own internal reports and records;
- (l) verify the accuracy and completeness of any information delivered or required by this Call Off Contract;
- (m) review the Supplier's quality management systems (including any quality manuals and procedures);
- (n) review the Supplier's compliance with the Standards;
- (o) inspect the Customer Assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date; and/or
- (p) review the integrity, confidentiality and security of the Customer Data.

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

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

21.4.1 all reasonable information requested by the Customer within the scope of the audit;

21.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Goods and/or Services; and

21.4.3 access to the Supplier Personnel.

21.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 21, unless the audit reveals a Default by the Supplier in which case the Supplier shall

reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

22. CHANGE

22.1 Variation Procedure

- 22.1.1 Subject to the provisions of this Clause 22 and Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a **"Variation"**.
- 22.1.2 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 22.1.3 Where the Customer has so specified on receipt of a Variation Form from the Supplier, the Supplier shall carry out an impact assessment of the Variation on the Goods and/or Services (the **"Impact Assessment"**). The Impact Assessment shall be completed in good faith and shall include:
- (a) details of the impact of the proposed Variation on the Goods and/or Services and the Supplier's ability to meet its other obligations under this Call Off Contract;
 - (b) details of the cost of implementing the proposed Variation;
 - (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Call Off Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - (e) such other information as the Customer may reasonably request in (or in response to) the Variation request.
- 22.1.4 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.
- 22.1.5 Subject to 22.1.4, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Goods and/or Services and the proposed Variation.
- 22.1.6 In the event that:
- (a) the Supplier is unable to agree to or provide the Variation; and/or
 - (b) the Parties are unable to agree a change to the Call Off Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof,

the Customer may:

- (i) agree to continue to perform its obligations under this Call Off Contract without the Variation; or
- (ii) terminate this Call Off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the provision of the Goods and/or Services in accordance with this Call Off Contract or where the Supplier can show evidence of substantial work being carried out to provide the Goods and/or Services under this Call Off Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

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

22.2 Legislative Change

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

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

22.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 22.2.1(b)), the Supplier shall:

- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
 - (i) whether any Variation is required to the provision of the Goods and/or Services, the Call Off Contract Charges or this Call Off Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
- (b) provide to the Customer with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 18 (Continuous

Improvement), has been taken into account in amending the Call Off Contract Charges.

- 22.2.3 Any change in the Call Off Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 22.2.1(b)) shall be implemented in accordance with the Variation Procedure.

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

23. CALL OFF CONTRACT CHARGES AND PAYMENT

23.1 Call Off Contract Charges

- 23.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Goods and/or Services, the Customer shall pay the undisputed Call Off Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).
- 23.1.2 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 12 (Testing), 21 (Records, Audit Access and Open Book Data), 34.4 (Transparency and Freedom of Information) and 34.5 (Protection of Personal Data).
- 23.1.3 If the Customer fails to pay any undisputed Call Off Contract Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 23.1.4 If at any time during this Call Off Contract Period the Supplier reduces its Framework Prices for any Goods and/or Services which are provided under the Framework Agreement (whether or not such Goods and/or Services are offered in a catalogue, if any, which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Call Off Contract Charges for such Goods and/or Services under this Call Off Contract by the same amount.

23.2 VAT

- 23.2.1 The Call Off Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a Valid Invoice.
- 23.2.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call Off Contract. Any amounts due under Clause 23.2 (VAT) shall be paid in cleared funds by the Supplier to the Customer not less than five

(5) Working Days before the date upon which the tax or other liability is payable by the Customer.

23.3 Retention and Set Off

- 23.3.1 The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Call Off Contract or under any other agreement between the Supplier and the Customer.
- 23.3.2 If the Customer wishes to exercise its right pursuant to Clause 23.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Call Off Contract Charges.
- 23.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

23.4 Foreign Currency

- 23.4.1 Any requirement of Law to account for the Goods and/or Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 23.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 23.4.1 by the Supplier.

23.5 Income Tax and National Insurance Contributions

- 23.5.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call Off Contract, the Supplier shall:
 - (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Goods and/or Services by the Supplier or any Supplier Personnel.
- 23.5.2 In the event that any one of the Supplier Personnel is a Worker as defined in Call Off Schedule 1 (Definitions) who receives consideration relating to the Goods and/or Services, then, in addition to its obligations under Clause 23.5.1, the Supplier shall ensure that its contract with the Worker contains the following requirements:
 - (a) that the Customer may, at any time during the Call Off Contract Period, request that the Worker provides information which

demonstrates how the Worker complies with the requirements of Clause 23.5.1, or why those requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided;

- (b) that the Worker's contract may be terminated at the Customer's request if:
 - (i) the Worker fails to provide the information requested by the Customer within the time specified by the Customer under Clause 23.5.2(a); and/or
 - (ii) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with Clause 23.5.1 or confirms that the Worker is not complying with those requirements; and
- (c) that the Customer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

24. PROMOTING TAX COMPLIANCE

24.1 This Clause 24 shall apply if the Call Off Contract Charges payable under this Call Off Contract exceed or are likely to exceed five (5) million pounds during the Call Off Contract Period.

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

- 24.2.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
- 24.2.2 promptly provide to the Customer:
 - (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.

24.3 In the event that the Supplier fails to comply with this Clause 24 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable, then the Customer reserves the right to terminate this Call Off Contract for material Default.

25. BENCHMARKING

25.1 Notwithstanding the Supplier's obligations under Clause 18 (Continuous Improvement), the Customer shall be entitled to regularly benchmark the Call Off Contract Charges and level of performance by the Supplier of the supply of the Goods and/or Services, against other suppliers providing goods and/or services substantially the same as the Goods and/or Services during the Call Off Contract Period.

- 25.2 The Customer, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 25.1 above.
- 25.3 The Customer shall be entitled to disclose the results of any benchmarking of the Call Off Contract Charges and provision of the Goods and/or Services to the Authority and any Contracting Authority (subject to the Contracting Authority entering into reasonable confidentiality undertakings).
- 25.4 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking and such information requirements shall be at the discretion of the Customer.
- 25.5 Where, as a consequence of any benchmarking carried out by the Customer, the Customer decides improvements to the Goods and/or Services should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Customer.
- 25.6 The benefit of any work carried out by the Supplier at any time during the Call Off Contract Period to update, improve or provide the Goods and/or Services, facilitate their delivery to any other Contracting Authority and/or any alterations or variations to the Charges or the provision of the Goods and/or Services, which are identified in the Continuous Improvement Plan produced by the Supplier and/or as a consequence of any benchmarking carried out by the Authority pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking), shall be implemented by the Supplier in accordance with the Variation Procedure and at no additional cost to the Customer.

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

26. KEY PERSONNEL

- 26.1 This Clause 26 shall apply where the Customer has specified Key Personnel in the Call Off Order Form.
- 26.2 The Call Off Order Form lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Call Off Commencement Date.
- 26.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Call Off Contract Period.
- 26.4 The Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 26.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Call Off Schedule 9 (Exit Management) unless:
- 26.5.1 requested to do so by the Customer;
 - 26.5.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 26.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
 - 26.5.4 the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).

26.6 The Supplier shall:

- 26.6.1 notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
- 26.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
- 26.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;
- 26.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Goods and/or Services; and
- 26.6.5 ensure that any replacement for a Key Role:
 - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 26.6.6 shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.

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

27. SUPPLIER PERSONNEL

27.1 Supplier Personnel

27.1.1 The Supplier shall:

- (a) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Goods and/or Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards;
 - (iii) obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer,

the ICT Policy) and provide the Goods and/or Services to the reasonable satisfaction of the Customer; and

- (iv) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call Off Schedule 7 (Security);
- (c) subject to Call Off Schedule 10 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Call Off Contract shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.

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

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

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

27.2 Relevant Convictions

27.2.1 This sub-clause 27.2 shall apply if the Customer has specified Relevant Convictions in the Call Off Order Form.

27.2.2 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) or otherwise), is employed or engaged in any part of the provision of the Goods and/or Services without Approval.

27.2.3 Notwithstanding Clause 27.2.2, for each member of Supplier Personnel who, in providing the Goods and/or Services, has, will have or is likely to have access to children, vulnerable persons or other

members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):

- (a) carry out a check with the records held by the Department for Education (DfE);
- (b) conduct thorough questioning regarding any Relevant Convictions; and
- (c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

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

28. STAFF TRANSFER

28.1 This Clause 28 shall not apply if there are Goods but no Services under this Call Off Contract.

28.2 The Parties agree that :

28.2.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Call Off Schedule 10 (Staff Transfer) shall apply as follows:

- (a) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Call Off Schedule 10 (Staff Transfer) shall apply;
- (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Call Off Schedule 10 (Staff Transfer) shall apply;
- (c) where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Call Off Schedule 10 (Staff Transfer) shall apply; and
- (d) Part C of Call Off Schedule 10 (Staff Transfer) shall not apply;

28.2.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Call Off Schedule 10 (Staff Transfer) shall apply and Parts A and B of Call Off Schedule 10 (Staff Transfer) shall not apply; and

28.2.3 Part D of Call Off Schedule 10 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;

28.3 The Supplier shall both during and after the Call Off Contract Period indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

29. SUPPLY CHAIN RIGHTS AND PROTECTION

29.1 Appointment of Sub-Contractors

- 29.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this Call Off Contract in the Delivery of the Goods and/or Services; and
 - (c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Call Off Contract.
- 29.1.2 Prior to sub-contacting any of its obligations under this Call Off Contract, the Supplier shall notify the Customer and provide the Customer with:
- (a) the proposed Sub-Contractor's name, registered office and company registration number;
 - (b) the scope of any Goods and/or Services to be provided by the proposed Sub-Contractor; and
 - (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 29.1.3 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 29.1.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-Contract; and
 - (b) any further information reasonably requested by the Customer.
- 29.1.4 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 29.1.2 (or, if later, receipt of any further information requested pursuant to Clause 29.1.3), object to the appointment of the relevant Sub-Contractor if they consider that:
- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to the interests respectively of the Customer under this Call Off Contract;
 - (b) the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - (c) the proposed Sub-Contractor employs unfit persons,
- in which case, the Supplier shall not proceed with the proposed appointment.
- 29.1.5 If:

- (a) the Customer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 29.1.2; and
 - (ii) any further information requested by the Customer pursuant to Clause 29.1.3; and
- (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority and the Customer in accordance with Clause 29.2 (Appointment of Key Sub-Contractors).

the Supplier may proceed with the proposed appointment.

29.2 Appointment of Key Sub-Contractors

- 29.2.1 The Authority and the Customer have consented to the engagement of the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors).
- 29.2.2 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Customer (the decision to consent or otherwise not to be unreasonably withheld or delayed). The Authority and/or the Customer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:
 - (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to its interests;
 - (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and/or reasonable services to its other customers; and/or
 - (c) the proposed Key Sub-Contractor employs unfit persons.
- 29.2.3 Except where the Authority and the Customer have given their prior written consent under Clause 29.2.1, the Supplier shall ensure that each Key Sub-Contract shall include:
 - (a) provisions which will enable the Supplier to discharge its obligations under this Call Off Contract;
 - (b) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
 - (c) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
 - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
 - (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Call Off Contract in respect of:

- (i) data protection requirements set out in Clauses 34.1 (Security Requirements), 34.2 (Protection of Customer Data) and 34.5 (Protection of Personal Data);
- (ii) FOIA requirements set out in Clause 34.4 (Transparency and Freedom of Information);
- (iii) the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in Clause 7.1.4(l) (Provision of Goods and/or Services);
- (iv) the keeping of records in respect of the Goods and/or Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data;
- (v) the conduct of audits set out in Clause 21 (Records, Audit Access & Open Book Data);
- (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 41 (Customer Termination Rights), 43 (Termination by Either Party) and 45 (Consequences of Expiry or Termination) of this Call Off Contract;
- (g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Goods and/or Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;
- (h) a provision, where a provision in Call Off Schedule 10 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be.

29.3 Supply Chain Protection

29.3.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
- (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- (c) conferring a right to the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
- (d) giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and

- (e) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub clauses (a) and (b) directly above.

29.3.2 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
- (b) include within the Performance Monitoring Reports required under Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) a summary of its compliance with this Clause 29.3.2 (a), such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.

29.3.3 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

29.3.4 Notwithstanding any provision of Clauses 34.3 (Confidentiality) and 35 (Publicity and Branding) if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

29.4 Termination of Sub-Contracts

29.4.1 The Customer may require the Supplier to terminate:

- (a) a Sub-Contract where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant to any of the termination events in Clause 41 (Customer Termination Rights) except Clause 41.7 (Termination Without Cause); and/or
 - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Goods and/or Services or otherwise; and/or
- (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
 - (i) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

- (ii) the Customer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

29.5 Competitive Terms

- 29.5.1 If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Goods and/or Services, then the Customer may:
 - (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or
 - (b) subject to Clause 29.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.
- 29.5.2 If the Customer exercises the option pursuant to Clause 29.5.1, then the Call Off Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.
- 29.5.3 The Customer's right to enter into a direct agreement for the supply of the relevant items is subject to:
 - (a) the Customer making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Goods and/or Services; and
 - (b) any reduction in the Call Off Contract Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

29.6 Retention of Legal Obligations

- 29.6.1 Notwithstanding the Supplier's right to Sub-Contract pursuant to Clause 29 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

G. PROPERTY MATTERS

30. CUSTOMER PREMISES

30.1 Licence to occupy Customer Premises

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

Contract and in accordance with Call Off Schedule 9 (Exit Management).

- 30.1.2 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.
- 30.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2 (Due Diligence) and set out in the Call Off 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 30.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 30.1.4 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.
- 30.1.5 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.

30.2 Security of Customer Premises

- 30.2.1 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.
- 30.2.2 The Customer shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

31. CUSTOMER PROPERTY

- 31.1 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.

- 31.2 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.
- 31.3 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.
- 31.4 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.
- 31.5 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.
- 31.6 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 Goods and/or Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.
- 31.7 The Supplier shall be liable for all loss of, or damage to the Customer Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Customer Cause. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Customer Property.

32. SUPPLIER EQUIPMENT

- 32.1 Unless otherwise stated in the Call Off Order Form (or elsewhere in this Call Off Contract), the Supplier shall provide all the Supplier Equipment necessary for the provision of the Goods and/or Services.
- 32.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.
- 32.3 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.
- 32.4 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.
- 32.5 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 and/or Services in accordance with this Call Off Contract, including the Service Level Performance Measures.
- 32.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.

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

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

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

32.8 For the purposes of this Clause 32.8, 'X' shall be the number of Service Failures, and 'Y' shall be the period in months, as respectively specified for 'X' and 'Y' in the Call Off Order Form. If this Clause 32.8 has been specified to apply in the Call Off Order Form, and there are no values specified for 'X' and/or 'Y', in default, 'X' shall be two (2) and 'Y' shall be twelve (12). Where a failure of Supplier Equipment or any component part of Supplier Equipment causes X or more Service Failures in any Y 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).

H. INTELLECTUAL PROPERTY AND INFORMATION

33. INTELLECTUAL PROPERTY RIGHTS

33.1 Allocation of title to IPR

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

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

(i) the Supplier Background IPR; and

(ii) the Third Party IPR.

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

(i) Customer Background IPR;

(ii) Customer Data; and

(iii) Project Specific IPRs.

33.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 33.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

33.1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

33.1.4 Unless the Customer otherwise agrees in advance in writing (and subject to Clause 33.10.3):

- (a) Project Specific IPR Items shall be created in a format, or able to be converted into a format, which is:
 - (i) suitable for publication by the Customer as Open Source; and
 - (ii) based on Open Standards (where applicable);
- (b) where the Project Specific IPR Items are written in a format that requires conversion before publication as Open Source or before complying with Open Standards, the Supplier shall also provide the converted format to the Customer.

33.2 Assignments granted by the Supplier: Project Specific IPR

- 33.2.1 The Supplier hereby assigns to the Customer with full guarantee, title to and all rights and interest in the Project Specific IPRs. The assignment under this Clause 33.2.1 shall take effect as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs.
- 33.2.2 The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Project Specific IPRs are properly transferred to the Customer.
- 33.2.3 To the extent that it is necessary to enable the Customer to obtain the full benefits of ownership of the Project Specific IPRs, the Supplier hereby grants to the Customer and shall procure that any relevant third party licensor shall grant to the Customer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR Items.

33.3 Licences granted by the Supplier: Supplier Background IPR

- 33.3.1 The Supplier hereby grants to the Customer a perpetual, royalty-free and non-exclusive licence to use the Supplier Background IPR for any purpose relating to the Goods and/or Services (or substantially equivalent goods and/or services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function.
- 33.3.2 At any time during the Call Off Contract Period or following the Call Off Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Background IPR under Clause 33.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Customer Cause which constitutes a material breach of the terms of 33.3.1 which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.
- 33.3.3 In the event the licence of the Supplier Background IPR is terminated pursuant to Clause 33.3.2, the Customer shall:

- (a) immediately cease all use of the Supplier Background IPR;
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Background IPR, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Customer may destroy the documents and other tangible materials that contain any of the Supplier Background IPR; and
- (c) ensure, so far as reasonably practicable, that any Supplier Background IPR that is held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Customer) from any computer, word processor, voicemail system or any other device containing such Supplier Background IPR.

33.4 Customer's right to sub-license

33.4.1 The Customer may sub-license:

- (a) the rights granted under Clause 33.3.1 (Licence granted by the Supplier: Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Customer; and
 - (ii) the sub-licence only authorises the third party to use the rights licensed in Clause 33.3.1 (Licence granted by the Supplier: Supplier Background IPR) for purposes relating to the Goods and/or Services (or substantially equivalent goods and/or services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and
- (b) the rights granted under Clause 33.3.1 (Licence granted by the Supplier: Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Customer.

33.5 Customer's right to assign/novate licences

33.5.1 The Customer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR) to:

- (a) a Central Government Body; or
- (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.

33.5.2 Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 33.3 (Licences granted by the Supplier: Supplier

Background IPR). If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR).

- 33.5.3 If a licence granted in Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR) is novated under Clause 33.5.1 or there is a change of the Customer's status pursuant to Clause 33.5.2 (both such bodies being referred to as the "**Transferee**"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

33.6 Third Party IPR

- 33.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR) and Clause 33.5.1 (Customer's right to assign/novate licences). If the Supplier cannot obtain for the Customer a licence materially in accordance with the licence terms set out in Clause 33.3 (Licences granted by the Supplier: Supplier Background IPR) and Clause 33.5.1 (Customer's right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:
- (a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
 - (b) only use such Third Party IPR if the Customer Approves the terms of the licence from the relevant third party.
- 33.6.2 Without prejudice to any other right or remedy of the Customer, if the Supplier becomes aware at any time, including after termination, that the Project Specific IPRs contain any Intellectual Property Rights for which the Customer does not have a licence in accordance with Clause 33.2.3, then the Supplier must notify the Customer within 10 days of what those rights are and which parts of the Project Specific IPR Items they are found in.

33.7 Licence granted by the Customer

- 33.7.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call Off Contract Period to use the Customer Background IPR, the Project Specific IPRs and the Customer Data solely to the extent necessary for providing the Goods and/or Services in accordance with this Call Off Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 34.3 (Confidentiality); and
 - (b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

33.8 Termination of licenses

- 33.8.1 Subject to Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR), all licences granted pursuant to Clause 33 (Intellectual Property Rights) (other than those granted pursuant to Clause 33.6 (Third Party IPR) and 33.7 (Licence granted by the Customer)) shall survive the Call Off Expiry Date.
- 33.8.2 The Supplier shall, if requested by the Customer in accordance with Call Off Schedule 9 (Exit Management), grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 33.3 (Licence granted by the Supplier: Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 33.8.3 The licence granted pursuant to Clause 33.7 (Licence granted by the Customer) and any sub-licence granted by the Supplier in accordance with Clause 33.7.1 (Licence granted by the Customer) shall terminate automatically on the Call Off Expiry Date and the Supplier shall:
- (a) immediately cease all use of the Customer Background IPR and the Customer Data (as the case may be);
 - (b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Background IPR and the Customer Data, provided that if the Customer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Background IPR and the Customer Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Customer Background IPR and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Customer Background IPR and/or Customer Data.

33.9 IPR Indemnity

- 33.9.1 The Supplier shall, during and after the Call Off Contract Period, on written demand, indemnify the Customer against all Losses incurred by, awarded against, or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 33.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:

- (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other Goods and/or Services;
 - (iii) there is no additional cost to the Customer; and
 - (iv) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Goods and/or Services.
- 33.9.3 If the Supplier elects to procure a licence in accordance with Clause 33.9.2(a) or to modify or replace an item pursuant to Clause 33.9.2(b), but this has not avoided or resolved the IPR Claim, then:
 - (a) the Customer may terminate this Call Off Contract by written notice with immediate effect; and
 - (b) without prejudice to the indemnity set out in Clause 33.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute goods and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

33.10 Open Source Publication

- 33.10.1 Subject to Clause 33.10.3, the Supplier agrees that the Customer may at its sole discretion publish as Open Source all or part of the Project Specific IPR Items after the Operational Services Commencement Date (such date to be notified by the Customer to the Supplier).
- 33.10.2 Subject to Clause 33.10.3, the Supplier hereby warrants that the Project Specific IPR Items:
 - (a) are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Customer will not enable a third party to use the published Project Specific IPRs or Project Specific IPR Items in any way, which could reasonably be foreseen to compromise the operation, running or security of the Project Specific IPRs or the Customer System;
 - (b) have been developed by the Supplier using reasonable endeavours to ensure that publication by the Customer of the same shall not cause any harm or damage to any party using the published Project Specific IPRs;
 - (c) do not contain any material which would bring the Customer into disrepute upon publication as Open Source;
 - (d) do not contain any IPRs which have not been licensed to the Customer under licence terms which permit the publication of the Project Specific IPR Items as Open Source by the Customer;

- (e) will be supplied in a format suitable for publication as Open Source ("the Open Source Publication Material") no later than the date notified to the Supplier under Clause 33.10.1; and
 - (f) do not contain any Malicious Software.
- 33.10.3 The Supplier hereby acknowledges and agrees that any Supplier Background IPRs which it includes in the Open Source Publication Material supplied to the Customer pursuant to Clause 33.10.2(e) and which have not been Approved for exclusion under Clause 33.10.4 will become Open Source and will hereby be licensed to the Customer under the Open Source licence terms adopted by the Customer and treated as such following publication by the Customer.
- 33.10.4 Where the Customer has Approved a request by the Supplier under Clause 33.1.4, for any part of the Project Specific IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Background IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:
- (a) as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and
 - (b) include in the written details provided under Clause 33.10.4 (a) information about the impact that inclusion of such IPRs and items or Deliverables based on such IPRs will have on any other Project Specific IPRs Items and the Customer's ability to publish such other items or Deliverables as Open Source.

34. SECURITY AND PROTECTION OF INFORMATION

34.1 Security Requirements

- 34.1.1 The Supplier shall comply with the Security Policy and the requirements of Call Off Schedule 7 (Security) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 34.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 34.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Goods and/or Services it may propose a Variation to the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call Off Contract Charges shall then be subject to the Variation Procedure.
- 34.1.4 Until and/or unless a change to the Call Off Contract Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Goods and/or Services in accordance with its existing obligations.

34.2 Protection of Customer Data

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

34.3 Confidentiality

- 34.3.1 For the purposes of Clause 34.3, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 34.3.2 Except to the extent set out in Clause 34.3 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call Off Contract or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 34.3.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 34.4 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;
 - (ii) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Goods and/or Services provided under this Call Off Contract; or
 - (iii) the conduct of a Central Government Body review in respect of this Call Off Contract; or
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;

- (d) such information was in the possession of the Disclosing Party without obligation of confidentiality prior to its disclosure by the information owner;
 - (e) such information was obtained from a third party without obligation of confidentiality;
 - (f) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; and
 - (g) the information is independently developed without access to the Disclosing Party's Confidential Information.
- 34.3.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 34.3.5 Subject to Clause 34.3.2, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:
- (a) Supplier Personnel who are directly involved in the provision of the Goods and/or Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Call Off Contract; and
 - (b) its professional advisers for the purposes of obtaining advice in relation to this Call Off Contract.
- 34.3.6 Where the Supplier discloses Confidential Information of the Customer pursuant to Clause 34.3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.
- 34.3.7 The Customer may disclose the Confidential Information of the Supplier:
- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
 - (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
 - (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 34.3.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Call Off Contract;
 - (e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or

- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under Clause 34.3.

- 34.3.8 Nothing in Clause 34.3 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 34.3.9 In the event that the Supplier fails to comply with Clauses 34.3.2 to 34.3.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

34.4 Transparency and Freedom of Information

- 34.4.1 The Parties acknowledge that
 - (a) the Transparency Reports; and
 - (b) the content of this Call Off Contract, including any changes to this Call Off Contract agreed from time to time, except for –
 - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Customer; and
 - (ii) Commercially Sensitive Information;

(together the "Transparency Information") are not Confidential Information.
- 34.4.2 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 34.4.3 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Call Off Schedule 13 (Transparency Reports).
- 34.4.4 If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from

publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

34.4.5 The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Call Off Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.

34.4.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 34.3.7(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Customer within 5 working days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.

34.4.7 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;
- (b) transfer to the Customer all Requests for Information relating to this Call Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Customer with a copy of all Information held on behalf of the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- (d) not respond directly to a Request for Information addressed to the Customer unless authorised in writing to do so by the Customer.

34.4.8 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Call Off Contract) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other

information is exempt from disclosure in accordance with the FOIA and EIRs.

34.5 Protection of Personal Data

- 34.5.1 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Call Off Contract, the Parties acknowledge that the Customer is the Data Controller and that the Supplier is the Data Processor.
- 34.5.2 Notwithstanding clause 34.5.1 the Supplier shall comply with its obligations under the DPA.
- 34.5.3 The Supplier shall:
- (a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call Off Contract;
 - (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in Clauses 34.1 (Security Requirements) and 34.2 (Protection of Customer Data);
 - (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call Off Contract)
 - (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under Clause 34.5.3 and Clauses 34.1 (Security Requirements), 34.2 (Protection of Customer Data) and 34.3 (Confidentiality);
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
 - (e) notify the Customer within five (5) Working Days if it receives:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;

- (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
- (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint, communication or request made (as referred to at Clause 34.5.3(e)), including by promptly providing:
 - (i) the Customer with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 34.5.3 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

34.5.4 The Supplier shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Call Off Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a Variation to the Customer which, if it is agreed by the Customer, shall be dealt with in accordance with the Variation Procedure and Clauses 34.5.4(b) to 34.5.4(c);
- (b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
 - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
 - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred

to Restricted Countries so as to ensure the Customer's compliance with the DPA;

- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (A) a direct data processing agreement with the Customer on such terms as may be required by the Customer; or
 - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-Contractor relating to the relevant Personal Data transfer, and
 - (iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

34.5.5 The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the DPA. The Supplier shall not perform its obligations under this Call Off Contract in such a way as to cause the Customer to breach any of the Customer's obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

35. PUBLICITY AND BRANDING

35.1 The Supplier shall not:

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

- 35.1.2 use the Customer's name or brand in any promotion or marketing or announcement of orders,
- 35.1.3 without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed).
- 35.2 Each Party acknowledges to the other that nothing in this Call Off Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Goods and/or Services and Supplier Equipment) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

I. LIABILITY AND INSURANCE

36. LIABILITY

36.1 Unlimited Liability

- 36.1.1 Neither Party excludes or limits its liability for:
 - (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
 - (b) bribery or Fraud by it or its employees;
 - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any liability to the extent it cannot be excluded or limited by Law.
- 36.1.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 33.9 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

36.2 Financial Limits

- 36.2.1 Subject to Clause 36.1 (Unlimited Liability), the Supplier's total aggregate liability:
 - (a) in respect of all:
 - (i) Service Credits; and
 - (ii) Compensation for Critical Service Level Failure;incurred in any rolling period of 12 Months shall be subject in aggregate to the Service Credit Cap;
 - (b) in respect of all other Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:
 - (i) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, the higher of ten million pounds (£10,000,000) or a sum equal to one hundred and fifty per

cent (150%) of the Estimated Year 1 Call Off Contract Charges;

- (ii) in relation to any Defaults occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, the higher of ten million pounds (£10,000,000) in each such Call Off Contract Year or a sum equal to one hundred and fifty percent (150%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
- (iii) in relation to any Defaults occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, the higher of ten million pounds (£10,000,000) in each such Call Off Contract Year or a sum equal to one hundred and fifty percent (150%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period;

unless the Customer has specified different financial limits in the Call Off Order Form.

36.2.2 Subject to Clauses 36.1 (Unlimited Liability) and 36.2 (Financial Limits) and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:

- (a) in relation to any Customer Causes occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, a sum equal to the Estimated Year 1 Call Off Contract Charges;
- (b) in relation to any Customer Causes occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
- (c) in relation to any Customer Causes occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.

36.3 Non-recoverable Losses

36.3.1 Subject to Clause 36.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:

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

36.4 Recoverable Losses

36.4.1 Subject to Clause 36.2 (Financial Limits), and notwithstanding Clause 36.3 (Non-recoverable Losses), the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

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

36.5 Miscellaneous

- 36.5.1 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call Off Contract.
- 36.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 36.2 (Financial Limits).
- 36.5.3 Subject to any rights of the Customer under this Call Off Contract (including in respect of an IPR Claim), any claims by a third party where an indemnity is sought by that third party from a Party to this Call Off Contract shall be dealt with in accordance with the provisions of Framework Schedule 20 (Conduct of Claims).

37. INSURANCE

37.1 This Clause 37 will only apply where specified in the Call Off Order Form or elsewhere in this Call Off Contract.

37.2 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 31 (Insurance) of the Framework Agreement, the Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Framework Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract.

37.3 Without limitation to the generality of Clause 37.2 the Supplier shall ensure that it maintains the policy or policies of insurance as stipulated in the Call Off Order Form.

37.4 The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause 37 for six (6) years after the Call Off Expiry Date.

- 37.5 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause 37 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 37.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause 37 the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 37.7 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 37.8 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

J. REMEDIES AND RELIEF

38. CUSTOMER REMEDIES FOR DEFAULT

38.1 Remedies

- 38.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising (including under Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 13.6 (Service Levels and Service Credits) and 6.4.1(b) (Delay Payments), if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Goods and/or Services have been Delivered) do any of the following:
- (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Customer's instructions;
 - (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Goods and/or Services comply with this Call Off Contract;
 - (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of

whether such Defaults are remedied - which taken together constitute a material Default):

- (i) instruct the Supplier to comply with the Rectification Plan Process;
- (ii) suspend this Call Off Contract (whereupon the relevant provisions of Clause 44 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Goods and/or Services;
- (iii) without terminating or suspending the whole of this Call Off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Goods and/or Services only (whereupon the relevant provisions of Clause 44 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Good and/or Services;

38.1.2 Where the Customer exercises any of its step-in rights under Clauses 38.1.1(c)(ii) or 38.1.1(c)(iii), the Customer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or Services by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Goods and/or Replacement Goods and/or Services.

38.2 Rectification Plan Process

38.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 38.1.1(c)(i):

- (a) the Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within 10 (ten) Working Days (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.
- (b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a cause analysis;
 - (ii) the actual or anticipated effect of the Default; and
 - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

38.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's

root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of this Call Off Schedule 11 (Dispute Resolution Procedure).

- 38.2.3 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent reoccurrence of the Default; and/or
 - (d) will rectify the Default but in a manner which is unacceptable to the Customer.
- 38.2.4 The Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.
- 38.2.5 If the Customer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

39. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

39.1 If the Supplier has failed to:

- 39.1.1 Achieve a Milestone by its Milestone Date;
- 39.1.2 provide the Goods and/or Services in accordance with the Service Levels;
- 39.1.3 comply with its obligations under this Call Off Contract,
(each a "Supplier Non-Performance"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 17 (Supplier Notification of Customer Cause)):

- (a) the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (b) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.7 (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
- (d) where the Supplier Non-Performance constitutes a Service Level Failure:
- (i) the Supplier shall not be liable to accrue Service Credits;
 - (ii) the Customer shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 14 (Critical Service Level Failure); and
 - (iii) the Supplier shall be entitled to invoice for the Call Off Contract Charges for the provision of the relevant Goods and/or Services affected by the Customer Cause,
- in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Customer Cause.

39.2 In order to claim any of the rights and/or relief referred to in Clause 39.1, the Supplier shall:

- 39.2.1 comply with its obligations under Clause 17 (Notification of Customer Cause); and
- 39.2.2 within ten (10) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer notice (a "**Relief Notice**") setting out details of:
 - (a) the Supplier Non-Performance;
 - (b) the Customer Cause and its effect on the Supplier's ability to meet its obligations under this Call Off Contract; and
 - (c) the relief claimed by the Supplier.

39.3 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.

39.4 Without prejudice to Clauses 8.6 (Continuing obligation to provide the Services) and 9.11 (Continuing obligation to provide the Goods), if a Dispute arises as to:

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

39.4.2 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.

39.5 Any Variation that is required to the Implementation Plan or to the Call Off Contract Charges pursuant to Clause 39 shall be implemented in accordance with the Variation Procedure.

40. FORCE MAJEURE

40.1 Subject to the remainder of Clause 40 (and, in relation to the Supplier, subject to its compliance with any obligations in Clause 15 (Business Continuity and Disaster Recovery)), a Party may claim relief under Clause 40 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.

40.2 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.

40.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under Clause 40 to the extent that consequences of the relevant Force Majeure Event:

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

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

40.4 Subject to Clause 40.5, 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 and/or Services affected by the Force Majeure Event.

40.5 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.

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

40.6.1 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 and/or Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and

- (b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Cause arising as a result of such failure;

40.6.2 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 38.1.1(b) and 38.1.1(c) (Customer Remedies for Default) as a result of such failure;
 - (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; and
 - (iii) to receive Service Credits or withhold and retain any of the Call Off Contract Charges as Compensation for Critical Service Level Failure pursuant to Clause 14 (Critical Service Level Failure) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; and
- (b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Goods and/or Services (or part of the Goods and/or Services) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.

40.7 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.

40.8 Relief from liability for the Affected Party under Clause 40 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 40.7.

K. TERMINATION AND EXIT MANAGEMENT

41. CUSTOMER TERMINATION RIGHTS

41.1 Termination in Relation to Call Off Guarantee

41.1.1 Where this Call Off Contract is conditional upon the Supplier procuring 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; or
 - (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; or
- (e) the Supplier fails to provide the documentation required by Clause 4.1 by the date so specified by the Customer.

41.2 Termination on Material Default

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

- (a) the Supplier commits a Critical Service Level Failure;
- (b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable;
- (c) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed 80% (unless stated differently in the Call Off Order Form) of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clauses 36.2.1(a) and 36.2.1(b) (Liability);
- (d) 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 (Implementation Plan), 8.4.2 (Services), 9.4.2 and 9.6.1 (Goods), 10.3 (Installation Works), 14.1 (Critical Service Level Failure), 16.4 (Disruption), 21.5 (Records, Audit Access and Open Book Data), 24 (Promoting Tax Compliance), 34.3.9 (Confidentiality), 50.6.2 (Prevention of Fraud and Bribery), Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Call Off Schedule 10 (Staff Transfer);
- (e) 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
- (f) 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.

41.2.2 For the purpose of Clause 41.2.1, 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.

41.3 Termination in Relation to Financial Standing

41.3.1 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 and/or Services under this Call Off Contract; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and/or Services under this Call Off Contract.

41.4 Termination on Insolvency

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

41.5 Termination on Change of Control

41.5.1 The Supplier shall notify the Customer immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.

41.5.2 The Supplier shall ensure that any notification made pursuant to Clause 41.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

41.5.3 The Customer may terminate this Call Off Contract by issuing a Termination Notice under Clause 41.5 to the Supplier within six (6) Months of:

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

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

41.6 Termination for breach of Regulations

41.6.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

41.7 Termination Without Cause

41.7.1 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 (unless stated differently in the Call Off Order Form).

41.8 Termination in Relation to Framework Agreement

- 41.8.1 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.

41.9 Termination In Relation to Benchmarking

- 41.9.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in paragraphs 1 and 2 of Framework Schedule 12 (Continuous Improvement and Benchmarking).

41.10 Termination in Relation to Variation

- 41.10.1 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.

42. SUPPLIER TERMINATION RIGHTS

42.1 Termination on Customer Cause for Failure to Pay

- 42.1.1 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 an amount equal to one month's average Call Off Contract Charges (unless a different amount has been specified in the Call Off Order Form), for the purposes of this Clause 42.1.1 (the "**Undisputed Sums Limit**"), and the said undisputed sum due remains outstanding for forty (40) Working Days (the "**Undisputed Sums Time Period**") after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

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

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 23.3 (Retention and Set off).

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

43. TERMINATION BY EITHER PARTY

43.1 Termination for continuing Force Majeure Event

- 43.1.1 Either Party may, by issuing a Termination Notice to the other Party, terminate this Call Off Contract in accordance with Clause 40.6.1(a) (Force Majeure).

44. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

- 44.1 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.
- 44.2 Any suspension of this Call Off Contract under Clause 44.1 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.
- 44.3 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/or Services and the Call Off Contract Charges, provided that the Supplier shall not be entitled to:
- 44.3.1 an increase in the Call Off Contract Charges in respect of the provision of the Goods and/or Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 41 (Customer Termination Rights) except Clause 41.7 (Termination Without Cause); and
- 44.3.2 reject the Variation.

45. CONSEQUENCES OF EXPIRY OR TERMINATION

- 45.1 Consequences of termination under Clauses 41.1 (Termination in Relation to Guarantee), 41.2 (Termination on Material Default), 41.3 (Termination in Relation to Financial Standing), 41.8 (Termination in Relation to Framework Agreement), 41.9 (Termination in Relation to Benchmarking) and 41.10 (Termination in Relation to Variation)
- 45.1.1 Where the Customer:
- (a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 45.1; and
- (b) then makes other arrangements for the supply of the Goods and/or Services,
- the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period provided that Customer shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

45.2 Consequences of termination under Clauses 41.7 (Termination without Cause) and 42.1 (Termination on Customer Cause for Failure to Pay)

45.2.1 Where:

- (a) the Customer terminates (in whole or in part) this Call Off Contract under Clause 41.7 (Termination without Cause); or
- (b) the Supplier terminates this Call Off Contract pursuant to Clause 42.1 (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 41.7 (Termination without Cause).

45.2.2 The Customer shall not be liable under Clause 45.2.1 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.

45.3 Consequences of termination under Clause 43.1 (Termination for Continuing Force Majeure Event)

45.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Call Off Contract for a continuing Force Majeure Event pursuant to Clause 43.1 (Termination for Continuing Force Majeure Event).

45.4 Consequences of Termination for Any Reason

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

- (a) termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 21 (Records, Audit Access & Open Book Data), 33 (Intellectual Property Rights), 34.3 (Confidentiality), 34.4 (Transparency and Freedom of Information) 34.5 (Protection of Personal Data), 36 (Liability),

45 (Consequences of Expiry or Termination), 51 (Severance), 53 (Entire Agreement), 54 (Third Party Rights) 56 (Dispute Resolution) and 57 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), Call Off Schedule 9 (Exit Management), Call Off Schedule 10 (Staff Transfer), Call Off Schedule 11 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

45.5 Exit management

- 45.5.1 The Parties shall comply with the exit management provisions set out in Call Off Schedule 9 (Exit Management).

L. MISCELLANEOUS AND GOVERNING LAW

46. COMPLIANCE

46.1 Health and Safety

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

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

- 46.1.2 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

- 46.1.3 While on the Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Personnel and other persons working there and any instructions from the Customer on any necessary associated safety measures.

46.2 Equality and Diversity

- 46.2.1 The Supplier shall:

- (a) perform its obligations under this Call Off Contract (including those in relation to provision of the Goods and/or Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - (ii) any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law;

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

46.3 Official Secrets Act and Finance Act

46.3.1 The Supplier shall comply with the provisions of:

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

46.4 Environmental Requirements

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

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

47. ASSIGNMENT AND NOVATION

47.1 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.

47.2 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:

- 47.2.1 any other Contracting Authority; or
- 47.2.2 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
- 47.2.3 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 47.2.

47.3 A change in the legal status of the Customer shall not, subject to Clause 47.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.

47.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a private sector body in accordance with Clause 47.2.3 (the "**Transferee**" in the rest of this Clause 47.4) the right of termination of the Customer in Clause 41.4 (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 41.4 (Termination on Insolvency) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee).

48. WAIVER AND CUMULATIVE REMEDIES

48.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 55 (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 that right or remedy.

48.2 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.

49. RELATIONSHIP OF THE PARTIES

49.1 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.

50. PREVENTION OF FRAUD AND BRIBERY

50.1 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:

- 50.1.1 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
- 50.1.2 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.

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

- 50.2.1 commit a Prohibited Act; and/or
- 50.2.2 do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

50.3 The Supplier shall during the Call Off Contract Period:

- 50.3.1 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;
- 50.3.2 keep appropriate records of its compliance with its obligations under Clause 50.3.1 and make such records available to the Customer on request;
- 50.3.3 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 that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Goods and/or Services in connection with this Call Off Contract are compliant with the Relevant Requirements. The Supplier shall provide such